

**Response to Comments
made by Cable and Wireless HKT**

Trustworthy System

- We note the comment on the definition of “trustworthy system”. It is quite common that we refer to the test of “reasonableness” in legislation. This is essentially a matter of fact, to be decided having regard to the circumstances of the case. Should there be any dispute over this point, the issue will ultimately be settled by the court. The legislation of Singapore, Malaysia, Utah, etc. adopt a similar definition of “trustworthy system”. To enhance the understanding of the industry about the operation of the provision, the Information Technology Services Department will consider issuing technical guidelines for the purpose.

Appeal

- We note the comment on Clause 37 of the Electronic Transactions Bill. We do not agree that the proposed appeal mechanism is inadequate. The Secretary for Information Technology and Broadcasting (SITB), when considering an appeal, will examine whether the Director of Information Technology Service (DITS) has properly exercised his power pursuant to Clauses 20, 21, 22, 23 and 26 of the Bill. The major criteria for exercising such power are clearly laid down in Clauses 20(3)-(4), 21(4) and 24 of the Bill. These criteria will guide the SITB in coming to a decision on the appeal. The statement that “the criteria of SITB’s decision on appeal are not clearly specified in the Bill” is, therefore, incorrect.
- The decision of the SITB on the appeal is subject to judicial review. To make the appeal process more transparent, we shall propose a Committee Stage Amendment to provide that the SITB shall give reasons for his decision on the appeal. This will facilitate the appellant to seek judicial review if he so wishes.

Discretionary Power of the Director of Information Technology Service

- We note the comment on the discretionary power of the DITS under Clause 20. We do not consider the power too wide. To properly discharge his

function as the recognition authority, the DITS has to be given some flexibility so that he can deal with applications for recognition as recognised certification authorities having regard to the specific circumstances and facts of each application. Besides the specific factors set out in Clause 20(3) and (4) of the Bill, the DITS may only consider other matters which are relevant. We consider that the provision, as currently drafted, is sufficiently clear and objective to guide the DITS in coming to a decision.

- The relevance of a matter considered by the DITS is subject to appeal to the SITB. The SITB's decision is in turn subject to judicial review.
- We are reviewing practices adopted in other places in the world in connection with the recognition of certification authorities and the DITS will consider issuing compliance guidelines for the recognition criteria stipulated in the Bill.

Suspension

- We note the comment on Clause 23 of the Electronic Transactions Bill. Under the Clause, the DITS may suspend a recognition for a period not exceeding 14 days by serving a notice of suspension on a recognised certification authority. We do not consider that there is a need for the DITS to invite the certification authority concerned to make representations before the suspension is implemented. This will otherwise defeat the purpose of suspension which has to be carried out promptly in order to be effective. However, the certification authority concerned may appeal under Clause 27 of the Bill to the SITB against the suspension decision of the DITS within 7 days of the date on which the suspension notice is served on the certification authority. If an appeal is made, by virtue of Clause 23(3) of the Bill, the suspension will not take effect until the expiry of 7 days from the date on which the SITB confirms the suspension on appeal.

Consequential Liability

- We note the comment on Clause 36 of the Bill. The purpose of the Clause is to allow a recognised certification authority to limit its liability under prescribed situations where the recognised certification authority has complied with the requirements under the Bill and no negligence or intentional or reckless misrepresentation is involved. The intention is to provide certainty and to minimise dispute or litigation in cases where the recognised certification authority is not at fault. We do not consider it

appropriate to introduce a statutory exclusion of consequential liability where there is negligent misrepresentation on the part of the recognised certification authority.

Public Consultation on Future Amendment to the Code of Practice

- We note the comment on Clause 39 of the Electronic Transactions Bill. The DITS is consulting the industry in drawing up the code of practice for recognised certification authorities. The DITS will similarly consult the industry beforehand when the code of practice is to be amended in future.

Disclosure of Private Keys

- We note the comment on Clause 41 (2)(b) of the Electronic Transactions Bill. Clause 41(1) of the Bill stipulates that a person who has access to any record, book, information or other material in the course of performing a function under or for the purposes of this Bill shall not disclose such material to any other person except in circumstances stipulated under Clause 41(2). The SITB and the DITS will not have access to the private keys of individual subscribers under the Bill at all. Neither has the Bill stipulated that recognised certification authorities shall have access to the private keys of their subscribers. In short, we do not envisage that the SITB, the DITS or a recognised certification authority would have access to the private keys of subscribers in the course of performing a function under or for the purposes of this Bill at all.

Periodic Review of Schedule 1

- We note the comment on Schedule 1 to the Electronic Transactions Bill. It is our intention to regularly review the Schedule with a view to reducing the number of excluded items thereunder.

Recognition of Electronic Signatures

- We note the comment on the recognition of electronic signature. The primary aim of the Electronic Transactions Bill is to provide a certain and secure environment for the conduct of electronic transactions over open networks. Digital signature is currently the only form of electronic signature with a level of technical maturity that adequately meets the need for user

authentication, integrity and confidentiality of data and non-repudiation of transactions in an open network environment. It is also by far the most common form of electronic signature being used in the market that is supported by open standards.

- In considering whether we should give recognition to other forms of electronic signature, we should look at the practical implications. If the Government and others in the community have no commonly available means to accept and deal with electronic signatures other than digital signature, any move to recognise other forms of electronic signature would be premature. Security breaches of any kind due to immaturity of the technology would substantially undermine the confidence of the public in participating in electronic commerce. This would impede the development of electronic commerce in Hong Kong.
- The adoption of digital signature is technologically neutral in the sense that digital signature is not based on particular types of algorithm products in the market. Moreover, it is up to the user to decide what level of security in respect of the digital certificates should be adopted to suit intended purpose.

Mutual Recognition of Certification Authorities

- We note the views on the mutual recognition of certification authorities. It is our plan to develop and establish cross recognition between the HKSAR and other economies in respect of the operation of certification authorities so as to facilitate cross-border electronic commerce. This is one of the new initiatives of the Information Technology and Broadcasting Bureau set out in the 1999 Policy Address.