

**Response to Comments  
made by the Consumer Council**

Introduction

- We note that the Consumer Council expresses its general support for the Electronic Transactions Bill.

Basic Consumer Safeguards

- We agree with the Consumer Council that the Electronic Transactions Bill is not the right instrument to address specific issues on consumer safeguards for electronic commerce referred to in paragraph 4 of the Council's submission.
- We welcome the initiatives taken by the Consumer Council to discuss with industry associations on self-regulatory issues which would help to safeguard the interest of consumers in electronic commerce. We will provide support to facilitate these discussions where appropriate.
- We also note that the Consumer Council will soon issue a benchmark code of practice for operation of cybershops which will encourage self-regulation by the industry.

Competition Oversight

- We consider that competition is best nurtured and sustained by allowing the free play of market forces and keeping intervention to the minimum. We welcome choice in trustworthy certification services in Hong Kong through the presence of quality certification authorities here. To this end, we will not set a ceiling on the number of certification authorities operating in Hong Kong. This should be

determined entirely by market forces.

- We consider that there is a need for the Government to take the lead in the establishment of the local public key infrastructure in order to kick-start the development of electronic commerce in Hong Kong. We have, therefore, proposed that the Hongkong Post should operate a public certification service. Though exempt from Part VII of the Electronic Transactions Bill, Hongkong Post will as a recognised certification authority be required to comply with the code of practice to be issued by the Director of Information Technology Services (DITS) under Clause 39 of the Bill. As a Government department, Hongkong Post will ensure that it acts in accordance with public interests. The proposed recognition scheme operates on a voluntary basis. It is up to individual certification authorities to decide whether they would wish to submit to it.
- The DITS as the recognition authority under the Bill will exercise authority over recognised certification authorities only. In view of this, we do not consider that DITS's role should be expanded into a competition authority for overseeing the operation of the entire certification authorities market which will include certification authorities without Government recognition.

### Liability Against Fraud

- The operation of a certification authority is a normal type of commercial activity. It is adequate that the relationship of the certification authority with its customers be governed by common law like contract or tort. We do not consider that such issues should be addressed through a Government licensing scheme. Nor do we consider it appropriate for matters of law to be determined by the executive arm of Government instead of by the court.

## Choice of Laws

- We agree with the views of the Consumer Council that if an e-commerce trader specifies that a particular jurisdiction's law should apply to the transaction, the choice is open for a consumer not to trade, or to trade and take any risk associated. We therefore consider that such matters should be left to be decided by the transacting parties and it is not appropriate for us to make any stipulations or default arrangements in the legislation.