

Electronic Transactions Bill – Clause 4

At the fifth Bills Committee meeting held on 18 November, Members asked the Administration to re-examine the drafting of clause 4, which deals with the scope of application of the Electronic Transactions Bill (the Bill). This paper reports on the outcome of our consideration.

2. As far as the application scope of the Bill is concerned, our legislative intent is that –

- (a) the Bill should bind the Government of the Hong Kong Special Administrative Region (HKSAR) with regard to obligations created upon it under the Bill (e.g. obligations imposed on the Director of Information Technology Services (DITS) in his capacity as the recognition authority under Parts VII and VIIA of the Bill); and
- (b) the benefits arising from the Bill should apply to all and sundry in Hong Kong. These benefits arise from Part III of the Bill, which provides an additional method of complying with legal requirements for paper-based documents and manual signatures.

3. Clause 4, as originally drafted, provides that subject to the exceptions in the Bill, the Bill applies in relation to any rule of law applicable to an individual, public body or public authority and to any electronic transaction to which any such person is a party. It essentially addresses the beneficent purpose of the Bill. Under common law, however, a party may take the benefits created under an Ordinance without a specific application clause. In other words, the original clause 4 is unnecessary insofar as it seeks to affirm the beneficent purpose of the Bill.

4. On the other hand, different parts of the HKSAR Government will undertake obligations under various clauses of the Bill. The new obligations created under the new Part VIIA for DITS to maintain an on-line and publicly accessible certificate authority disclosure record for each recognised certification authority and to notify revocations, suspensions and non-renewals of recognitions, etc in such certificate authority disclosure record are a case in point. In the interest of clarity, we consider it preferable to spell out clearly the binding effect of the Bill on the

HKSAR Government.

5. In the light of the foregoing, we propose that clause 4 of the Bill be revised to read : “This Ordinance binds the Government.”

**Information Technology and Broadcasting Bureau
November 1999**