

**Bills Committee on Electronic Transactions Bill**

**Summary of Committee Stage amendments proposed by the Administration**

**(Position as at 27 November 1999)**

Clause No.	Committee Stage amendments	Remarks
2 (Interpretation)	<p><u>Definition of "accept a certificate"</u> To add "<i>uses the certificate or</i>" before "<i>otherwise</i>" in paragraph (b) of the definition. (LC Paper No. CB(1)465/99-00(04))</p>	Proposed by the Administration.
	<p><u>Definition of "certification authority disclosure record"</u> To replace the definition by "<i>, in relation to a recognized certification authority, means the record maintained under section 27B for that certification authority;</i>". (LC Paper No. CB(1)443/99-00(06))</p>	Proposed by the Administration to make reference to the new clause 27B.
	<p><u>Definition of "code of practice"</u> To replace the reference to section 39 by section 27D. (LC Paper No. CB(1)443/99-00(06))</p>	Proposed by the Administration to make reference to the new clause 27D.
	<p><u>Definition of "information system"</u> To delete "<i>automatically</i>" in the definition. (LC Paper No. CB(1)443/99-00(06))</p>	To address the concern of HKLS.
	<p><u>Definition of "issue"</u> To make a minor drafting change. (LC Paper No. CB(1)443/99-00(06))</p>	Proposed by the Administration.
	<p><u>Definition of "recognized certificate"</u> To add "<i>designated as a recognized certificate</i>" after "<i>certificate</i>" in paragraph (c) of the definition. (LC Paper No. CB(1)443/99-00(06))</p>	Proposed by the Administration.

Clause No.	Committee Stage amendments	Remarks
<p>2 (Interpretation)</p>	<p><u>Definition of "recognized certification authority"</u> To make a minor drafting change. (LC Paper No. CB(1)443/99-00(06))</p>	<p>Proposed by the Administration.</p>
	<p><u>Definition of "rule of law"</u> To replace "equity" by "a rule of equity" in paragraph (b) and to add paragraph (c) "customary law" to the definition. (LC Paper No. CB(1)230/99-00(11))</p>	<p>To address the concern of HKLS.</p>
	<p><u>Definition of "trustworthy system"</u> To replace "generally accepted security procedures" by "generally accepted security principles" in paragraph (d) of the definition. (LC Paper No. CB(1)443/99-00(06))</p>	<p>To address the concern of HKSA.</p>
<p>3 (Matters to which sections 5, 6, 7, 8 and 16 are not applicable)</p>	<p>To use a general form of wording to cover all three scenarios of "be in writing, given or presented in writing". (LC Paper No. CB(1)140/99-00(02))</p>	<p>Proposed by the Administration to simplify the provision.</p>
<p>5 (Requirement for writing)</p>	<p><u>Clause 5 (1) and (2)</u> To use a general form of wording to cover all three scenarios of "be in writing, given or presented in writing". (LC Paper No. CB(1)140/99-00(02))</p>	<p>Proposed by the Administration to simplify the provision.</p>
	<p><u>Clause 5(1)</u> To amend clause 5(1) to the effect that "the requirement under the rule of law is satisfied". (LC Paper No. CB(1)230/99-00(09))</p>	<p>To address the concern of HKBA.</p>
<p>6 (Digital signatures)</p>	<p>To amend clause 6(1) to the effect that "the requirement under the rule of law is satisfied". (LC Paper No. CB(1)230/99-00(09))</p>	<p>To address the concern of HKBA.</p>
<p>7 (Presentation or retention of information in its original forms)</p>	<p><u>Clause 7(1)</u> To amend clause 7(1) to the effect that "the requirement under the rule of law is satisfied". (LC Paper No. CB(1)230/99-00(09))</p>	<p>To address the concern of HKBA.</p>

Clause No.	Committee Stage amendments	Remarks
7 (Presentation or retention of information in its original forms)	<u>Clause 7(1)(a)</u> To amend clause 7(1)(a) to provide flexibility to the effect that the information referred to in the clause can be generated in its final form as a paper or electronic record. (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.
8 (Retention of information in electronic records)	<u>Clause 8(1)</u> To amend clause 8(1) to the effect that " <i>the requirement under the rule of law is satisfied</i> ". (LC Paper No. CB(1)230/99-00(09))	To address the concern of HKBA.
	<u>Clause 8(1)(a)</u> To simplify clause 8(1)(a). (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.
	<u>Clause 8(1)(b)</u> To make a minor drafting change. (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.
11 (Secretary may make orders excluding application of section 5, 6, 7 or 8)	To replace " <i>rule of law</i> " by " <i>Ordinance</i> " and to make a minor drafting change. (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.
12 (Electronic record to comply with specified requirements to satisfy sections 5, 6, 7, 8)	To replace " <i>rule of law</i> " by " <i>Ordinance</i> " and to make minor drafting changes. (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.
New clause 14A (When sections 5, 6 and 7 apply to transactions between persons who are not government)	To provide flexibility for non-Government entities to agree amongst themselves as to whether electronic record/digital signature should be used in satisfying a requirement under a rule of law for one party to provide information or to sign a document for presenting to the other party. (LC Paper No. CB(1)140/99-00(02)) (LC Paper No. CB(1)409/99-00(03)) (LC Paper No. CB(1)443/99-00(06))	To address the concern of HKSA.

Clause No.	Committee Stage amendments	Remarks
<p>15 (Sections 5, 6, 7 and 8 not to have effect if their operation affects other statutory requirements)</p>	<p>To simplify the provision of clause 15(4). (LC Paper No. CB(1)443/99-00(06))</p>	<p>Proposed by the Administration.</p>
<p>16 (Formation and validity of electronic contracts)</p>	<p><u>Clause 16(1)</u> To amend clause 16(1) to provide greater flexibility for the use of electronic records in contract formation. (LC Paper No. CB(1)140/99-00(02)) (LC Paper No. CB(1)230/99-00(11))</p>	<p>To address the concern of HKLS.</p>
	<p><u>Clause 16(3)</u> To add the new subclause (3) to protect the common law principle that the offeror may specify the means of acceptance of an offer in contract formation. (LC Paper No. CB(1)140/99-00(02))</p>	<p>To address the concerns of HKBA and Horvath &amp; Giles.</p>
<p>18 (Sending and receiving electronic records)</p>	<p>To replace "comes to the attention of" by "comes to the knowledge of" in clause 18(2)(a)(ii) and 18(2)(b). (LC Paper No. CB(1)343/99-00(07))</p>	<p>To address the concern of the Bills Committee and HKSA</p>
<p>19 (Certification authority may apply to Director for recognition)</p>	<p><u>Clause 19(3)(b)(i)</u> To amend clause 19(3)(b)(i) to the effect that an applicant must furnish a report which contains an assessment as to whether the applicant is capable of complying with the provisions of the Bill applicable to a recognized CA and any code of practice. (LC Paper No. CB(1)409/99-00(03))</p>	<p>To address the concerns of HKSA and the Bills Committee.</p>

Clause No.	Committee Stage amendments	Remarks
<p>19 (Certification authority may apply to Director for recognition)</p>	<p><u>Clause 19(4) and (5)</u> To amend clause 19(4) and to add the new subclause (5) to the effect that the Director may invoke the waiving provision only for the purpose of facilitating the recognition in Hong Kong of CAs licensed, registered or otherwise recognized in a place outside Hong Kong if there is recognition in that place on a reciprocal basis of CAs recognized in Hong Kong. (LC Paper No. CB(1)382/99-00(01)) (LC Paper No. CB(1)409/99-00(01)) (LC Paper No. CB(1)409/99-00(03))</p>	<p>To address the concern of the Bills Committee and HKSA.</p>
<p>20 (Director may on application recognize certification authorities)</p>	<p><u>Clause 20(1A)</u> To add the new subclause (1A) to provide that the Director will give reasons for refusing an application for recognition under clause 20(1)(b). (LC Paper No. CB(1)443/99-00(01))</p>	<p>To address the concern of the Bills Committee.</p>
	<p><u>Clause 20(3)(a)</u> To clarify the provisions of clause 20(3)(a). (LC Paper No. CB(1)443/99-00(06))</p>	<p>To address the concern of the Bills Committee.</p>
	<p><u>Clause 20(3)(c)</u> To cover "security arrangements" in clause 20(3) as one of the recognition criteria. (LC Paper No. CB(1)443/99-00(02))</p>	<p>To address the concern of the Bills Committee.</p>
<p>21 (Director may recognize certificates)</p>	<p><u>Clause 21(5A)</u> To add the new subclause (5A) to provide that the Director will give reasons for refusing an application for recognition under clause 21(5). (LC Paper No. CB(1)443/99-00(01))</p>	<p>To address the concern of the Bills Committee.</p>
	<p><u>Clause 21(8)</u> To add ", 5A" after "5". (LC Paper No. CB(1)443/99-00(06))</p>	<p>Proposed by the Administration to made reference to new subclause (5A).</p>

Clause No.	Committee Stage amendments	Remarks
<p>22 (Revocation of recognition)</p>	<p><u>Heading</u> To replace the heading by "<i>Director may revoke recognition</i>". (LC Paper No. CB(1)443/99-00(06))</p>	<p>Proposed by the Administration.</p>
	<p><u>Clause 22(2)</u> To make a minor drafting change. (LC Paper No. CB(1)443/99-00(06))</p>	<p>Proposed by the Administration.</p>
	<p><u>Clause 22(4)</u> To amend clause 22(4) to provide that the Director must give reasons in the notice of revocation of recognition of CA. (LC Paper No. CB(1)140/99-00(02))</p>	<p>Proposed by the Administration to assist the CA concerned in its preparation for an appeal.</p>
	<p><u>Clause 22(8)</u> To delete clause 22(8). (LC Paper No. CB(1)443/99-00(06))</p>	<p>Proposed by the Administration to incorporate the provisions of clause 22(8) into the new clauses 27B(2) and 27C(2).</p>
	<p><u>Clause 22(9)</u> To delete clause 22(9). (LC Paper No. CB(1)443/99-00(01))</p>	<p>To address the concern of the Bills Committee.</p>
<p>23 (Director may suspend recognition)</p>	<p><u>Clause 23(1) and (1A)</u> To amend clause 23(1) and to add the new subclause (1A) to provide that the Director must give reasons in the notice of suspension of recognition of CA. (LC Paper No. CB(1)443/99-00(06))</p>	<p>To address the concern of the Bills Committee.</p>
	<p><u>Clause 23(4)</u> To make a drafting change. (LC Paper No. CB(1)443/99-00(06))</p>	<p>Proposed by the Administration.</p>

Clause No.	Committee Stage amendments	Remarks
<p>23 (Director may suspend recognition)</p>	<p><u>Clause 23(6)</u> To delete clause 23(6). (LC Paper No. CB(1)443/99-00(06))</p>	<p>Proposed by the Administration to incorporate the provisions of clause 23(6) into the new clauses 27B(2) and 27C(2).</p>
	<p><u>Clause 23(7)</u> To delete clause 23(7). (LC Paper No. CB(1)443/99-00(01))</p>	<p>To address the concern of the Bills Committee.</p>
<p>24 (Matters Director may take into account in revoking or suspending a recognition)</p>	<p>To make a drafting change. (LC Paper No. CB(1)443/99-00(06))</p>	<p>Proposed by the Administration to remove the reference to "audit".</p>
<p>25 (Effect of revocation, suspension of recognition or expiry of validity of recognized certificate)</p>	<p><u>Clause 25(1)</u> To amend clause 25(1) to cover the situation where the period of validity of a recognition specified under clause 20(5)(b) has expired. (LC Paper No. CB(1)465/99-00(04))</p>	<p>Proposed by the Administration.</p>
	<p><u>Clause 25(2)</u> To make a minor drafting change. (LC Paper No. CB(1)465/99-00(04))</p>	<p>Proposed by the Administration.</p>
	<p><u>Clause 25(3) and (5)</u> To delete clause 25(3) and 25(5) and replace them by new clauses 25(5), 25(6), 25(7) and 25(8) to the effect that the revocation, suspension or the expiry of the period of validity of the recognition of a CA or a recognized certificate does not affect the valid use of the recognized certificates concerned before the revocation or suspension takes place, or before the expiry of the period of validity, as the case may be. (LC Paper No. CB(1)443/99-00(01)) (LC Paper No. CB(1)465/99-00(04))</p>	<p>To address the concern of the Bills Committee.</p>

Clause No.	Committee Stage amendments	Remarks
<p>26 (Director may renew recognition of certification authority)</p>	<p><u>Clause 26(1)</u> To improve the drafting of clause 26(1) to make it clear that a recognized CA may apply for renewal of the recognition and an application for renewal must be made at least 30 days before but not earlier than 60 days before the expiry of the validity of the recognition. (LC Paper No. CB(1)443/99-00(01))</p>	<p>To address the concern of the Bills Committee.</p>
	<p><u>Clause 26(4)</u> To improve the drafting of clause 26(4). (LC Paper No. CB(1)443/99-00(06))</p>	<p>Proposed by the Administration.</p>
	<p><u>Clause 26(5)</u> To delete clause 26(5). (LC Paper No. CB(1)443/99-00(06))</p>	<p>Proposed by the Administration to incorporate the provisions of clause 26(5) into the new clause 27C(3).</p>
<p>27 (Certification authority may appeal to Secretary against decision of Director)</p>	<p><u>Clause 27(1)(b) and (2)</u> To make minor drafting changes. (LC Paper No. CB(1)443/99-00(06))</p>	<p>Proposed by the Administration.</p>
	<p><u>Clause 27(1A)</u> To add the new subclause (1A) to provide that a CA who appeals to the Secretary must also give notice of the appeal to the Director as soon as practicable. (LC Paper No. CB(1)443/99-00(06))</p>	<p>Proposed by the Administration.</p>
	<p><u>Clause 27(3)</u> To add the new subclause (3) to provide that the Secretary must give reasons for his decision on the appeal. (LC Paper No. CB(1)343/99-00(05))</p>	<p>To address the concern of HKT. It will facilitate the appellant to seek judicial review if he so wishes.</p>



Clause No.	Committee Stage amendments	Remarks
<p>New clause 27A (Notices or documents sent by post or registered post)</p>	<p>To add the new clause 27A to provide that if a notice or other document required to be given to a person is sent by post or registered post, it is taken to have been served at the time at which the notice or other document is sent by post or registered post if the notice or other document is sent to the last known address of that person. <i>(LC Paper No. CB(1)465/99-00(04))</i></p>	<p>To address the concern of the Bills Committee.</p>
<p>New Part VIIA (Certification authority disclosure records and code of practice)</p>	<p>To add the new Part VIIA to cover the new clauses 27B, 27C and 27D. <i>(LC Paper No. CB(1)443/99-00(06))</i></p>	<p>Proposed by the Administration.</p>
<p>New clause 27B (Director to maintain certification authority disclosure record)</p>	<p>To provide that the Director must maintain an on-line and publicly accessible CA disclosure record, which contains information relevant for the purposes of the Bill, for each recognized CA. <i>(LC Paper No. CB(1)443/99-00(06))</i></p>	<p>To address the concern of the Bills Committee.</p>
<p>New clause 27C (Director to notify revocations, suspensions and non-renewals of recognition, etc.)</p>	<p>To provide that the Director must immediately give notice to the public in the on-line CA disclosure record maintained by the Director:</p> <ul style="list-style-type: none"> <li>— when the Director gives a notice of revocation;</li> <li>— when a revocation has taken effect;</li> <li>— when the Director gives a notice of suspension;</li> <li>— when a suspension has taken effect;</li> <li>— when the recognition of a suspended recognition is reinstated;</li> <li>— when the Director receives a notice of appeal; and</li> <li>— on becoming aware that the Secretary has confirmed, varied or reversed the decision of the Director to revoke or suspend a recognition.</li> </ul> <p><i>(LC Paper No. CB(1)465/99-00(04))</i></p>	<p>To address the concern of the Bills Committee.</p>

Clause No.	Committee Stage amendments	Remarks
New clause 27D (Director may issue code of practice)	To add the new clause 27D to replace the original clause 39. (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.
29 (The Postmaster General as recognized certification authority)	To make a minor drafting change to clause 29(1). (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.
30 (Publication of issued and accepted certificates)	<u>Clause 30(1)</u> To delete unnecessary wording. (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration
	<u>Clause 30(2)</u> To make a minor drafting change. (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.
32 (Presumption as to correctness of information)	To delete unnecessary wording. (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.
34 (Representations upon publications of recognized certificates)	To delete unnecessary wording. (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.
37 (Audit of performance of recognized certification authorities)	To delete the original clause 37 and substitute a new one: — to change the title of the clause to " <i>Recognized certification authority to furnish report on compliance with Ordinance and code of practice</i> "; and — to remove the reference to " <i>audit</i> ". (LC Paper No. CB(1)409/99-00(03))	To address the concern of HKSA.

Clause No.	Committee Stage amendments	Remarks
<p>New clause 38A (Recognized certification authority to maintain repository)</p>	<p>To add the new clause 38A to provide that:</p> <ul style="list-style-type: none"> <li>— a recognized CA must maintain an on-line and publicly accessible repository for storing and retrieving recognized certificates and other information relevant to the recognized certificates it has issued; and</li> <li>— the Director must publish in the Gazette a list of the repositories.</li> </ul> <p><i>(LC Paper No. CB(1)443/99-00(02))</i></p>	<p>To address the concern of the Bills Committee.</p>
<p>Part X (Issue of code of practice and recognition of repositories by Director)</p>	<p>To delete Part X (Clauses 39 and 40)</p> <ul style="list-style-type: none"> <li>— to replace clause 39 (Director may issue code of practice) by the new clause 27D.</li> <li>— to replace clause 40 (Recognition of repositories) by the new clause 38A(2).</li> </ul> <p><i>(LC Paper No. CB(1)443/99-00(06))</i></p>	<p>Proposed by the Administration.</p>
<p>41 (Obligation of secrecy)</p>	<p><u>Clause 41(1)</u> To amend clause 41(1) to the effect that, subject to clause 41(2), a person who has access to any information in the course of performing a function under or for the purposes of the Bill shall not disclose or permit or suffer to be disclosed such information to any other person. <i>(LC Paper No. CB(1)465/99-00(04))</i></p>	<p>To address the concern of the Bills Committee.</p>
	<p><u>Clause 41(2)(a)</u> To amend clause 41(2)(a) to the effect that the secrecy provision is disappplied to disclosure which is necessary for performing or assisting in the performance of a function under or for the purposes of the Bill.</p>	<p>To address the concern of HKSA.</p>
	<p><u>Clause 41(2)(b) and (2)(ba)</u> To amend clause 41(2)(b) and to add the new subclause (2)(ba) to the effect that the secrecy provision is disappplied in situations where information is disclosed for the purpose of any criminal proceedings in Hong Kong or for the purpose of complying with a requirement made under a rule of law with a view to instituting such proceedings. <i>(LC Paper No. CB(1)382/99-00(01))</i></p>	<p>To address the concern of the Bills Committee.</p>

Clause No.	Committee Stage amendments	Remarks
44 (Regulations)	To make a minor consequential amendment to paragraph (c). (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.
45 (Secretary may amend Schedules)	To make a minor drafting change. (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.
46 (Immunity of public officers)	To update the immunity clause for the protection of public officers. (LC Paper No. CB(1)465/99-00(04))	Proposed by the Administration.
Schedule 1 (Matters excluded from application of sections 5, 6, 7 and 8 of this Ordinance under section 3 of this Ordinance)	<u>Heading</u> To add section 16 to the heading. (LC Paper No. CB(1)140/99-00(02))	Proposed by the Administration to address a minor omission.
	<u>Item 2</u> To clarify the provision of item 2. (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.
	<u>Item 8</u> To delete item 8 "an estate agency agreement entered into between an estate agent and its client". (LC Paper No. CB(1)140/99-00(02))	Proposed by the Administration as a result of consultation with the Estate Agents Authority.
	<u>New item 8</u> To expand Schedule 1 to cover also a floating charge and a fixed charge as described in sections 2A(1) and (2) of the Land Registration Ordinance (Cap. 128) as these documents relate to land/property transactions which have to be in writing. (LC Paper No. CB(1)140/99-00(02))	To address the concern of HKSA and the Bills Committee.
	<u>Item 12</u> To replace item 12 by "A warrant by a court or a magistrates". (LC Paper No. CB(1)443/99-00(06))	Proposed by the Administration.

<b>Clause No.</b>	<b>Committee Stage amendments</b>	<b>Remarks</b>
Schedule 1 (Matters excluded from application of sections 5, 6, 7 and 8 of this Ordinance under section 3 of this Ordinance)	<u>Item 13</u> To replace item 13 by " <i>Negotiable instruments</i> ". ( <i>LC Paper No. CB(1)230/99-00(10)</i> )	To address the concern of HKLS.

Abbreviations

BSA : Business Software Alliance  
HKBA : Hong Kong Bar Association  
HKLS : Hong Kong Law Society  
HKSA : Hong Kong Society of Accountants  
HKT : Cable & Wireless HKT

Legislative Council Secretariat

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