

ELECTRONIC TRANSACTIONS BILL

COMMITTEE STAGE

Amendments to be moved by the [_____]

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	<p>(a) In subclause (2) by deleting "This Ordinance" and substituting "Sections 3, 5, 6, 7, 8 and 10, Parts IV and VII and Schedules 1 and 2".</p> <p>(b) By adding -</p> <p>"(3) The remaining provisions of this Ordinance shall come into operation at the beginning of the day on which this Ordinance is published in the Gazette.".</p>
2(1)	<p>(a) In the definition of "accept a certificate"-</p> <p>(i) in paragraph (a) by deleting ";or" and substituting a semicolon;</p>

(ii) by adding -

"(ab) uses the certificate; or".

(b) By deleting the definition of "certification authority disclosure record" and substituting -

"certification authority disclosure record" (), in relation to a recognized certification authority, means the record maintained under section 27B for that certification authority;".

(c) In the definition of "code of practice" -

(i) by deleting "a" and substituting "the";

(ii) by deleting "39" and substituting "27D".

(d) In the definition of "information system" by deleting "automatically" wherever it appears.

(e) In the definition of "issue" by deleting "of its" and substituting "its".

(f) In the definition of "recognized certificate" -

- (i) in paragraph (b) by adding "or" at the end;
 - (ii) in paragraph (c) by adding "designated as a recognized certificate" after "certificate".
 - (g) In the definition of "recognized certification authority" by deleting "or a" and substituting "or the".
 - (h) In the definition of "rule of law" -
 - (i) in paragraph (a) by deleting "or";
 - (ii) in paragraph (b) -
 - (A) by adding "a rule of" before "equity";
 - (B) by adding "or" at the end;
 - (iii) by adding -
 - "(c) customary law;".
 - (i) In the definition of "trustworthy system" in paragraph (d) by deleting "procedures" and substituting "principles".
- 3
- (a) In paragraph (a) by deleting "to give or present information" and substituting "for information to be or given".

(b) In paragraph (d) by deleting "documents, records or".

4 By deleting clause 4 and substituting -

"4 Ordinance to bind the Government

This Ordinance binds the Government."

5 (a) In subclause (1) -

(i) by deleting "in writing, given or presented" and substituting "or given";

(ii) by deleting "that rule of law" and substituting "the requirement".

(b) In subclause (2) by deleting everything from "given" where it first appears to "record" where it first appears and substituting "or given in writing, an electronic record satisfies that rule of law".

6(1) By deleting "that rule of law" and substituting "the requirement".

7(1) (a) By deleting "that rule of law" and

substituting "the requirement".

- (b) In paragraph (a) by deleting "as an electronic record".

8(1)

- (a) By deleting "documents, records or".

- (b) By deleting "that rule of law" and substituting "the requirement".

- (c) In paragraph (a) -

- (i) by deleting "the information or";

- (ii) by deleting "document or" and substituting "electronic".

- (d) In paragraph (b) by deleting "form" where it twice appears and substituting "format".

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- (a) In subclause (1) by deleting "a rule of law" wherever it appears and substituting "an Ordinance".

- (b) In subclause (2) -

- (i) by deleting "any rule of law" where it first appears and substituting "an Ordinance";

- (ii) in paragraph (a) -

- (A) by deleting "any rule of law"

and substituting "that
Ordinance";

(B) by deleting "a rule of law"
where it twice appears and
substituting "that
Ordinance".

(c) In subclause (3) by adding "or cases" after
"persons".

12

(a) By deleting "any rule of law" and
substituting "an Ordinance".

(b) By deleting "executed" and substituting
"made".

(c) By deleting "the rule of law" and
substituting "that Ordinance".

(d) By deleting "that rule of law" and
substituting "that Ordinance".

New

By adding -

**"14A. When sections 5, 6 and 7 apply to
transactions between persons
who are not government
entities**

(1) If an Ordinance requires
information to be given by a person to
another and neither person is or is acting

on behalf of a government entity, section 5(1) applies only if the person to whom the information is to be given consents to it being given in the form of an electronic record.

(2) If an Ordinance permits information to be given by a person to another and neither person is or is acting on behalf of a government entity, section 5(2) applies only if the person to whom the information is to be given consents to it being given in the form of an electronic record.

(3) If an Ordinance requires the signature of a person ("the signer") and neither the signer nor the person to whom the signature is to be given ("the second mentioned person") is or is acting on behalf of a government entity, section 6 applies only if the second mentioned person consents to the signer's digital signature being given.

(4) If an Ordinance requires

information to be presented in its original form and neither the person presenting it nor the person to whom it is to be presented ("the second mentioned person") is or is acting on behalf of a government entity, section 7(1) applies only if the second mentioned person consents to it being presented in the form of an electronic record.

(5) In this section -

"consent" () includes consent that can be reasonably inferred from the conduct of the person concerned;

"government entity" () means a public officer, public authority or public body."

15(4) By deleting "documents, records or".

16 (a) In subclause (1) by adding "in whole or in part" before "expressed".

(b) By adding -

"(3) For the avoidance of doubt,

it is stated that this section does not affect any rule of common law to the effect that the offeror may prescribe the method of communicating acceptance."

18(2)(a)(ii) By deleting "attention" and substituting
and (b) "knowledge".

19 (a) In subclause (3)(b)(i) -

(i) by deleting "certifies that" and substituting "contains an assessment as to whether";

(ii) by deleting "any" and substituting "the".

(b) In subclause (4) by deleting "if the Director considers it appropriate to do so" and substituting "in the circumstances specified in subsection (5)".

(c) By adding -

"(5) The Director may waive the requirements referred to in subsection (4) only if -

- (a) the applicant is a certification authority with a status in a place outside Hong Kong comparable "(comparable status)" to that of a recognized certification authority; and
- (b) the competent authority of that place accords to a recognized certification authority a comparable status on the basis of it being a recognized certification authority."

20

- (a) By adding -

"(1A) The Director must give reasons in writing to the applicant for refusing an application under subsection (1)(b)."

- (b) In subclause (3) -

(i) by deleting paragraph (a) and substituting -

"(a) whether the applicant has the appropriate financial status for operating as a recognized certification authority in accordance with this Ordinance and the code of practice;"

(ii) in paragraph (c) by deleting "and standard" and substituting ", security arrangements and standards".

21

(a) By adding -

"(5A) The Director must give reasons in writing to the applicant for refusing an application under subsection (5)."

(b) In subclause (8) by adding ", (5A)" after "(5)".

22

- (a) By deleting the heading and substituting
"Director may revoke recognition".
- (b) In subclause (2) by deleting "notice in writing of the intention to do so and" and substituting "a notice of intention to revoke the recognition specifying".
- (c) By deleting subclause (4) and substituting -
 "(4) If the Director decides to revoke a recognition, the Director must immediately give the certification authority notice in writing of the decision specifying the reasons for the decision and the date on which the decision was made."
- (d) In subclause (6) by deleting everything after "which" and substituting "the decision to revoke the recognition was made."
- (e) By deleting subclauses (8) and (9).

23

- (a) In subclause (1) by deleting everything after "days" and substituting a full stop.
- (b) By adding -
 "(1A) If the Director decides to

suspend the recognition, the Director must immediately give the certification authority notice in writing of the decision specifying the reasons for the decision and the date on which the decision was made.".

(c) By deleting subclause (4) and substituting -

"(4) Subject to subsection (3), a suspension takes effect on the expiry of 7 days from the date on which the decision is made.".

(e) By deleting subclauses (6) and (7).

24 By deleting paragraph (c) and substituting -

"(c) the relevant report furnished under section 37."

25 (a) In subclause (1) by deleting "effect" and substituting "effect or the period of validity of a recognition specified under section 20(5)(b) has expired".

(b) In subclause (2) by deleting "recognized

certificates" and substituting "a recognized certificate".

(c) By deleting subclause (3).

(d) By deleting subclause (5) and substituting -

"(5) The revocation or suspension of the recognition of a certification authority does not affect the valid use of a recognized certificate issued by that certification authority before the revocation or suspension took effect or after the reinstatement of the recognition.

(6) The revocation or suspension of the recognition of a recognized certificate does not affect the valid use of the certificate concerned before the recognition or suspension took effect or after the reinstatement of the recognition.

(7) The expiry of the period of validity of the recognition of a certificate specified under section 21(6) or the expiry of the period of

validity of a recognized certificate does not affect the valid use of the certificate concerned before the expiry of the period of validity of the recognition or the certificate, as the case may be.

(8) The expiry of the period of validity of the recognition of a certification authority specified under 20(5)(b) does not affect the valid use of a recognized certificate issued by that certification authority during the period of validity of its recognition.”.

26

(a) In subclause (1) by deleting everything after “recognition” where it first appears and substituting “. An application for renewal must be made at least 30 days before but not earlier than 60 days before the expiry of the period of validity of the recognition.”.

(b) In subclause (4) by adding “, in the

circumstances specified in section 19(5)," after "may" where it first appears.

(c) By deleting subclause (5).

27

(a) In subclause (1) -

(i) in paragraph (b) by adding "or" at the end;

(ii) by deleting everything after "days" and substituting "from the date on which the relevant decision is made.".

(b) By adding -

"(1A) A certification authority who appeals to the Secretary under this section must also give notice of the appeal to the Director as soon as practicable.".

(c) In subclause (2) by adding "under subsection (1)" after "appeal".

(d) By adding -

"(3) The Secretary must give reasons in writing to the appellant for the decision on appeal.".

New

By adding in Part VII -

"27A. How Director may give notices under this Part

(1) A notice or other document the Director is required to give to a certification authority under this Part is taken to be given if it is -

- (a) sent to the certification authority as an electronic record;
- (b) sent by post or registered post to the last known address of the certification authority.

(2) If it is not reasonably practicable to give a notice under this part by either of the means specified in subsection (1)(a) or (b), the notice is taken to have been given if the Director publishes it in the relevant certification authority disclosure record."

New

By adding -

"PART VIIA

**CERTIFICATION AUTHORITY DISCLOSURE
RECORDS AND CODE OF PRACTICE**

27B. Director to maintain certification authority disclosure record

(1) The Director must maintain for each recognized certification authority an on-line and publicly accessible record.

(2) The Director must publish in the certification authority disclosure record information regarding that certification authority relevant for the purposes of this Ordinance (in addition to the information required to be given in it under other provisions of this Ordinance).

27C. Director to notify revocations, suspensions and non-renewals of recognition, etc.

(1) The Director must give notice in the relevant certification authority disclosure record, immediately -

(a) when the Director makes a decision to revoke a recognition under section 22(4);

(b) when a revocation has taken effect under section 22(6) or (7);

- (c) when the Director makes a decision to suspend a recognition under section 23(1A);
- (d) when a suspension has taken effect under section 23(3) or (4);
- (e) when the recognition of a suspended recognition is reinstated;
- (f) when the Director receives a notice of appeal under section 27(1A); or
- (g) on becoming aware that the Secretary has confirmed, varied or reversed the decision of the Director to revoke or suspend a recognition.

(2) Where the revocation or suspension of a recognition has taken effect, the Director must, as soon as practicable, give notice of the revocation or suspension for

at least 3 consecutive days in one English language daily newspaper and one Chinese language daily newspaper in circulation in Hong Kong.

(3) If a recognized certification authority does not apply for renewal before the end of the period during which an application for renewal can be made under section 26(1), the Director must, at least 21 days before the expiry of the period of validity of the recognition, give notice -

(a) for at least 3 consecutive days in one English language daily newspaper and one Chinese language daily newspaper in circulation in Hong Kong; and

(b) in the certification authority disclosure record maintained for the certification authority,

of the date of the expiry of the validity and that the certification authority has not

applied for renewal.

27D. Director may issue code of practice

The Director may issue a code of practice specifying standards and procedures for carrying out the functions of recognized certification authorities."

29(1) By deleting "through" and substituting "by".

30 (a) In subclause (1) by deleting "recognized repository" and substituting "repository".

(b) In subclause (2) by deleting everything after "it" where it first appears and substituting a full stop.

32 By deleting "recognized repository" and substituting "repository".

34 By deleting "to the repository in which the certificate is published and".

36(2)(b) By deleting "recognized repository" and

substituting "repository".

37

By deleting the clause and substituting -

**"37. Recognized certification authority
to furnish report on compliance
with Ordinance and code of
practice**

(1) At least once in every 12 months, a recognized certification authority must furnish to the Director a report containing an assessment as to whether the recognized certification authority has complied with the provisions of this Ordinance applicable to a recognized certification authority and the code of practice during the period for which the report is prepared.

(2) A report under subsection (1) must be prepared, at the expense of the certification authority, by a person approved by the Director as being qualified to make such a report.

(3) The Director must publish in the certification authority disclosure record for the certification authority the date of the report and the material information in

the report.".

New By adding in Part IX -

**"38A. Recognized certification authority
to maintain repository**

(1) A recognized certification authority must maintain or cause to be maintained an on-line and publicly accessible repository.

(2) The Director must publish in the Gazette a list of the repositories maintained under subsection (1)."

Part X By deleting the Part.

41 (a) In subclause by (1) adding "or permit or suffer to be disclosed" after "disclose".

(b) In subclause (2) -

- (i) in paragraph (a) by deleting "for the purposes of" where it first appears and substituting "which is necessary for";
- (ii) in paragraph (b) by deleting everything after "Hong Kong" and substituting a semicolon.

(iii) by adding -

"(ba) for the purpose of complying with
a requirement made under a rule of
law with a view to instituting a
criminal proceeding in Hong Kong;
or".

43 By deleting "or an organization".

44 In paragraph (c) by deleting everything after
"statements" and substituting a semicolon.

44(a) By adding "or for recognition or renewal of
recognition of certificates" after "authority".

45 By adding "published in the Gazette" after
"order".

46 By deleting the clause and substituting -

"46. Protection of public officers

(1) No liability is incurred by the
Government or a public officer by reason
only of the fact that a recognition is

granted, renewed, revoked, suspended or reinstated under Part VII.

(2) No civil liability is incurred by a public officer in respect of anything done or omitted to be done by the public officer in good faith in the performance or purported performance of any function under any other Part of this Ordinance.

(3) The protection conferred under subsection (2) does not in any way affect the liability, if any, of the Government for the act or omission of the public officer in the performance or purported performance of the relevant function."

- Schedule 1
- (a) In the heading by deleting "AND 8" and substituting ", 8 AND 16".
 - (b) In section 2 by adding "(other than resulting, implied or constructive trusts)" after "trust".
 - (c) By deleting section 8 and substituting -
 - "8. A document effecting a floating charge referred to in section 2A of the

Land Registration Ordinance (Cap.
128).".

(d) By deleting sections 12 and 13 and
substituting -

"12. A warrant issued by a court or a
magistrate.

13. Negotiable instruments.".