

(Revised)

LC Paper No. CB(1)559/99-00(06)

Bills Committee on Electronic Transactions Bill

Summary of Committee Stage amendments proposed by the Administration

(Position as at 10 December 1999)

| Clause No. | Committee Stage amendments | Remarks |
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| 1 (Short title and commencement) | <u>Clause 1(2)</u> To amend clause 1(2) to the effect that Part I, sections 4 and 9, Part V (other than in relation to the matters referred to in Schedule 1), Part VI, sections 27B and 27D and Parts VIII, IX, XI and XII shall come into operation at the beginning of the day on which the Ordinance is published in the Gazette. | Proposed by the Administration. |
| | <u>Clause 1(3)</u> To add the new subclause (3) to the effect that the provisions of the Ordinance, except those listed in subclause (2), shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice in the Gazette. | Proposed by the Administration. |
| 2 (Interpretation) | <u>Definition of "accept a certificate"</u> To amend the definition to the effect that a person who uses a certificate means that he accepts it. | To address the concern of the Bills Committee. |
| | <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> ". | Proposed by the Administration to make reference to the new clause 27B. |

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| <p>2 (Interpretation)</p> | <p><u>Definition of "code of practice"</u> To replace the reference to section 39 by section 27D.</p> | <p>Proposed by the Administration to make reference to the new clause 27D.</p> |
| | <p><u>Definition of "information system"</u> To delete "automatically" in the definition.</p> | <p>To address the concern of HKLS.</p> |
| | <p><u>Definition of "issue"</u> To make a minor drafting change.</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Definition of "recognized certificate"</u> To add "designated as a recognized certificate" after "certificate" in paragraph (c) of the definition.</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Definition of "recognized certification authority"</u> To make a minor drafting change.</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.</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.</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".</p> | <p>Proposed by the Administration to simplify the provision.</p> |
| <p>4 (Rules of law and electronic transactions to which Ordinance applies)</p> | <p>Heading To replace the heading by "Ordinance to bind the Government".</p> | <p>To address the concern of the Bills Committee.</p> |

| Clause No. | Committee Stage amendments | Remarks |
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| 4 (Rules of law and electronic transactions to which Ordinance applies) | <u>Clause 4</u> To amend the clause to the effect that the Electronic Transactions Ordinance binds the Government. | To address the concern of the Bills Committee. |
| 5 (Requirement for writing) | <u>Clause 5 (1) and (2)</u> To use a general form of wording to cover all three scenarios of <i>"be in writing, given or presented in writing"</i> . | Proposed by the Administration to simplify the provision. |
| | <u>Clause 5(1)</u> To amend clause 5(1) to the effect that <i>"the requirement under the rule of law is satisfied"</i> . | To address the concern of HKBA. |
| 6 (Digital signatures) | To amend clause 6(1) to the effect that <i>"the requirement under the rule of law is satisfied"</i> . | To address the concern of HKBA. |
| 7 (Presentation or retention of information in its original forms) | <u>Clause 7(1)</u> To amend clause 7(1) to the effect that <i>"the requirement under the rule of law is satisfied"</i> . | To address the concern of HKBA. |
| | <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. | 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> . | To address the concern of HKBA. |
| | <u>Clause 8(1)(a)</u> To simplify clause 8(1)(a). | Proposed by the Administration. |
| | <u>Clause 8(1)(b)</u> To make a minor drafting change. | Proposed by the Administration. |

| Clause No. | Committee Stage amendments | Remarks |
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| 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. | 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. | 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. | To address the concern of HKSA. |
| 15 (Sections 5, 6, 7 and 8 not to have effect if their operation affects other statutory requirements) | To replace " <i>rule of law</i> " by " <i>Ordinance</i> " to reflect the legislative intent and to make other drafting changes. | Proposed by the Administration. |
| 16 (Formation and validity of electronic contracts) | <u>Clause 16(1)</u> To amend clause 16(1) to provide greater flexibility for the use of electronic records in contract formation. | To address the concern of HKLS. |
| | <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. | To address the concern of HKBA and Horvath & Giles. |
| 18 (Sending and receiving electronic records) | To replace " <i>comes to the attention of</i> " by " <i>comes to the knowledge of</i> " in clause 18(2)(a)(ii) and 18(2)(b). | To address the concern of the Bills Committee and HKSA. |

| Clause No. | Committee Stage amendments | Remarks |
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| <p>19 (Certification authority may apply to Director for recognition)</p> | <p><u>Clause 19(2)</u> In the Chinese version, to delete everything before “須就” and substituting “除第(4)款及第 20(2)條另有規定外，第(1)款所指的申請必須以訂明方式並以署長指明的格式提出，申請人並”。</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Clause 19(3)(a)</u> To amend clause 19(3)(a) to allow flexibility for the Director of Information Technology Services to specify the particulars and documents to be furnished in the application for recognition as a recognized CA.</p> | <p>Proposed by the Administration.</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.</p> | <p>To address the concern of the Bills Committee and HKSA.</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 with a status in a place outside Hong Kong comparable to that of a recognized CA in Hong Kong.</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 must give reasons for refusing an application for recognition under clause 20(1)(b).</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).</p> | <p>To address the concern of the Bills Committee.</p> |

| Clause No. | Committee Stage amendments | Remarks |
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| <p>20 (Director may on application recognize certification authorities)</p> | <p><u>Clause 20(3)(c)</u> To cover "<i>security arrangements</i>" as one of the recognition criteria.</p> | <p>To address the concern of the Bills Committee.</p> |
| | <p><u>Clause 20(4)</u> To make a minor drafting change.</p> | <p>Proposed by the Administration.</p> |
| <p>21 (Director may recognize certificates)</p> | <p><u>Clause 21(1A)</u> To add the new subclause (1A) to allow flexibility for the Director to specify the particulars and documents to be furnished in the application for recognition of certificates.</p> | <p>Proposed by the Administration.</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).</p> | <p>To address the concern of the Bills Committee.</p> |
| | <p><u>Clause 21(8)</u> To add "1A," before "2", and ", 5A" after "5".</p> | <p>Proposed by the Administration to made reference to the new subclauses (1A) and (5A).</p> |
| <p>22 (Revocation of recognition)</p> | <p><u>Heading</u> To replace the heading by "<i>Director may revoke recognition</i>".</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Clause 22(2)</u> To make a minor drafting change.</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Clause 22(4)</u> To amend clause 22(4) to provide that if the Director decides to revoke a recognition, the Director must immediately give the CA notice in writing of the decision specifying the reasons for the decision and the date on which the decision was made.</p> | <p>To address the concern of the Bills Committee.</p> |

| Clause No. | Committee Stage amendments | Remarks |
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| <p>22 (Revocation of recognition)</p> | <p><u>Clause 22(6)</u> To amend clause 22(6) to the effect that a revocation takes effect on the expiry of 7 days from the date on which the decision to revoke the recognition was made.</p> | <p>To address the concern of the Bills Committee.</p> |
| | <p><u>Clause 22(8)</u> To delete clause 22(8).</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).</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 if the Director decides to suspend the recognition, the Director must immediately give the CA notice in writing of the decision specifying the reasons for the decision and the date on which the decision was made.</p> | <p>To address the concern of the Bills Committee.</p> |
| | <p><u>Clause 23(2)</u> In the Chinese version, to replace “就證書而暫時吊銷” by “暫時吊銷證書的”.</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Clause 23(4)</u> To amend clause 23(4) to the effect that a suspension takes effect on the expiry of 7 days from the date on which the decision to suspend the recognition was made.</p> | <p>To address the concern of the Bills Committee.</p> |

| Clause No. | Committee Stage amendments | Remarks |
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| <p>23 (Director may suspend recognition)</p> | <p><u>Clause 23(6)</u> To delete clause 23(6).</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).</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.</p> | <p>Proposed by the Administration to remove the reference to "<i>audit</i>".</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.</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Clause 25(2)</u> To make a minor drafting change.</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 effect, or after the reinstatement of the recognition, or before the expiry of the period of validity of the recognition or the certificate, as the case may be.</p> | <p>To address the concern of the Bills Committee.</p> |

| Clause No. | Committee Stage amendments | Remarks |
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| <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 to the Director for renewal of the recognition.</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Clause 26(1A)</u> To add the new subclause (1A) to provide that 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.</p> | <p>To address the concern of the Bills Committee.</p> |
| | <p><u>Clause 26(1B)</u> To add the new subclause (1B) to provide that an application for renewal must be sent to the Director as an electronic record, delivered by hand to the Director or left at the office of the Director during the ordinary business hours of that office.</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Clause 26(2)</u> To add "(1A), (1B) and" before "(4)", and to allow flexibility for the Director to specify the particulars and documents to be furnished in the application for renewal of recognition as a recognized CA.</p> | <p>Proposed by the Administration to made reference to the new subclauses (1A) and (1B).</p> |
| | <p><u>Clause 26(4)</u> To improve the drafting of clause 26(4).</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Clause 26(5)</u> To delete clause 26(5).</p> | <p>Proposed by the Administration to incorporate the provisions of clause 26(5) into the new clause 27C(3).</p> |

| Clause No. | Committee Stage amendments | Remarks |
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| <p>26 (Director may renew recognition of certification authority)</p> | <p><u>Clause 26(6)</u> To add "<i>and (5)</i>" after "<i>20(3)</i>".</p> | <p>Proposed by the Administration to make reference to the new subclause (5).</p> |
| <p>27 (Certification authority may appeal to Secretary against decision of Director)</p> | <p><u>Clause 27(1)</u> To amend clause 27(1) to the effect that a CA may appeal against the Director's decision within 7 days from the date on which the relevant decision was made.</p> | <p>To address the concern of the Bills Committee.</p> |
| | <p><u>Clause 27(1)(b) and (2)</u> To make minor drafting changes.</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Clause 27(1A)</u> To add the new subclause (1A) to provide that a notice of appeal has to be sent to the Secretary as an electronic record, by hand or by leaving it at the office of the Secretary during the ordinary business hours of that office.</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Clause 27(1B)</u> To add the new subclause (1B) to provide that a CA who appeals to the Secretary must also give notice of the appeal to the Director as soon as practicable.</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 the appellant notice of the decision on the appeal together with reasons for his decision by sending it to the appellant as an electronic record, or by post or registered post.</p> | <p>To address the concern of the Bills Committee and HKT.</p> |

| Clause No. | Committee Stage amendments | Remarks |
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| <p>27 (Certification authority may appeal to Secretary against decision of Director)</p> | <p><u>Clause 27(4)</u> To add the new subclause (4) to provide that if it is not reasonably practicable to give the notice of the decision on appeal by either of the means specified in subclause (3), the notice is taken to have been given if the Secretary publishes it in the CA disclosure record.</p> | <p>Proposed by the Administration.</p> |
| <p>New clause 27A (How Director may give notices under this Part)</p> | <p>To add the new clause 27A to provide that if it is not reasonably practicable to give a notice to a CA under Part VII by electronic means, by post or registered post, the notice is taken to have been given if the Director publishes it in the relevant CA disclosure record.</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.</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.</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"> — when the Director makes a decision to revoke a recognition; — when a revocation has taken effect; — when the Director makes a decision to suspend a recognition; — when a suspension has taken effect; — when the recognition of a suspended recognition is reinstated; — when the Director receives a notice of appeal; and — on becoming aware that the Secretary has confirmed, varied or reversed the decision of the Director to revoke or suspend a recognition. | <p>To address the concern of the Bills Committee.</p> |

| Clause No. | Committee Stage amendments | Remarks |
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| New clause 27D (Director may issue code of practice) | To add the new clause 27D to replace the original clause 39. | Proposed by the Administration. |
| 29 (The Postmaster General as recognized certification authority) | To make a minor drafting change to clause 29(1). | Proposed by the Administration. |
| 30 (Publication of issued and accepted certificates) | <u>Clause 30(1)</u> To delete unnecessary wording. | Proposed by the Administration |
| | <u>Clause 30(2)</u> To make a minor drafting change. | Proposed by the Administration. |
| 32 (Presumption as to correctness of information) | To delete unnecessary wording. | Proposed by the Administration. |
| 34 (Representations upon publications of recognized certificates) | To delete unnecessary wording. | Proposed by the Administration. |
| 36 (Liability limits for recognized certification authorities) | <u>Clause 36(2)</u> In the Chinese version, to add “認可” after “某” | Proposed by the Administration. |
| | <u>Clause 36(2)(b)</u> To replace “ <i>recognized repository</i> ” by “ <i>repository</i> ”. | 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 heading 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> ”. — to make clear the arrangements for the preparation of assessment report. | To address the concern of HKSA. |

| Clause No. | Committee Stage amendments | Remarks |
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| New clause 38A (Recognized certification authority to maintain repository) | To add the new clause 38A to provide that: — 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 — the Director must publish in the Gazette a list of the repositories. | To address the concern of the Bills Committee. |
| Part X (Issue of code of practice and recognition of repositories by Director) | To delete Part X (Clauses 39 and 40) — to replace clause 39 (Director may issue code of practice) by the new clause 27D. — to replace clause 40 (Recognition of repositories) by the new clause 38A(2). | Proposed by the Administration. |
| 41 (Obligation of secrecy) | <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. | To address the concern of the Bills Committee. |
| | <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. | To address the concern of HKSA. |
| | <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. | To address the concern of the Bills Committee. |
| 42 (False information) | In the Chinese version, to delete “後果”. | Proposed by the Administration. |

| Clause No. | Committee Stage amendments | Remarks |
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| 43 (Other offences) | To make a minor drafting change. | Proposed by the Administration. |
| 44 (Regulations) | <u>Clause 44(a)</u> To amend clause 44(a) to allow the Secretary to make regulations on the manner of applying to the Director for recognition or renewal of certificates. | Proposed by the Administration. |
| | <u>Clause 44(b)</u> In the Chinese version, to replace “須訂明” by “訂明須”. | Proposed by the Administration. |
| | <u>Clause 44(c)</u> To make a minor consequential amendment. | Proposed by the Administration. |
| 45 (Secretary may amend Schedules) | To make a minor drafting change. | Proposed by the Administration. |
| 46 (Immunity of public officers) | <u>Heading</u> To replace the heading by " <i>Protection of public officers</i> ". | Proposed by the Administration. |
| | <u>Clause 46</u> To update the immunity clause for the protection of public officers. | 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. | Proposed by the Administration to address a minor omission. |
| | <u>Item 2</u> To clarify the provision of item 2. | Proposed by the Administration. |

| Clause No. | Committee Stage amendments | Remarks |
|---|---|---|
| <p>Schedule 1 (Matters excluded from application of sections 5, 6, 7 and 8 of this Ordinance under section 3 of this Ordinance)</p> | <p><u>Item 6</u> In the Chinese version, to replace “約、轉易契、其他書面形式的” by “據、轉易契、其他書面形式的文件或”.</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Item 7</u> In the Chinese version, to replace everything after “他” by “關乎不動產或不動產權益的處置的合約，或任何其他達成該等處置的合約。”.</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Item 8</u> To delete item 8 "<i>an estate agency agreement entered into between an estate agent and its client</i>".</p> | <p>Proposed by the Administration as a result of consultation with the Estate Agents Authority.</p> |
| | <p><u>New item 8</u> To expand Schedule 1 to cover a floating charge referred to in section 2A of the Land Registration Ordinance (Cap. 128) as these documents relate to land/property transactions which have to be in writing.</p> | <p>To address the concern of the Bills Committee.</p> |
| | <p><u>Item 12</u> To replace item 12 by "<i>A warrant issued by a court or a magistrate</i>".</p> | <p>Proposed by the Administration.</p> |
| | <p><u>Item 13</u> To replace item 13 by "<i>Negotiable instruments</i>".</p> | <p>To address the concern of HKLS.</p> |

Abbreviations

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