

**Response to Comments made by
the Business Software Alliance**

General Concerns/the Draft Bill is not technologically neutral

- (1) The primary objective of the Electronic Transactions Bill is to create a certain legal environment for the conduct of electronic transactions. This legal certainty is reinforced by the use of security measures that, from a technical point of view, adequately address the need for user authentication, integrity and confidentiality of data and non-repudiation of transactions.
- (2) Once the Electronic Transactions Bill is enacted, entities in the private sector may, as they wish, to apply for recognition as recognised certification authorities. For certification authorities that do not wish to apply for recognition under the proposed voluntary recognition scheme, they are free to commence operation even before the enactment of the Bill as we have not adopted a mandatory licensing system for the operation of certification authorities. There will not be any quota in the number of certification authorities to be established in Hong Kong which would be determined by market force.
- (3) The Director of Information Technology Services will publish a code of practice under the Bill to set out the detailed requirements as regards the standards and procedures to be adopted by the recognised certification authorities. The draft code of practice has been published for public consultation and a copy of the draft has been sent to the Business Software Alliance for comment. The code of practice is technologically neutral and its main purpose is to ensure that all recognised certification authorities will have met an acceptable level of trustworthiness and inter-operability in their operations. The regulations to be drafted under the Bill mainly deal with information to be submitted together with the application for recognition as a recognised certification authority and the application fees involved. They are also technologically neutral.
- (4) Digital signature is currently the only technically mature technology in the market that could provide security services in respect of user authentication,

integrity and non-repudiation in an open network environment. Practically speaking, there are problems for Government departments and others in the community to accept other forms of electronic signature other than digital signature under various rules of law. Legal recognition of other forms of electronic signature would, therefore, lead to uncertainty and may unduly affect the promotion of electronic transactions. However, users of electronic commerce are free to accept various forms of electronic signature which suit their intended purposes. Recognition of electronic signatures other than digital signature would be governed by the common law.

- (5) We do not consider that the approach we have adopted would result in monopoly or oligopoly of trusted service providers. As explained above, there is no quota in the number of certification authorities to be established in Hong Kong. Nor do we propose to introduce a mandatory licensing scheme to impose restriction on the operation of certification authorities.
- (6) We do not consider that we would artificially limit innovation. As and when other forms of electronic signature which adopt open standards become technically mature and commercially available in the market, we can consider amending the Electronic Transactions Ordinance (when enacted) to give legal recognition to them. The amendments to be made are not envisaged to be complicated.
- (7) Users are free to accept different forms of electronic signatures which suit their intended purposes or to accept certificates issued by overseas certification authorities. There is no restriction under the Electronic Transactions Bill.

The Draft Bill Establishes Overly-Restrictive conditions for Legal Recognition

- (1) Legal recognition of electronic records means that Government departments will have to accept electronic records under various rules of law. Practically speaking, Government systems will not be able to accept and handle electronic records prepared using any types of software. It is, therefore, necessary to stipulate the manner and format in receiving electronic records under various rules of law. Similar requirements are also stipulated in the legislation of Australia and Singapore. Such

arrangements will in fact facilitate those who wish to transact electronically with Government.

Other Concerns

- (1) We do not agree that the Director of Information Technology Services (DITS) has been given wide discretionary powers in the determination of recognition criteria for recognised certification authorities. The main factors which the DITS has to take into account in granting recognition is clearly set out in Clause 20(3) and (4) of the Bill. There should not be any legal uncertainty. Moreover, under Clause 27 of the Bill, the decision of the DITS in granting recognition is subject to appeal.
- (2) Under Clause 39 of the Bill, DITS may issue a code of practice specifying the standards and procedures for carrying out the functions of recognised certification authorities. As stated above, we have already published the draft code for public consultation and a copy of the draft has been sent to the Business Software Alliance for comment.
- (3) Apart from Part VII of the Bill on "Recognition of certification authorities and certificates by Director" which deals with the procedures for seeking recognition and for the DITS to suspend or revoke certificates, Hongkong Post as a recognised certification authority has to comply with the other parts of the Bill in the same way as other recognised certification authorities.
- (4) The liability of recognised certification authorities is limited only in prescribed circumstances whereby the recognised certification authorities have complied with the requirements in the Bill and in the code of practice issued by the DITS and no negligence, intentional or reckless misrepresentation is involved. The main aim is to encourage the development of certification authorities in Hong Kong and to provide for certainty, thereby minimizing unnecessary dispute and litigation. Similar provision exists in overseas legislation on certification authorities, e.g. the Electronic Transactions Act of Singapore, the Malaysian Digital Signature legislation and the Utah Digital Signature Act.
- (5) The Bill has not imposed any restriction on the use of electronic signatures generated outside Hong Kong. It is up to such service providers to decide whether they would wish to seek recognition in Hong Kong. If they do not wish to do so, their operation and relationship with

their clients in Hong Kong would be governed by common law.