

**Response to Comments made
by the Bar Association**

(a) Languages of Clauses 5, 6, 7 and 8

- (1) We shall propose Committee Stage Amendments to Clauses 5(1), 6(1), 7(1) and 8(1) to the effect that "the requirement under the rule of law is satisfied".
- (2) We consider that Clauses 5(1) and 6(1) reflect the policy intention clearly and do not propose to adopt a deeming provision.
- (3) We shall propose Committee Stage Amendments to simplify Clause 8(1)(a) and to clarify any misunderstanding.

(b) Clauses 11 and 45

The orders to be made by the Secretary under Clauses 11 and 45 are subsidiary legislation and are subject to negative vetting by the Legislative Council. Therefore, there is a proper and appropriate mechanism for the Legislative Council to scrutinize the exercise of the power by the Secretary under the two Clauses. In the Electronic Transactions Bill of Australia, there are similar provisions which allow the Governor-General to make regulations to provide exemptions from the provisions of the Bill.

(c) Clause 13 and Schedule 2

Judicial or quasi-judicial proceedings which are not exempt under Schedule 2 and which have to be exempt will be dealt with by order under Clause 11 of the Bill.

(d) Clause 16

We shall propose a Committee Stage Amendment to clarify that Clause 16 is not intended to preclude an offeror from prescribing the mode of communicating acceptance.

(e) Clause 18

While "Universal Standard Time" is not defined in the Interpretation and General Clauses Ordinance (Cap. 1), it is referred to and used in section 67(2) of the Ordinance. The term is sufficiently clear and its meaning is well understood. We, therefore, do not propose to change it to "Coordinated Universal Time", which has not been used in the laws of Hong Kong.

(f) Clause 20

Clause 20(4)(a) - (d) highlights specific features which the Director of Information Technology Services (DITS) has to take into account in deciding whether an applicant for recognition as a recognised certification authority is a fit and proper person. We consider that the provision, as currently drafted, is sufficiently clear to guide DITS in coming to a decision.

(g) A Compulsory Recognition System for Certification Authority

We consider that a mandatory licensing scheme for certification authorities would be unduly restrictive and difficult to maintain. For instance, for those entities which provide certification service primarily to a closed network of users/clients with an established trust relationship (e.g. banks issuing digital certificates to their own clients), there is no a priori need to require them to obtain a licence before providing the service. Practically speaking, it would also be

extremely difficult, if not impossible, to require those overseas certification authorities, which are already offering their service to the Hong Kong market over the Internet, to obtain a licence from the local authority.

Under our proposed voluntary recognition scheme, only those certification authorities whose operations follow the standards and procedures laid down by the recognition authority would receive recognition. We consider that such a voluntary recognition scheme, coupled with adequate public education efforts, should provide sufficient consumer protection. Singapore, the United Kingdom and Denmark have adopted/or proposed to adopt a voluntary recognition system similar to the one we have proposed.