

**Response to Comments made  
by the Law Society**

(a) Section 2

We do not propose to expand the definition of "electronic record" to cover "record generated in electronic form" as this may extend the coverage to items like analogue video and audio tapes, etc. (these are records generated in electronic form but they cannot be digitally signed) which are not intended to be dealt with under the Bill.

We do not propose to delete the reference to "stored in an information system or other medium" in the definition of "electronic record" as an electronic record can be stored in an information system or other medium like CD-ROM, diskette.

Information includes sound codes and there is no typographical error.

We are reviewing the definition of "information system" in the light of the observations made and have noted the proposed definition which appears to be appropriate.

It is our intention to give an exhaustive meaning to "a rule of law" so as to provide for certainty. We will propose Committee Stage Amendments to amend "equity" to read "rules of equity" and to add "customary law" to the definition.

(b) Section 3

We do not consider it necessary to make the entire Ordinance not applicable to those stipulated matters or acts set out in Schedule 1 e.g. dis-applying Clause 9 will cast doubt on whether matters set out in Schedule 1 in the form of electronic records can be admissible as evidence

in legal proceedings. Dis-applying Clauses 5, 6, 7 and 8 is sufficient.

We have proposed to exempt under Schedule I of the Bill, *inter alia*,-

- (a) bills of exchange;
- (b) Government conditions of grants and Government leases;
- (c) any deed, conveyance or other document or instrument in writing, judgements, and *lis pendens* referred to in the Land Registration Ordinance (Cap. 128) by which any parcels of ground, tenements, or premises in Hong Kong may be affected;
- (d) any assignment, mortgage or legal charge within the meaning of the Conveyancing and Property Ordinance (Cap. 219) or any other contract relating to or effecting the disposition of immovable property or an interest in immovable property; and
- (e) a floating charge and a fixed charge as described in section 2A(1) and (2) of the Land Registration Ordinance (Cap. 128).

We do not consider that the list should be expanded to cover all documents of title which would otherwise cover items like bills of lading (electronic bills of lading are now available) which do not need to be exempt. Nor do we consider that the list should be expanded to cover all negotiable instruments like promissory note which can also be in electronic form.

(c) Section 6 - Digital Signature

To enhance security and certainty in electronic transactions and to address the risk associated with the open network environment of the cyberspace, we consider that a signature affixed to an electronic record should achieve the following objectives –

- (i) to authenticate the person who affixes the signature;
- (ii) to indicate that person's approval of the information contained in the electronic record; and

- (iii) to ensure non-repudiation of the fact that the electronic record containing the information is attributed by that person.

Authentication systems engaging the use of passwords or PINs, biometrics, physical feature, behavioural actions, smart card, etc. can only serve the objective of user identification. They have to be used in combination with cryptography technology in order to give an electronic signature.

Currently, digital signature-based technology is the only technically mature technology that provides the security service of ensuring integrity and non-repudiation in an open network environment. Therefore, if electronic signatures are employed, we would require digital signature technology to be used. As regards technologies other than digital signature-based, they are immature and there is a lack of common standards in the market.

The legal recognition of other forms of electronic signature other than those which are digital signature-based means that they have to be accepted under a rule of law. There are practical difficulties for the Government and others in the community to accept and deal with other forms of electronic signature for use in documents for the time being. To give legal recognition to them at present may thus cause uncertainty and operational problems and may unduly affect the promotion of electronic transactions.

On the other hand, the use of digital signature based on public key infrastructure (PKI) technology is mature and there are open and common standards in the market. Moreover, it is technology neutral in the sense that PKI technology does not have to base on particular types of algorithm products in the market.

The approach we have adopted in the Electronic Transactions Bill in respect of legal recognition of digital signature is also adopted in other places like Germany, Malaysia and Utah, etc.

However, we are prepared to review the legislation regularly and make amendments (which are unlikely to be complicated) where appropriate in future when other forms of electronic signature are established and become commercially mature in the market.

We are convinced that the Postmaster General, in providing a certification service, will be able to gain the trust of other parties outside Hong Kong. In fact, the Hongkong Post is actively participating in the deliberations of the Universal Postal Union in developing a global trust model for postal administrations to serve as certification authorities.

We do not consider that the requirement of a digital signature will create an extra hurdle for our foreign counterparts in electronic commerce. The users of electronic commerce have complete freedom of choice in using recognised certificates or other certificates issued by different certification authorities which best suit their intended purposes.

(d) Part IX

It is clear that Part IX of the Bill applies to the Postmaster General as a recognised certification authority.

(e) Section 9 - Admissibility of Electronic Records

The admissibility of electronic records as evidence in court has been set out in the Evidence Ordinance (Cap. 8). We do not wish to make any changes under the Electronic Transactions Bill which would affect the situation. Clause 9 of the Bill seeks to make the situation clear for the avoidance of doubt so as to enhance certainty.

(f) Section 16 - Formation and Validity of Electronic Contracts

We will propose Committee Stage Amendments to provide that where an electronic record is wholly or partly used in the formation of a contract, it shall not be denied validity or enforceability on the sole ground that an electronic record was used for the purpose.

(g) Section 20 - Reliance Limit

We have no intention to control or regulate how recognised certification authorities should set the reliance limits for their recognised certificates. The same applies to the Postmaster General as a recognised certification authority and other recognised certification authorities. The reliance limit is only a factor for consideration for the Director of Information Technology Services to decide whether recognition should be granted to a certification authority. The Post Office as a Government department, in providing a public certification service, will adopt a prudent and responsible manner in setting the reliance limit for its certificates.

(h) Interpretation/Definition of Technical Terms

We will amend the interpretation/definition of technical terms as and when necessary in accordance with the normal procedure.