

立法會
Legislative Council

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**Report of the Bills Committee
on Electronic Transactions Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on Electronic Transactions Bill.

The Bill

2. To enhance Hong Kong's overall competitiveness, there is a need to tap the full potentials of electronic commerce which is widely recognized as the engine of future economic growth. The Government introduced the Electronic Transactions Bill (the Bill) on 14 July 1999 with a view to addressing public concerns about the security and certainty of electronic transactions and to launching the Electronic Service Delivery scheme in the latter half of 2000.

3. The Bill seeks to provide a statutory framework for conducting commercial and other transactions by electronic communication in Hong Kong. It gives electronic records and digital signatures used in electronic transactions the same legal status as that of their paper-based counterparts, and establishes a framework to promote and facilitate the operation of certification authorities so as to ensure trust and security in electronic transactions. With the issue of digital certificates and through the use of digital signatures and public/private key encryption, individuals and business companies will be able to establish the identity of the opposite party in electronic transactions and authenticate electronic messages received.

4. In order not to hamper the development of electronic commerce, the Administration's legislative intent is to adopt a technology-neutral approach to cope with rapid technological changes and to adopt a minimalist regulatory approach.

The Bills Committee

5. The House Committee agreed at its meeting on 24 September 1999 to form a Bills Committee to study the Bill. The Bills Committee first met on 22 October 1999 and Hon SIN Chung-kai was elected Chairman. The membership list of the Bills Committee is in **Appendix I**.

6. During the course of deliberation, the Administration has reiterated the need to put the legal framework as contained in the Bill in place before the end of 1999 as Hongkong Post has pledged to start providing public certification services on a non-exclusive basis by the end of 1999. Within seven weeks from 22 October to 10 December 1999, the Bills Committee held a total of ten meetings. It has received written submissions from eleven organizations and three individuals, and met representatives from six of the organizations. The list of the organizations and individuals is in **Appendix II**.

Deliberations of the Bills Committee

7. The Bills Committee welcomes the introduction of the Bill which aims to promote the development of electronic commerce in Hong Kong. The main deliberations of the Bills Committee are set out in the following paragraphs.

Form of signature to be given legal recognition

(Clauses 5, 6, 7 and 8)

8. Clause 6 of the Bill provides that where a rule of law requires the signature of a person, a digital signature of the person supported by a recognized certificate satisfies the requirement. This provision is of great concern to most of the organizations which have submitted views on the Bill. They are of the view that if the purpose of the Bill is to promote electronic commerce by removing legal impediments to the conduct of electronic transactions, and by adopting a technology-neutral approach and minimalist regulatory approach, the Bill should ensure that all electronic signatures are afforded the same legal recognition. They consider that the proposed legislation should not be limited solely to the recognition of digital signature, which is only one form of electronic signature.

9. Whilst appreciating the concern of the organizations, the Bills Committee notes that different jurisdictions have followed different models in enacting their legislation on electronic transactions. No specific reference is made to either digital signature or electronic signature in the United Nations Commission on International Trade Law (UNCITRAL) - Model Law on Electronic Commerce. While Australia follows the UNCITRAL Model Law, Germany, Italy, Malaysia, Korea and a number of states in the United States (USA) give legal recognition to digital signature. Canada, a number of other states in USA and United Kingdom (in its draft legislation) give legal recognition to electronic signature.

10. The Administration has advised that for the purpose of providing a statutory framework to address concerns over the security and certainty in electronic transactions, it considers that legal recognition should for the time being be given to digital signature only. Digital signature is currently the only technically mature technology that provides security service of a quality that satisfies the need for user authentication, ensuring the integrity and confidentiality of data and providing safeguard against repudiation of electronic transactions. The Administration considers that to give legal recognition to other forms of electronic signature at this stage may cause uncertainty and operational problems, and will impede the adoption of electronic transactions.

11. In view of the technical constraints, the Bills Committee has no objection that as a start, legal recognition be given only to digital signature. However, the Bills Committee has urged the Administration to review the legislation regularly to take account of technological developments and make amendments where appropriate in future when other forms of electronic signature become technically mature with the support of open standards and are commonly available in the market. The Administration has undertaken to do so.

Public key infrastructure

12. The Bills Committee notes that under the Bill, the technical basis for digital signature is the public key infrastructure under which a pair of code keys, one public and one private is used for each individual. The Bills Committee is concerned about the duplication of private key for illegal purposes. In this connection, members note the Administration's advice that there are provisions under existing legislation (e.g. the Crimes Ordinance (Cap. 200), the Theft Ordinance (Cap. 210)) to deal with crimes arising from the duplication of another person's private key or the use of information about another person's private key without the owner's consent. If the offences involve elements which fall outside the jurisdiction of Hong Kong, local law enforcement agencies may seek international cooperation as appropriate in tackling these cases.

Formation and validity of electronic contracts

(Clause 16)

13. To provide greater flexibility for the use of electronic records in contract formation, the Bills Committee supports the view of the Law Society of Hong Kong that clause 16 should be amended to provide that where an electronic record is wholly or partly used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that an electronic record was used for that purpose. The Administration has agreed to move a CSA to this effect.

14. The Bills Committee also supports the view of some legal bodies including the Hong Kong Bar Association that clause 16 should be amended to protect the common law principle that the offeror may specify the means of communicating

acceptance of an offer in contract formation. The amendment is to provide flexibility for parties for entering into contract with the use of electronic records by allowing the offeror to specify, when making the offer, that the offer cannot be accepted by means of electronic records. The Administration has also agreed to move a CSA to this effect.

Types of documents excluded from the application of the provisions on electronic records, digital signatures and electronic contracts
(Clause 45 and Schedule 1)

15. The Bills Committee notes that the types of documents set out in Schedule 1 of the Bill, such as wills, powers of attorney, instruments affecting land, warrants, are excluded from the application of clauses 5, 6, 7, 8 (which cover electronic records and digital signatures) and clause 16 (which covers electronic contracts) of the Bill. It appears to the Bills Committee that this provision contradicts the Administration's policy objective to promote the wider adoption of electronic transactions. Nevertheless, the Administration has explained that as legal recognition of electronic records and digital signatures is a fairly recent development both locally and globally, it considers that for the time being certain types of transactions would preferably be conducted through conventional means and that the Bill should not go as far as to require acceptance of electronic documents and digital signatures in all types of transactions before the community at large is ready for such a change. Having regard to the Administration's view, the Bills Committee accepts that a step-by-step approach in this regard be taken.

16. On the types of documents to be excluded, the Administration has taken the Bills Committee's view that a document effecting a floating charge referred to in section 2A of the Land Registration Ordinance (Cap. 128) should be excluded. The Administration has also accepted the suggestion of the Law Society of Hong Kong that all negotiable instruments, and not just bills of exchange, should be excluded. Having regard to the view of the Estate Agents Authority, the Administration has agreed that "*an estate agency agreement entered into between an estate agent and its client*" should not be excluded. The Administration will move CSAs to Schedule 1 accordingly.

17. The Bills Committee notes that the Administration, in determining the types of documents to be excluded, has taken into account a number of factors, such as the solemnity of the transactions involved, the need for secondary authentication, protection of Government revenue, etc. While the Bills Committee has no objection to the adoption of these criteria, it has urged the Administration to keep the list of documents under review. The Administration has undertaken to closely monitor technological developments and the changes in community perception, and to review the list as and when necessary. It has also pointed out that under clause 45, the Secretary for Information Technology and Broadcasting (the Secretary) may by order amend Schedule 1. The order is subsidiary legislation which is subject to the negative vetting of the Legislative Council.

Time of receipt of electronic records
(Clause 18)

18. Clause 18(2)(a)(ii) and (2)(b) of the Bill provide that the time of receipt of an electronic record occurs at the time when the electronic record comes to the attention of the addressee. The Bills Committee and the Hong Kong Society of Accountants are concerned about the clarity of the formulation, "*comes to the attention of*", which is not commonly used in the laws of Hong Kong. To address the Bills Committee's concern, the Administration has examined two alternatives, namely, "*at the time when the data message is retrieved by the addressee*" used in the UNCITRAL — Model Law on Electronic Commerce, and "*comes to the knowledge of*", a more commonly used formulation in the laws of Hong Kong. The Administration considers it more reasonable to adopt the formulation "*comes to the knowledge of*", which would achieve the same policy objective as "comes to the attention of" in balancing the rights of the originator and the addressee and would improve the clarity of the provision. The Administration will move CSAs to this effect.

Voluntary recognition scheme for certification authorities
(Clauses 19 and 20)

19. The Bills Committee notes that some of the organizations prefer a mandatory licensing scheme for certification authorities (CAs) to the voluntary recognition scheme proposed under the Bill. The organizations are concerned that the public may not be able to distinguish between a recognized CA and one which has not applied for recognition. The Administration however considers that a mandatory licensing scheme for CAs would be unduly restrictive and difficult to operate. It is of the view that the proposed voluntary recognition scheme, coupled with adequate publicity and public education efforts, should provide sufficient protection to consumers. Moreover, under clause 43 of the Bill, it is an offence for an entity to make a false claim that it is a recognized CA. Whilst the Bills Committee has no objection to the Administration's proposal, it has urged the Administration to keep the scheme under review in the light of operational experience.

20. The Bills Committee also notes that under clause 20(3), the Director of Information Technology Services (the Director) shall take into account a number of factors, including "the financial status of the applicant", in determining whether an applicant is suitable for recognition. The Bills Committee considers the term "*financial status*" too abstract. To address the concern of the Bills Committee, the Administration has agreed to move a CSA to clarify that the Director has to take into account "*whether the applicant has the appropriate financial status for operating as a recognized CA in accordance with the Bill and the code of practice*". The Administration will also move another CSA, having regard to the view of the Hong Kong Society of Accountants, to include "*security arrangements*" as one of the recognition criteria.

21. The Bills Committee and some of the organizations have also expressed concern about the vagueness of the provisions in clause 19(3)(b). The subclause provides that an applicant for recognition must furnish to the Director a report which certifies that the applicant is capable of complying with the provisions of the Bill applicable to a recognized CA and any code of practice, and that the report is prepared by a person acceptable to the Director as being qualified to give such a report. The Bills Committee and some of the organizations consider that the word "*certifies*" may imply that the person who certifies the report has a legal liability and that it is not clear who will be considered by the Director as being qualified to give the report. To address this concern, the Administration has agreed to move a CSA 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 relevant provisions, and to include the details about the requirement to furnish a report in support of an application for recognition as a recognized CA, including the required expertise of the person who prepares such a report, in the code of practice for recognized CAs. The Administration's initial view is that persons who have the expertise in accounting, such as Certified Public Accountants, and the technical expertise on information technology should have the qualification, training and professional skill to prepare the report.

22. Clause 19(4) provides that the Director may waive the requirements as to the manner and form of making an application for recognition or the requirement of a report, in relation to a CA, if the Director considers it appropriate to do so. The Bills Committee and the Hong Kong Society of Accountants consider it necessary to clearly define the circumstances under which the waiving provision in clause 19(4) may be invoked. In the Bills Committee's view, it is only justified to invoke the waiving provision upon an applicant which is a CA recognized in a place outside Hong Kong. In response, the Administration has undertaken to move a CSA to clause 19 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.

Recognized certificates
(Clause 21)

23. The Bills Committee is concerned that as recognized CAs, including the Postmaster General, may issue recognized and unrecognized certificates, consumers may not be able to differentiate between the two. To address the Bills Committee's concern, the Administration has agreed to keep the situation under review in the light of operational experience to see if this gives rise to any problems and if so, to see how the situation could be improved.

Revocation, suspension and renewal of recognition
(Clauses 22, 23 and 26)

24. The Bills Committee notes that under clauses 22(4) and 23(1), if the Director decides to revoke or suspend a recognition, he must inform the CA concerned

of his decision by notice in writing. The Bills Committee is of the view that apart from the CAs concerned, the public should have timely notice about the Director's decision so that they can decide whether to obtain or continue to obtain the certification services provided by the CAs concerned. To achieve this, the Administration has agreed to move CSAs to add the new clauses 27C and 27D to provide that the Director must maintain for each recognized CA an on-line and publicly accessible CA disclosure record which contains information regarding that CA relevant for the purposes of the Bill, and that the Director must immediately give notice to the public in the CA disclosure record on the revocation, suspension or non-renewal of recognition of CAs.

25. To further protect the interest of the public, the Bills Committee considers that the public should have access to real time information on whether a certificate is valid at the time of transaction. In this connection, the Administration has agreed to add the new clause 38A to provide that a recognized CA must maintain or cause to be maintained an on-line and publicly accessible repository for storing and retrieving recognized certificates and other information relevant to the recognized certificates it has issued.

26. The Bills Committee notes that the Director may refuse applications for recognition as recognized CAs, refuse to recognize the certificates issued by recognized CAs, revoke or suspend a recognition. However, the Director is only required to give reasons for his decision on suspension. In order to be fair to the applicants, the Bills Committee considers that the Director must give reasons for all his decisions on refusing applications, and revoking or suspending a recognition. The Administration has agreed to move CSAs to clauses 20, 21, 22 and 23 to this effect.

Effect of revocation, suspension of recognition or expiry of validity of recognized certificate

(Clause 25)

27. In view of the Bills Committee's concern about the clarity of the provisions in clause 25, the Administration has agreed to amend the clause 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.

Appeal mechanism

(Clause 27)

28. The Bills Committee notes that under clause 27, a CA who is aggrieved by the Director's decision on refusing its application for recognition or renewal of recognition, or on revoking or suspending a recognition may appeal to the Secretary against the decision. Some members of the Bills Committee share the view of some

organizations that it is more appropriate for the appeal to be handled by an independent committee. The Administration maintains that it is common in existing legislation that an appeal against the decision of an executive body of the Government over a certain matter is made to the Policy Secretary responsible for that matter. Since the Secretary's decision is subject to judicial review, the Administration does not consider it necessary to set up an independent committee to handle the appeal.

29. In reviewing existing arrangements in legislation about appeal mechanism, the Bills Committee notes that in general, there are three different appeal mechanisms against the decisions of executive bodies of the Government:

- (a) appeal made to the Policy Secretary (e.g. under section 28(7)(a) of the Ferry Services Ordinance (Cap. 104));
- (b) appeal made to the Chief Executive in Council (e.g. under sections 5B and 5E of the Societies Ordinance (Cap. 151)); and
- (c) appeal made to an appeal board (e.g. under section 12(1) of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)).

Since it is existing practice for an appeal to be made to the Policy Secretary, the Bills Committee accepts that the same mechanism be adopted for the appeal under clause 27. However, the Bills Committee considers it necessary to ensure a fair and transparent appeal process and to keep the appeal mechanism under review.

30. To address the Bills Committee's concern, the Administration has agreed to move a CSA to clause 27 to provide that the Secretary must give reasons in writing to the appellant for his decision on the appeal, and to include the appeal procedures in the code of practice for recognized CAs. As regards the Bills Committee's views that the appellant should be given the opportunity to make oral representation to the Secretary, if he so wishes, the Administration does not consider it necessary to make such an arrangement as the appellant may state the grounds of his appeal in writing. Nevertheless, the Administration has agreed to review the appeal mechanism 18 months after the enactment of the Bill.

Postmaster General as recognized certification authority
(Clauses 28 and 29)

31. Clause 28 of the Bill provides that the Postmaster General is a recognized CA and that Part VII of the Bill on "Recognition of Certification Authorities and Certificates by Director" does not apply to him. Some of the organizations are of the view that Hongkong Post should compete on an equal footing with commercial service providers. The Bills Committee however is more concerned about whether Hongkong Post will still enjoy the exemption upon privatization. The Administration has confirmed that currently, it has no plan on the privatization of Hongkong Post. If Hongkong Post were to be privatized, it would have to comply with all the provisions

in the Bill which are applicable to a CA, including Part VII of the Bill.

32. Clause 29(2) provides that the Postmaster General may determine and charge fees for providing services of a CA or services incidental or related to the functions or services of a CA. The Bills Committee is concerned that Hongkong Post, in order to maintain its competitiveness as a CA, may subsidize the cost of issuing certificates by operational revenue from the postal services. The Administration has confirmed that the certification services provided by Hongkong Post is intended to be self-sufficient. To address the Bills Committee's concern, the Administration has agreed that Hongkong Post will single out its operation as a CA in its overall Post Office Trading Fund (POTF) Account, and also in the certified statements in respect of POTF to be tabled in the Legislative Council annually.

Code of practice for recognized CAs

(Original clause 39 to be replaced by the new clause 27E)

33. The Bills Committee shares the grave concern expressed by most of the organizations about the Code of Practice to be issued by the Director under the Bill. The Code will specify standards and procedures for carrying out the functions of recognized CAs, including the general responsibilities of a recognized CA, criteria for recognizing CAs and certificates (clauses 20 and 21), guiding principles on "*trustworthy system*" to be used by a recognized CA in performing its services (clause 31), etc.

34. The Bills Committee is pleased to note that the Administration has revised the draft Code and substantially expanded its contents in the light of the major comments received during the consultation period from 25 October to 15 November 1999, including those from the Bills Committee. Nevertheless, the Bills Committee stresses the need for the Administration to monitor the implementation of the Code and to consult the Legislative Council and the industry on any amendment to be made to the Code in future. In this connection, some members are of the view that the Code of Practice should be included in clause 44 to the effect that it is subsidiary legislation subject to the negative vetting of the Legislative Council. The Administration does not consider it appropriate to do so as the Code of Practice only specifies standards and procedures for recognized CAs to follow, but not statutory requirements for a professional qualification. Nevertheless, in response to members' request, the Administration has agreed to set up an advisory committee to oversee the implementation of the Code and to consider appropriate amendments to be made in the light of operational experience. The Administration has also agreed to review the consultative mechanism for the Code 18 months after the enactment of the Bill.

35. On the advice of the Bills Committee, the Administration has agreed to further revise the draft Code of Practice to include the procedure for application to the Director for recognition, the appeal procedures, and the terms of reference and composition of the advisory committee.

Report by recognized certification authority on compliance with the Bill and Code of Practice

(Clause 37)

36. The Bills Committee shares the concern of the Hong Kong Society of Accountants that the terms "*audit*" used in clause 37 and "*auditor*" in the Code of Practice are misleading, as they in fact do not relate to the statutory financial audits performed by Certified Public Accountants. The Administration appreciated this concern and agreed to move a CSA to delete clause 37 and substitute a new one without the reference to "audit", and to amend the Code of Practice accordingly. The Administration will also provide in the revised clause 37 the arrangements for the preparation of an assessment report on whether a recognized CA has complied with the provisions of the Electronic Transactions Ordinance applicable to a recognized CA and the Code of Practice.

Obligation of secrecy

(Clause 41)

37. The Bills Committee considers the provision on obligation of secrecy in clause 41(1) and (2) not sufficiently clear. Members are particularly concerned about the provision in clause 41(2)(b) which may impose a new obligation to disclose information for law enforcement purposes. In response to the Bills Committee's request, the Administration has made reference to the secrecy provision in the Inland Revenue Ordinance (Cap. 112) and redrafted clause 41(1) and (2) to reflect its legislative intent, as follows:

- (a) to tighten clause 41(2)(a) so that the provision on obligation of secrecy is dis-applied to disclosure which is necessary for performing or assisting in the performance of a function under or for the purposes of the Bill; and
- (b) to provide that the provision on obligation of secrecy is dis-applied 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.

38. In other words, clause 41(2), as amended, will not create a new obligation to disclose information where such obligation does not already exist under other prevailing ordinances. The Bills Committee supports the above proposed amendments.

Scope of application of the Bill

(Clause 4)

39. The Bills Committee invites the Administration to re-examine the drafting of clause 4, which deals with the scope of application of the Bill, to tie in with the relevant provisions in other legislation. The Administration has advised that the legislative intent of the clause is that the Bill should bind the Government with regard to obligations created upon it under the Bill, and that the benefits arising from the Bill should apply to all and sundry in Hong Kong. On review of clause 4, the Administration realizes that under common law, a party may take the benefits created under an Ordinance without a specific application clause. In the circumstances, it is not necessary to affirm in clause 4 the beneficent purpose of the Bill. The Administration therefore proposes to move a CSA to clause 4 to the effect that the Electronic Transactions Ordinance binds the Government. The Bills Committee supports this proposed amendment.

Commencement date of the Bill

(Clause 1)

40. The Administration proposes to move CSAs to clause 1 to the effect that those provisions the operation of which does not have to rely on subsidiary legislation shall come into operation at the beginning of the day on which the Electronic Transactions Ordinance is published in the Gazette, and that the remaining provisions, i.e. those provisions the operation of which has to be supported by subsidiary legislation, shall come into operation on a day to be appointed by the Secretary by notice in the Gazette. This will allow the first category of provisions, including those which enhance certainty in the use of electronic records in contract formation and those which relate to the provision of certification services by the Hongkong Post, to come into effect soon after the enactment of the Bill. The Bills Committee has no objection to these proposed amendments.

Review of the legislation

41. In view of the importance of this legislation in governing the conduct of electronic transactions in Hong Kong and in order to keep pace with new technological developments, the Bills Committee has urged the Administration to keep the legislation under review, particularly on the:

- (a) legal recognition of electronic/digital signature;
- (b) list of documents excluded from the application of clauses 5, 6, 7, 8 and 16 (Schedule 1);
- (c) voluntary recognition scheme, including the issuance of recognized certificates and unrecognized certificates by recognized CAs;

- (d) appeal mechanism (clause 27);
- (e) consultative mechanism for the Code of Practice for recognized CAs;
and
- (f) provision on obligation of secrecy (clause 41).

42. The Administration has undertaken to conduct a review of the legislation 18 months after its enactment and to indicate this commitment upon the resumption of the Second Reading debate on the Bill.

Committee Stage amendments

43. Apart from the CSAs mentioned above, the Administration has also proposed to move a number of minor amendments to the Bill. A full set of the CSAs to be moved by the Administration is in **Appendix IV**. To facilitate Members' consideration of the CSAs, a summary is prepared in **Appendix III**.

Amendment to the Post Office Trading Fund Resolution (Cap. 430 sub. leg.)

44. The Bills Committee notes that in order that the Hongkong Post can provide certification services, the Administration proposes to amend the POTF Resolution by adding "the services of a certification authority within the meaning of the Electronic Transactions Ordinance and services incidental or related to such services" to the schedule of services set out in the POTF Resolution. The Administration intends to move the amendment resolution after the enactment of the Bill.

Consultation with House Committee

45. The House Committee, at its meeting on 17 December 1999, supported the recommendation of the Bills Committee that the Second Reading debate on the Bill be resumed on 5 January 2000.

《電子交易條例草案》委員會
Bills Committee on
Electronic Transactions Bill

委員名單
Membership list

單仲偕議員(主席)	Hon SIN Chung-kai (Chairman)
朱幼麟議員	Hon David CHU Yu-lin
李家祥議員	Hon Eric LI Ka-cheung, JP
夏佳理議員	Hon Ronald ARCULLI, JP
馬逢國議員	Hon MA Fung-kwok
陳國強議員	Hon CHAN Kwok-keung
曾鈺成議員	Hon Jasper TSANG Yok-sing, JP
楊孝華議員	Hon Howard YOUNG, JP
馮志堅議員	Hon FUNG Chi-kin

合共：9 位議員
Total: 9 Members

日期：1999 年 10 月 22 日
Date: 22 October 1999

**Bills Committee on
Electronic Transactions Bill**

List of organizations/individuals submitted views on the Bill

Business Software Alliance*

Cable & Wireless HKT Limited

Consumer Council*

Hong Kong Bar Association

Hong Kong Computer Society*

Hong Kong General Chamber of Commerce

Hong Kong Institution of Engineers (IT Division)*

Hong Kong Society of Accountants*

Horvath & Giles, Solicitors and Notaries

Law Society of Hong Kong*

Office of the Privacy Commissioner for Personal Data

Mr Charles LAM

Mr John TSO

Mr Damien WONG

Total: 11 organizations and 3 individuals

Remark:

“*” denotes those organizations the representatives of which have given oral presentation to the Bills Committee.

Bills Committee on Electronic Transactions Bill

Summary of Committee Stage amendments proposed by the Administration

(Position as at 22 December 1999)

Clause No.	Committee Stage amendments	Remarks
<p align="center">1 (Short title and commencement)</p>	<p><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 27C and 27E 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.</p>	<p>Proposed by the Administration.</p>
	<p><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.</p>	<p>Proposed by the Administration.</p>
<p align="center">2 (Interpretation)</p>	<p><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.</p>	<p>To address the concern of the Bills Committee.</p>
	<p><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 27C for that certification authority;</i>".</p>	<p>Proposed by the Administration to make reference to the new clause 27C.</p>

Clause No.	Committee Stage amendments	Remarks
<p>2 (Interpretation)</p>	<p><u>Definition of "code of practice"</u> To replace the reference to section 39 by section 27E.</p>	<p>Proposed by the Administration to make reference to the new clause 27E.</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); — 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><u>Heading</u> 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
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
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 persons who are not 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 communicating 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
<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 by notice published in the Gazette 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 the 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
<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 by notice published in the Gazette 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 make 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
<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 clause 27D.</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 replace subclause (4) by the new subclause (2A) 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
<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 clause 27D.</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
<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 by notice published in the Gazette 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 make 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 27D.</p>
	<p><u>Clause 26(6)</u> To add "and (5)" after "20(3)".</p>	<p>Proposed by the Administration.</p>

Clause No.	Committee Stage amendments	Remarks
<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, or 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>
	<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>

Clause No.	Committee Stage amendments	Remarks
New clause 27B (Director to specify particulars and documents by notice in the Gazette)	To add the new clause 27B to provide that the Director must specify by notice published in the Gazette any particulars and documents to be furnished under clauses 19(3)(a), 21(1A) and (8) and 26(2).	To address the concern of the Bills Committee.
New Part VIIA (Certification authority disclosure records and code of practice)	To add the new Part VIIA to cover the new clauses 27C, 27D and 27E.	Proposed by the Administration.
New clause 27C (Director to maintain certification authority disclosure record)	To provide that the Director must maintain for each recognized CA an on-line and publicly accessible CA disclosure record, which contains information regarding that CA relevant for the purposes of the Bill.	To address the concern of the Bills Committee.
New clause 27D (Director to notify revocations, suspensions and non-renewals of recognition, etc.)	To provide that the Director must immediately give notice to the public in the on-line CA disclosure record maintained by the Director: <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; or — on becoming aware that the Secretary has confirmed, varied or reversed the decision of the Director to revoke or suspend a recognition. 	To address the concern of the Bills Committee.
New clause 27E (Director may issue code of practice)	To add the new clause 27E to replace the original clause 39.	Proposed by the Administration.
29 (Postmaster General may perform functions and provide services of certification authority)	To make minor drafting changes to clause 29(1).	Proposed by the Administration.

Clause No.	Committee Stage amendments	Remarks
<p>30 (Publication of issued and accepted certificates)</p>	<p><u>Clause 30(1)</u> To delete unnecessary wording.</p>	<p>Proposed by the Administration.</p>
	<p><u>Clause 30(2)</u> To make a minor drafting change.</p>	<p>Proposed by the Administration.</p>
<p>32 (Presumption as to correctness of information)</p>	<p>To delete unnecessary wording.</p>	<p>Proposed by the Administration.</p>
<p>34 (Representations upon publication of recognized certificates)</p>	<p>To delete unnecessary wording.</p>	<p>Proposed by the Administration.</p>
<p>36 (Liability limits for recognized certification authorities)</p>	<p><u>Clause 36(2)</u> In the Chinese version, to add “認可” after “某”</p>	<p>Proposed by the Administration.</p>
	<p><u>Clause 36(2)(b)</u> To replace “<i>recognized repository</i>” by “<i>repository</i>”.</p>	<p>Proposed by the Administration.</p>
<p>37 (Audit of performance of recognized certification authorities)</p>	<p>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.</p>	<p>To address the concern of HKSA.</p>

Clause No.	Committee Stage amendments	Remarks
New clause 38A (Recognized certification authority to maintain repository)	To add the new clause 38A to provide that: — a recognized CA must maintain or cause to be maintained 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 27E. — 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
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 recognition of certificates.	Proposed by the Administration.
	<u>Clause 44(b)</u> To make a minor drafting change.	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

Legislative Council Secretariat

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Appendix