

LEGISLATIVE COUNCIL BRIEF

ELECTRONIC TRANSACTIONS (FEES) REGULATION

INTRODUCTION

On 10 January 2000, the Secretary for Information Technology and Broadcasting made the Electronic Transactions (Fees) Regulation set out in the Annex under section 49 of the Electronic Transactions Ordinance (Cap. 553)

BACKGROUND AND ARGUMENT

Background

2. The Electronic Transactions Ordinance was passed by the Legislative Council on 5 January 2000 and gazetted on 7 January 2000. The Ordinance, inter alia, establishes a framework to promote the development of certification authorities (CAs) in Hong Kong. With the issue of digital certificates by CAs and through the use of digital signatures and public/private key encryption, individuals and businesses will be able to establish the identity of the opposite party in electronic transactions, authenticate electronic messages received, ensure the confidentiality and integrity of electronic messages exchanged and safeguard the non-repudiation of electronic transactions.

3. Under the established framework, we will introduce a voluntary scheme of recognition whereby trustworthy CAs may apply for recognition from Government. The scheme seeks to safeguard consumer interests and enhance users' confidence in electronic transactions. The Director of Information Technology Services (the Director) is the authority for granting Government recognition to CAs under the Ordinance.

4. Under sections 20(1) and 27(1) of the Ordinance, a CA may apply to the Director to become a recognised CA and to apply for the renewal of the recognition respectively. Under section 22(1) of the Ordinance, the Director may recognise certificates issued by a recognised CA as recognised certificates. Under sections 20(2), 22(4) and 27(5) of the Ordinance, the recognition of CAs and its renewal and the recognition of certificates would be made by the Director subject to the payment of prescribed fees. Under section 49(b) of the Ordinance, the Secretary for Information Technology and Broadcasting (the Secretary) may make regulations to prescribe fees payable in respect of applications for the recognition of CA, the recognition of certificates or the renewal of such recognition.

Fee Proposals

5. To support the operation of the CA recognition scheme, we have to prescribe the related application fees. As CA operation is commercial in nature, we consider that the fees should be set on a full cost recovery basis to reflect the actual cost which the Information Technology Services Department (ITSD) will incur in processing the applications.

6. The fees we propose are as follows -

Application	Fee
(a) An application for recognition as a recognised CA	\$15,000
(b) An application for renewal of recognition as a recognised CA	\$15,000

Application	Fee
(c) An application for recognition of a particular certificate or a particular type, class or description of certificates (if the application is made simultaneously with an application for recognition as a recognised CA or an application for renewal of recognition as a recognised CA)	\$1,500
(d) An application for recognition of a particular certificate or a particular type, class or description of certificates (if the application is not made simultaneously with an application for recognition as a recognised CA or an application for renewal of recognition as a recognised CA).	\$3,400

7. In processing applications for recognition as a recognised CA or renewal of such a recognition, ITSD will, in accordance with section 21(4) of the Ordinance, incur staffing and related costs in examining -

- (a) whether the applicant has the appropriate financial status for operating as a recognised CA in accordance with the Ordinance and the code of practice for recognised CAs (code of practice) issued under the Ordinance;
- (b) the arrangements put in place or proposed to be put in place by the applicant to cover any liability that may arise from its activities relevant for the purposes of the Ordinance;

- (c) the systems, procedures, security arrangements and standards used or proposed to be used by the applicant to issue certificates to subscribers;
- (d) the report which contains an assessment as to whether the applicant is capable of complying or has complied with the provisions of the Ordinance applicable to a recognised CA and the code of practice, as the case may be;
- (e) whether the applicant and its responsible officers are fit and proper persons;
- (f) the reliance limits set or proposed to be set by the applicant for its certificates;
and
- (g) any other matters the Director considers relevant.

8. In processing applications for recognition of certificates, ITSD will, in accordance with section 22(5) of the Ordinance, incur staffing and related costs in examining -

- (a) whether the certificates are issued in accordance with the associated certification practice statement;
- (b) whether the certificates are issued in accordance with the code of practice;
- (c) the reliance limit set or proposed to be set for the certificates;
- (d) the arrangements put in place or proposed to be put in place by the CA to cover any liability that may arise from the issue of the certificates; and
- (e) any other matters the Director considers relevant.

9. ITSD estimates that the efforts will be the same in processing an application for recognition as a recognised CA and an application for the renewal of such a recognition. The fees are thus the same, i.e. \$15,000, for these two types of applications. Under section 21(6)(b) of the Ordinance, the Director may specify a period of validity for such a recognition. The Director intends that the recognition should be valid for a period of two years.

10. ITSD estimates that the fee for processing an application for the recognition of a particular certificate or a particular type, class or description of certificates is \$3,400. However, there will be economies of scale if such an application is processed together with an application for recognition as a recognised CA or the renewal of such a recognition. A lower fee, i.e. \$1,500, will thus be charged in such cases.

11. To facilitate the operation of CAs, the Director does not consider that the recognition of certificates should be subject to renewal. The recognition should be valid as long as the CA concerned remains as a recognised CA and there are no material changes affecting the certificates. The Director will set out in the code of practice what constitutes material changes affecting the certificates and the CA concerned has to consult the Director as to whether a separate recognition has to be applied for in respect of its certificates if such changes are made to its certificates.

12. The proposed fees as set out above only take into account the actual cost which ITSD will incur in processing the applications. Other costs relating to the operation and enforcement of the CA recognition scheme are borne by the Government.

13. A fee paid is not refundable if the application concerned is rejected, withdrawn or discontinued.

ELECTRONIC TRANSACTIONS (FEES) REGULATION

14. The proposed fees are set out in the Electronic Transactions (Fees) Regulation (the Regulation) which is made by the Secretary under section 49 of the Ordinance on 10 January 2000.

15. The Regulation is intended to come into operation on 18 February 2000 when the relevant provisions in the Ordinance concerning the voluntary recognition scheme for CAs also come into effect.

LEGISLATIVE TIMETABLE

16. The Regulation will be gazetted on 14 January 2000 and will be tabled in the Legislative Council on 19 January 2000.

BASIC LAW IMPLICATIONS

17. The Regulation does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

18. The Regulation is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

19. For illustration, a CA which applies for recognition as a recognised CA and the recognition of five types of certificates will pay a total application fee of \$22,500. As there is unlikely to be a large number of bodies applying for recognition as a recognised CA, the additional revenue arising from the fee proposals set out in this paper each year is insignificant.

20. There are no additional staffing implications arising from the fee proposals.

PUBLIC CONSULTATION

21. We briefed the Legislative Council Bills Committee on the Electronic Transactions Bill that the proposed fees will be set on a full cost recovery basis when the Bills Committee examined the Bill late last year.

PUBLICITY

22. We will issue a press release on 14 January 2000 when the Regulation is published in the Gazette.

ENQUIRIES

23. Any enquiries on this brief should be addressed to Mr Alan Siu, Principal Assistant Secretary for Information Technology and Broadcasting, at 2189 2287 or by facsimile at 2511 1458.

Information Technology and Broadcasting Bureau
January 2000

ELECTRONIC TRANSACTIONS (FEES) REGULATION

(Made under section 49 of the Electronic Transactions
Ordinance (1 of 2000))

1. Commencement

This Regulation shall come into operation on the commencement of Part VII of the Electronic Transactions Ordinance (1 of 2000).

2. Fees payable in respect of applications for recognition and renewal of recognition

(1) The fee payable by an applicant in respect of an application specified in column 2 of the Schedule is the fee set out opposite to that application in column 3 of the Schedule.

(2) Fees paid are not refundable.

SCHEDULE

[s. 2]

FEES

Item	Applications in respect of which a fee is payable	Fee
		\$
1.	An application for recognition as a recognized certification authority under section 20(1) of the Ordinance	15,000

- | | |
|---|--------|
| 2. An application for renewal of recognition as a recognized certification authority under section 27(1) of the Ordinance | 15,000 |
| 3. An application for recognition of a particular certificate or a particular type, class or description of certificates under section 22(1) of the Ordinance (if made simultaneously with an application specified in item 1 or 2) | 1,500 |
| 4. An application for recognition of a particular certificate or a particular type, class or description of certificates under section 22(1) of the Ordinance (if not made simultaneously with an application specified in item 1 or 2) | 3,400 |

(K C Kwong)
Secretary for Information Technology
and Broadcasting

10 January 2000

Explanatory Note

The purpose of this Regulation is to prescribe the fees payable in respect of applications for the recognition of certification authorities, for the renewal of such recognition and for the recognition of certificates.