

立法會
Legislative Council

LC Paper No. CB(1)1477/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/16/02

**Bills Committee on
Electronic Transactions (Amendment) Bill 2003**

**Minutes of meeting
held on Wednesday, 17 March 2004, at 10:45 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon HUI Cheung-ching, JP
Hon CHAN Kam-lam, JP
Hon Howard YOUNG, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Dr Hon Eric LI Ka-cheung, GBS, JP
- Public officers
Attending** : Miss Adeline WONG
Principal Assistant Secretary for Commerce,
Industry and Technology
(Communications and Technology)
- Mr SIU Kuen-sang
Acting Assistant Commissioner (Special Duties)
Rating and Valuation Department
- Mr Gary LAI
Senior Systems Manager
Information Technology Services Department
- Mr Michael LAM
Senior Government Counsel
- Clerk in attendance** : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Council Secretary (1)1

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I Confirmation of minutes

LC Paper No. CB(1)1267/03-04 - Minutes of 1st meeting on 23 February 2004

The minutes of first meeting on 23 February 2004 were confirmed.

II Meeting with the Administration

Clause-by-clause examination of the Bill

LC Paper No. CB(1)1271/03-04(01) - Information paper provided by the Administration explaining its proposed Committee Stage Amendments to the Bill

LC Paper No. CB(3)734/02-03 - The Bill

ITBB/IT 107/4/1(03) Pt.29 - The Legislative Council Brief issued by the Commerce, Industry and Technology Bureau on 11 June 2003

LC Paper No. LS126/02-03 - The Legal Service Division Report on the Bill

LC Paper No. CB(1)985/03-04 - Background brief on Electronic Transactions (Amendment) Bill 2003 prepared by the Secretariat

LC Paper No. CB(1)1053/03-04(01) - Marked-up copy of the Bill

LC Paper No. CB(1)1053/03-04(02) - Letter dated 16 January 2004 from the Assistant Legal Adviser (ALA) to the Administration

LC Paper No. CB(1)1053/03-04(03) - Reply dated 19 February 2004 from the Administration to ALA's letter of 16 January 2004

LC Paper No. CB(1)1053/03-04(04) -Copies of the relevant provisions referred to in Schedule 3 to the Bill

2. The Bills Committee deliberated (index of proceedings attached at Appendix).

Issues which required follow-up actions/consideration by the Administration

Clause 1

3. The Administration advised that it might introduce a Committee Stage Amendment to stipulate 30 June 2004 as the date on which the Bill, if enacted, would come into operation. This was to tie in with the proposed merger of the Information Technology Services Department and some divisions of the Communications and Technology Branch of the Commerce, Industry and Technology Bureau. Subject to the approval of the Finance Committee, the proposed merger was planned to take effect from 1 July 2004 and would include the creation of a post tentatively titled as Chief Information Officer to replace the existing Director of Information Technology Services (the Director) post. It was the Administration's intention to move a resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) at a Council meeting before 1 July 2004 to transfer, with effect from 1 July 2004, the powers/functions conferred by the Electronic Transactions Ordinance (ETO) (Cap. 553) as amended by the Bill on the Director to the new Chief Information Officer. Members noted the Administration's proposal and did not raise any objection at the meeting.

Clause 3 - proposed section 5A

4. Some members were concerned that if it was considered appropriate to allow service of documents by electronic means under the three Ordinances in question, it might be more proper to introduce the necessary amendments to the Ordinances *per se*, instead of by way of adding a new section 5A and Schedule 3 to the ETO specifying (and adding onto) the list of Ordinances concerned. They pointed out that the latter approach was not user-friendly as a person perusing the relevant Ordinances would not be aware of the e-option for serving documents unless he also referred to the ETO. In this connection, members noted that consequential amendments were being proposed to the Inland Revenue Ordinance and the Securities and Futures (Financial Resources) Rules following the proposed amendment to section 6 of ETO. They therefore questioned why amendments could not be introduced to the three Ordinances *per se*.

5. The Administration responded that the existing ETO was a generic legal framework to facilitate electronic transactions by providing, *inter alia*, for the acceptance of electronic means to satisfy requirements under a rule of law for giving information in writing in other Ordinances. As such, it would not be necessary to amend each and every of the relevant Ordinances to stipulate that electronic means would be acceptable. The proposal to add new section 5A and new Schedule 3 to the

ETO was consistent with this approach. This would also provide a more convenient and efficient vehicle to provide for the acceptance of electronic means to satisfy similar requirements in other Ordinances in future, i.e. amendments would only be required to be introduced to the new Schedule 3, which was subsidiary legislation, instead of to those Ordinances which might involve amendments to the principal legislation. To help ensure that the ordinary end-users would be aware of the e-option for the service of documents under the three Ordinances stipulated in the new Schedule 3, the Administration assured the Bills Committee that it would publicize the availability of the e-option, such as by specifying this option in the instruction sheet attached to the relevant forms of the Rating and Valuation Department.

6. On whether the legal profession (notably the Law Society of Hong Kong and the Hong Kong Bar Association) had commented on this proposed approach during the public consultation on the ETO review in 2002, the Administration advised that both bodies had expressed support for this proposal in their submissions. The Chairman nevertheless remarked that the Bills Committee would keep in view the comments, if any, from the two professional bodies in response to the Bills Committee's invitation for views.

7. Despite the Administration's clarifications, some members still maintained that it was more appropriate to amend the relevant Ordinances *per se* to accept the electronic means, rather than to add a new section 5A and new Schedule 3 to the ETO. Nevertheless, the Administration advised that it remained its intention to adopt the approach currently proposed in the Bill. In this regard, Ms Audrey EU said that she would not oppose to the Bill merely because the Administration maintained the proposed approach.

Clause 16 - proposed section 33

8. Noting that under the existing section 30 of the ETO, the Director must specify by notice published in the Gazette any particulars and documents to be furnished by a certification authority (CA) for applying for recognition and that the notice was not subsidiary legislation, members by and large shared the view that the Code of Practice for Recognized Certification Authorities issued by the Director should receive similar treatment, i.e. it should be published in the Gazette and was not subsidiary legislation. The Chairman asked the Administration to follow up members' view.

Clause 21 - proposed section 46(2)(a)

9. Members highlighted that the scope of disclosure provided under proposed section 46(2)(a) was too wide and requested the Administration to consider :

- (a) replacing "necessary" with "required" to limit the scope of the purposes for which disclosure was allowed; and
- (b) whether or not the list of Ordinances which required disclosure should be separately listed in a Schedule to the ETO, instead of providing a blanket

Action

permission for disclosing information as long as such information was required for the purposes of the ETO or any other Ordinances.

10. Having regard to members' concerns, the Administration indicated that it would not proceed with the proposed amendment to section 46(2)(a). Members were aware that where necessary, disclosure might be effected under the direction or order of a magistrate or court pursuant to existing section 46(2)(d).

11. The Chairman remarked that if necessary, Assistant Legal Adviser 3 and Senior Government Counsel should study the disclosure requirements in other Ordinances to see if the arrangement in proposed section 46(2)(a) was a common practice.

Date of next meeting

12. Members agreed to continue clause-by-clause examination of the Bill at the third meeting to be held on 23 April 2004 at 3:30 pm.

Admin 13. Members noted that the Bills Committee had invited written submissions on the Bill by 31 March 2004. Written submissions received, if any, would be forwarded to the Administration for reference. Given that there was ample lead time between the deadline for submissions and the date of the next meeting, the Chairman requested the Administration to provide for the next meeting, where practicable, its written response to deputations' views.

III Any other business

14. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 1
Legislative Council Secretariat
 8 April 2004

**Proceedings of the meeting of the
Bills Committee on Electronic Transaction (Amendment) Bill 2003
on Wednesday, 17 March 2004, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000-000109	Chairman	Introductory remarks and confirmation of minutes of meeting on 23 February 2004.	
000110-001024	Administration Chairman	<p><u>Clause-by-clause examination of the Bill</u></p> <p>(a) The Chairman proposed and members agreed to go through the English version of the Bill clause by clause. Assistant Legal Adviser 3 (ALA3) would scrutinize the Chinese version of the Bill and where necessary, draw members' attention to any drafting issues.</p> <p>(b) <u>Clause 1</u> The Administration intended to commence operation of the Bill on 30 June 2004.</p> <p>(c) <u>Clause 2</u> Members raised no query.</p>	
001025-005820	Chairman Administration Mr Kenneth TING Ms Audrey EU Clerk Mr Howard YOUNG Mr HUI Cheung-ching ALA3	<p><u>Clause 3 - Proposed section 5A</u></p> <p>(a) Members noted that proposed section 5A was newly added to also allow the service of documents by electronic means as satisfying the legal requirements under certain provisions of the three Ordinances specified in proposed Schedule 3.</p> <p>(b) The pros and cons of introducing amendments to the Ordinances <i>per se</i> or effecting the necessary changes by including the Ordinances in a Schedule to the Electronic Transactions Ordinance (ETO) (Cap 553) which might be amended by the Secretary for Commerce, Industry and Technology by way of subsidiary legislation.</p> <p>(c) The need to balance administrative convenience and user-friendliness.</p> <p>(d) The expression "rule of law", which currently appeared in sections 5,6,7 and 8 of ETO.</p> <p>(e) The Administration's proposed Committee Stage Amendments (CSAs) to existing sections 3, 13(1) and (3)(a)</p>	The Administration to note/consider as per paragraph 3 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>of the ETO to provide for exclusion of the matters and proceedings in Schedules 1 and 2 to the ETO from the application of the new section 5A.</p> <p><u>Clause 4</u> (f) Members raised no query.</p>	
005821-010911	Chairman Administration	<p><u>Clauses 5 - 13</u> Members raised no query.</p>	
010912-011935	Chairman Administration	<p><u>Clause 14</u> (a) The Administration's clarification that the responsible officer authorized by a recognized Certification Authority (CA) to make the statutory declaration under the voluntary recognition scheme for CAs would be personally liable if he gave false information. (b) The Administration's remarks that during public consultation, the Administration's proposal had the support of the CA industry and the Hong Kong Society of Accountants. (c) The CA might decide to appoint any one of its responsible officers to make the statutory declaration. (d) The scope of matters included in a statutory declaration. (e) The scope of major changes to the operation of a recognized CA which would require the CA to furnish an additional assessment report in between two annual assessments.</p>	
011936-012010	Chairman Administration	<p><u>Clause 15</u> Members raised no query</p>	
012011-012416	Chairman Administration	<p><u>Clause 16</u> Whether the Code of Practice for Recognized CAs should be published in the Gazette.</p>	The Administration to note/consider and follow up as per paragraph 8 of the minutes.
012417-012550	Chairman Administration	<p><u>Clause 17</u> Members raised no query</p>	
012551-012850	Chairman Administration Ms Audrey EU	<p><u>Clause 18</u> The Administration's clarification that the revocation or suspension of the recognition of a certificate issued by a CA would not affect the valid use of the certificate</p>	

Time Marker	Speaker	Subject(s)	Action Required
		concerned before the revocation or suspension took effect.	
012851-013110	Chairman Administration Mr CHAN Kam-lam	<u>Clause 19</u> The Director of Information Technology Services (the Director) had issued guidelines for the preparation of assessment reports to be furnished to the Director.	
013111-014250	Chairman Administration Mr Howard YOUNG Ms Audrey EU Mr CHAN Kam-lam	<u>Clause 20 - Proposed section 43A</u> (a) For regulatory purposes, whether it was more appropriate to require CAs to report major changes according to certain thresholds set by the Director; or for the Director to require the CA to furnish an assessment report or a statutory declaration as and when necessary. (b) The Administration's current practice of requesting CAs to submit half-yearly reports as required under the Code of Practice for Recognized CAs and meeting with the CA's on a quarterly basis would help the Director identify if there had been/would be any major changes to the operation of CAs.	
014251-020400	Chairman Administration ALA3 Ms Audrey EU	<u>Clause 21</u> The apparently wide scope of proposed section 46(2)(a).	The Administration to follow up as per paragraphs 9 to 10 of the minutes.
020401-020801	Chairman Members	(a) Date of next meeting. (b) Members noted that the deadline for submission of views was 31 March 2004.	The Administration to note and follow up as per paragraph 13 of the minutes.