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Secretary for Commerce, Industry and Technology
(Attention: Miss Adeline Wong, PAS(ITB)D)
Information Technology and Broadcasting Branch
Commerce, Industry and Technology Bureau
2/F Murray Building
Garden Road
Central
Hong Kong

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BY FAX

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Dear Miss Wong,

Electronic Transactions (Amendment) Bill 2003

I am scrutinizing the above Bill with a view to advising Members and should be grateful if you would clarify the following:

Clause 3 - new section 5A and Schedule 3

- (a) Section 50(1) of the Rating Ordinance (Cap. 116) and section 45(1) of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) provide that service of a requisition, notice or other document required to be served under the Ordinances concerned may be effected on the Commissioner of Rating and Valuation "only by personal service or by post". If it is accepted that the legislative intent of those provisions is to confine the mode of service on the Commissioner to personal service and by post, would the new section 5A proposed in this Bill, which allows the service of the relevant documents in the form of an electronic record, be inconsistent with that legislative intent? If it is now considered appropriate to allow service by electronic means in those Ordinances, would it be more appropriate to amend the specific provisions instead?
- (b) How will the sending and receipt of an electronic record for the purposes of the new section 5A be determined? Although section 19 of the principal Ordinance contains provisions relating to sending and receiving electronic records, it would appear that not all the provisions under section 19 could apply to the new section 5A. As such, should separate provisions be made in the new section 5A? As you know, some of the documents required to be served under Part IV of the Landlord and Tenant Ordinance (Cap. 7) are served by landlords on tenants and vice versa. To enable landlords and tenants to understand clearly the matters relating to service of documents in the form of an electronic record, for example, how the time of receipt

of an electronic record is to be determined, should provisions be made in the new section 5A to cover these matters?

- (c) While the relevant provisions under the Ordinances set out in the new Schedule 3 refer to how the service of a document required to be served under the Ordinances may be effected, the new section 5A makes reference to "a document to be served" only. Should the wording of the new section 5A(1) and (2) be made consistent with that of those provisions. For example in the new section 5A(1), instead of referring to a provision requiring a document to be served on a person by personal service or by post, would it be more appropriate to refer to a provision providing that a document required to be served may be effected by personal service or by post?
- (d) Is it appropriate to use "a rule of law" to refer to the Ordinances set out in the new Schedule 3? Should the reference to "a rule of law under a provision" in the new section 5A(1) and (2) be amended to "a provision under an Ordinance"?

Clauses 4 and 18

In the proposed section 6(2)(aa), reference is made to withdrawal of designation of a certificate as a recognized certificate by the recognized certification authority referred to in section 34 of the principal Ordinance, namely the Postmaster General. Does the Postmaster General have a duty under section 37 of the principal Ordinance to use a trustworthy system in performing the services as a recognized certification authority to issue a certificate or withdraw the designation of a recognized certificate? If so, why is it proposed in clause 18 that the references to "withdraw" and "withdrawal" in section 37 of the principal Ordinance be repealed?

Clause 21

- (a) Proposed section 46(1), as drafted, seems to allow disclosure of any record, book, register, correspondence, information, document or other material that has come into the possession of a person in the course of performing a function under or for the purposes of the principal Ordinance if such record, book, register, information, etc. does not contain, or no longer contains, information relating to another person. This would mean that the document concerned could be disclosed, if, for example, the relevant document is edited by deleting the references to the name and other particulars of another person. Does this reflect the Administration's policy intent? If so, the proposed amendment appears to have the effect of changing the existing scope of the obligation of secrecy. Is there any reason for the proposed change?
- (b) In the proposed section 46(2), is there any reason why the areas in which the obligation of secrecy is disappplied are proposed to be extended to disclosure which is necessary for performing or assisting in the performance of a function under or for the purposes of "any other Ordinance"? What functions under or for the purposes of Ordinances other than the principal Ordinance are intended to be covered by the proposed provision?

Drafting matters

- (a) In the proposed section 6(1A)(b) under clause 4, should the reference to "the person to whom the signature is to be given is or are or is or are acting on behalf of a government entity" be amended to read "the person to whom the signature is to be given is or are, or is or are acting on behalf of, a government entity" to make it more comprehensible?
- (b) In the proposed section 43 under clause 19, while subsections (2), (3A) and (3B) make reference to "the certification authority" to refer specifically to the recognized certification authority referred to in subsection (1), the corresponding Chinese text refer to "核證機關" generally which can be construed to mean any certification authority instead of the one specifically referred to. Please consider improving the drafting of either text to avoid this possible different construction between the English and Chinese texts. You may wish to note that in a similar context in section 43(3) of the principal Ordinance, "有關核證機關" is used to refer to "the certification authority". Please consider whether the same Chinese rendition should be used in the proposed section 43(2), (3A) and (3B).
- (c) In the light of the above comments, please also consider whether it is appropriate to use "核證機關" in the proposed section 43A(2), (4) and (5) under clause 20 to refer to "the certification authority" in the corresponding English text.
- (d) In the proposed section 43A(3), the reference to "上述" in the Chinese text is not reflected in the corresponding English text. Please make both texts match as far as possible.

To assist Members in their scrutiny of the Bill, I should be grateful if the Administration would prepare a summary of the types and nature of documents required to be served under the relevant provisions of the Ordinances set out in the new Schedule 3.

I would appreciate it if you would let me have your reply in both languages at your earliest convenience.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

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