

31 March 2004

By Fax

The Bills Committee on Electronic Transactions (Amendment) Bill 2003
Legislative Council
8 Jackson Road, Central
Hong Kong

Attn: Miss Polly Yeung

Dear Sir

Re: Electronic Transactions (Amendment) Bill 2003

I refer to the letter of Ms Yeung dated 27 February 2004 inviting submission on the Electronic Transactions (Amendment) Bill 2003 (“ETAB”).

First of all, I would like to applaud the Government for taking the initiative of conducting a consultation review of the Electronic Transactions Ordinances (Cap. 553) (“ETO”) within just two years of its introduction in January 2000, and for being receptive to industry opinions and to the experiences of other countries which have enacted similar legal frameworks for the governance of e-transactions.

The resulting package of amendments to the ETO in the ETAB is certainly a step forward. As it is, focus has been put on three major proposals, namely, giving legal recognition to other forms of electronic signatures; accepting service of documents in the electronic form; and proposing changes in relation to the assessment of CAs.

Overall, I have a few suggestions on the Amendment for the Bill Committee’s consideration:

1. Clause 2(c), the proposed amendment of the definition of ““issue”, in relation to a certificate, means...”:
 - The definition is deemed to be more comprehensive if “the act of a certification authority” as stipulated in the original provision is retained, as it is expected that only CAs may issue such certificates.
2. Clause 2(d), the proposed inclusion of ““consent”... includes consent that can be reasonably inferred from the conduct of the person”:
 - It is suggested that a clearly defined range of acts of conduct may help to reduce possible disputes over the interpretation of such behaviour, else consent may be implied in some acts, and not the others.
3. Clause 17, the proposed amendment of Section 36 - Publication of issued and accepted certificates ... (a) accepts the certificate, the recognized certification authority concerned must publish the certificate in a repository as soon as reasonably practicable...”:
 - To prevent procrastination or delays, it is suggested that “as soon as reasonably practicable” should be quantified and clearly stated in the Code of Practice issued under Section 33 of ETAB.

Apart from the details of the contents, I would like to share my observation, regarding the ETAB, with the Bills Committee:

E-commerce is still a very recent phenomenon, both on international and national levels. We should not bury ourselves with too fine details, having too rigid a legal framework. As there is always a possibility of the bill or ordinance being rendered obsolete by fast changing technology, regular review of the Ordinance becomes necessary especially in this early stage of E-commerce development.

E-commerce awareness is still relatively low in Hong Kong, despite our early introduction of the ETO; early by comparison to our neighbours. The objective of setting up the most up-to-date legal framework for the conduct of e-business and of making Hong Kong “a leader and not a follower in the information world of tomorrow” is expected to be matched by a higher volume of business conducted online.

I would therefore like to plead the Administration to step up public education to raise awareness and adoption rate of e-commerce. Hopefully the launch of multi-application smart ID cards with the embedding of Hong Kong Post’s e-certs will help further Hong Kong ‘s IT success.

Yours faithfully

Leo KAN
Managing Director