

Document Date: 28 Mar 2004  
Author: Damien Wong  
Title: Comment on bill 2003 "Amend the Electronic Transactions Ordinance"

In response to HKSAR Legislative Council invitation to comment on Bill 2003 amendment of Electronic Transactions Ordinance. After reviewing the bill, I have the following comments:

1)

In my previous comment on an earlier Electronic Transaction Bill in November 1999, I had already emphasized the importance of Technology Neutral, but the government insisted and responded (RE: Response to comment made by Damien Wong - LC Paper No. CB(1) 343/99-00(06) ) PKI is being considered "technologically neutral". Obviously, the government admit this is no more being considered Neutral at this time, and changes are proposed in the bill which means it lack the vision at the first sight.

From this, I doubt the government's openness to hear public opinion and urge more openness in the current bill review and future activities.

2)

In my other message to the Legco regarding the problem of PKI in 2000, I had mentioned that PKI's complexity, difficulty to be understand and used by general public would largely make it un-useable. In the message, I urged the government that in order to make PKI successful, the government should take careful considerations and allocate adequate resources for implementation, promotion and education of PKI in order to facilitate the use of PKI by general public. But I've found that my comment had again not being listened.

While the government is now trying to open our legal framework to enable other technologies to be used in future through "Technology Neutral", it is important to stress again, that Simplicity of the technology, Ease of understand and Ease of use by general public, are as much important as the level of security it is providing.

After reviewing the bill, I suggest Direction, Guideline, Selection mechanism and/or Certification system should be established in order to identify technologies which are to be

considered acceptable by law as "Electronic Signature". This system should be empowered and spell-out by the amended Ordinance. Therefore, besides "reliable and appropriate" as suggested by the bill, I would suggest to add the above mentioned parameters (Simplicity, Easy, Usability etc.) to be incorporated into the technology selection guidance.

Without a clear guidance on which type of Electronic Signature may be considered legal in court, evidence of signature in court may be unacceptably accepted, or on the contrary, contract authority becomes too easy to break.

3)

Comment on the bill "9. Formation and validity of electronic contracts Section 17 is amended by adding--- (2A)"

3.1) Clear provision of contract authority - The authority provided is unclear. Electronic signature used "shall not be denied legal effect", can this be changed positively "shall be accepted as legal effect" ?

3.2) Signature association with document - Can an electronic signature be attached or associated with a wholly non-electronic record (or to use the term paper record) ? If partly electronic record are accepted, I see no reason why non electronic cannot. In light of the spirit of technology neutral, even today's technologies are being considered incapable of doing so, we cannot rule out the possibility in future.

4)

In order to enhance the Bill for better approaching the objective of "Technological Neutral", the term "Electronic Signature" is being suggested to be changed to "Digital Signature".

Electronic implies the use of certain physical media to represent information, which is subject to change of representation media along technological advancement. On the other hand, Information or the Signature information is better identified by the term "Digital" as it indicate the fundamental nature of information represented by Binary number system, disregarding the means of physical representation.