

**For consideration on
6 May 2004**

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

The Administration's Responses to Public Submissions

This paper sets out the Administration's responses to the submissions on the Electronic Transactions (Amendment) Bill 2003 made by the Hong Kong Computer Society and the Hong Kong Society of Accountants.

Responses to the Hong Kong Computer Society's Comments

Legal recognition of other forms of electronic signatures

2. We agree that appropriate security and controls implemented by Internet and e-business service providers are important to the development of e-business. While the Government has been facilitating the development of critical infrastructure such as the public key infrastructure, individual businesses would be responsible for deciding on the security and control measures to be adopted to protect their information systems having regard to their specific business and operational requirements.

*Operation of the voluntary recognition scheme
for certification authorities (CAs)*

3. We have already set out in the Code of Practice for Recognized CAs (Code of Practice) the professional qualifications required of assessors. Paragraph 12.2 of the Code of Practice provides that a person qualified to prepare an assessment report (i.e. an assessor) shall be independent of the CA under assessment and accredited by a recognized professional organisation or association and proficient in:

- (a) the assessment of public key infrastructure and related technologies, such as digital signature and certificate, etc;
- (b) applying information security tools and techniques;
- (c) performing financial reviews;
- (d) performing security reviews; and
- (e) performing third-party reviews.

4. Furthermore, paragraph 12.3 of the Code of Practice stipulates that the qualified person may be an individual possessing all of the above requirements, or a partnership or an organization comprising individuals that collectively possess all of the above requirements. The individual signing the assessment report shall be a registered member of the recognized professional organization or association, e.g. holding a valid practising certificate or attaining a similar status. Currently, the following persons who possess the technical expertise as set out in paragraph 12.2 of the Code of Practice (paragraph 3 above) are eligible to apply for approval by the Director of Information Technology Services (Director) as qualified persons to conduct the assessment:

- (a) a Certified Public Accountant, i.e. a professional accountant with a practising certificate issued under the Professional Accountants Ordinance (Cap. 50); and
- (b) a Corporate Member in the Information Discipline of the Hong Kong Institution of Engineers who is also a Registered Professional Engineer in the same discipline.

The Director may also consider requests from other organisations for their members who meet the relevant requirements as set out in paragraph 12 of the Code of Practice to become eligible to serve as qualified persons.

Responses to the Comments of the Hong Kong Society of Accountants

Section 19 - receiving electronic records

5. If an information recipient (the addressee) is to designate an information system for receiving an electronic record, he should designate an information system to which he has access so that he will be able to retrieve the electronic record from the designated system. In the

“default” arrangement (i.e. cases where the addressee has not designated an information system), as stipulated in section 19(2)(b), receipt occurs when the electronic record “comes to the knowledge” of the addressee.

6. The legal advice is that “come to the knowledge of” is commonly used in other ordinances and is a common legal term that can be found in legal dictionaries. Moreover, “knowledge” is interpreted by case law (see *Baden v Societe Generale pour Faranises le Developpment du Commerce et de l'Industrie en France SA* [1992] 4 All ER 161 at 235, per Peter Gibson J). The court, in addition to treating a person with actual knowledge as having knowledge, will treat a person as having constructive knowledge of the facts if he willfully shuts his eyes to the relevant facts which would be obvious if he opened his eyes. The court may also treat a person as having constructive knowledge of the facts if he has actual knowledge of circumstances which would indicate the facts to an honest and reasonable man.

Obligation of secrecy under section 46

7. The Hong Kong Society of Accountants (HKSA) made similar comments on the Electronic Transactions Bill in 1999. The current section 46(2)(a) was drafted having taken into account HKSA’s comments, and provisions similar to section 46(2)(a) are commonly used in other ordinances. Moreover, in our operational experience, there has not been any case in which the operation of section 46(2)(a) is the cause of any problem or complaint. We consider that there is no need to amend section 46(2)(a).

**Communications and Technology Branch
Commerce, Industry and Technology Bureau
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