

Bills Committee on Electronic Transactions (Amendment) Bill 2003

Summary of deputations' views

(As at 29 April 2004)

| Organization/Individual | Views |
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| 1. Mr Damien WONG | <p><u>Technology-neutral approach</u></p> <ul style="list-style-type: none"> • A "technology-neutral" approach should be adopted in selecting and using public key infrastructure (PKI) technology. • Besides being reliable and appropriate, the PKI technology selected should be simple, easy to understand and easy to use. • The phrase "shall not be denied legal effect" under proposed section 17 of the Bill should be amended as "shall be accepted as legal effect". • Electronic signature attached to or logically associated with an offer or the acceptance of an offer which was in paper form should also not be denied legal effect. • Proposes to use the term "digital signature" instead of "electronic signature". <p><u>Promotion of PKI technology</u></p> <ul style="list-style-type: none"> • To ensure successful implementation of PKI technology, the Government should allocate adequate resources to promote its wider use by the public. |
| 2. Privacy Commissioner for Personal Data | <p><u>Disclosure record for the certification authority (CA)</u></p> <ul style="list-style-type: none"> • It appears that what information is considered as "material" for publication in the disclosure record under proposed section 43A(3) is entirely a matter for the Director of Information Technology Services (DITS) to decide. <p><u>Repositories of recognized CAs</u></p> <ul style="list-style-type: none"> • Given that a recognized CA is required under section 45 of ETO to maintain an on-line and publicly accessible repository containing |

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| | <p>personal data belonging to holders of certificates, a purpose statement specifically defining the purpose of use is helpful in guarding against misuse of the personal data. The requirement for a such purpose statement should be included in the Bill.</p> <p><u>The collection of personal data by DITS and CAs</u></p> <ul style="list-style-type: none"> It is recommended that a written Personal Data Collection Statement should be given to data subjects by DITS or a CA before or upon the collection of personal data from data subjects. |
| 3. PCCW - HKT Telephone Ltd. | <p><u>Service of documents by electronic means</u></p> <ul style="list-style-type: none"> Welcomes proposed section 5A and Schedule 3. The list of legal provisions in Schedule 3 should be expanded, in line with the implementation of E-government. <p><u>Legal recognition for electronic transactions not involving government entities</u></p> <ul style="list-style-type: none"> It is not necessary to require the consent of the recipient of an electronic signature to the method of generating the electronic signature as stated under proposed section 6(1)(e). |
| 4. Hong Kong IT Alliance Ltd. | <ul style="list-style-type: none"> Supports the Bill and urges the Administration to step up publicity on e-commerce. <p><u>Clause 2 (c)</u></p> <ul style="list-style-type: none"> Drafting of the definition of "issue" <p><u>Clause 2 (d)</u></p> <ul style="list-style-type: none"> Suggests to define the range of acts which may amount to "consent" <p><u>Proposed section 36 (a)</u></p> <ul style="list-style-type: none"> Suggests that the phrase “as soon as reasonably practicable” should be quantified in the Bill. |

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| <p>5. Consumer Council</p> | <p><u>Use of personal identification number (PIN)</u></p> <ul style="list-style-type: none"> Some legislative standards should be set with regard to the proper management, i.e. creation, storage and use of PIN for satisfying the legal signature requirement. The Bill should empower DITS to set levels of reliability standard of the information system in handling the creation, storage and use of PIN. Companies should also be allowed to seek recognition of the standard of their information systems. <p><u>Electronic contract</u></p> <ul style="list-style-type: none"> The Bill should include the following provisions recommended by the United Nations Commission on International Trade Law Working Group (Electronic Commerce) to facilitate determination of the legal right of contracting parties in Hong Kong conducting electronic transactions and to give legal recognition to current practices of e-commerce: <ul style="list-style-type: none"> (a) Article 11 - invitations to Make Offers (b) Article 12 - Use of automated information systems for contract formation (c) Article 13 - Availability of contract terms |
| <p>6. Mr LAU Wai-cheung, Peter Member of Sai Kung District Council</p> | <ul style="list-style-type: none"> Expresses concern about the security level of PIN. |
| <p>7. Hong Kong Computer Society</p> | <ul style="list-style-type: none"> Supports the Bill and notes that most of the amendments are consistent with the technology-neutral model adopted in the United Nations Commission on International Trade Law - Model Law on Electronic Commerce. <p><u>Legal recognition for other forms of electronic signature</u></p> <ul style="list-style-type: none"> Welcomes proposed sections 6 (1) and 6 (1A) |

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| | <ul style="list-style-type: none"> Points out that the assessment of security and controls incorporated by both Internet and e-business service providers has become more important. <p><u>Service of documents by electronic means</u></p> <ul style="list-style-type: none"> Welcomes the proposed arrangements in proposed section 5A and Schedule 3 <p><u>Voluntary recognition scheme for CAs</u></p> <ul style="list-style-type: none"> Recommends that appropriate professional qualifications and certifications of the assessors be required. |
| 8. Hong Kong Society of Accountants | <ul style="list-style-type: none"> Welcomes and supports the objects of the Bill. <p><u>Section 19 of Electronic Transactions Ordinance (Cap 553) - Sending and receiving electronic records</u></p> <ul style="list-style-type: none"> The proposed "default" arrangement concerning the receipt of an electronic record provided under section 19(2) may create practical problems because an addressee may have access only to part of a system or he needs more time in retrieving the relevant information. Notes that the phrase "comes to the knowledge of the addressee" in section 19(2) is not self-explanatory and may be subject to an interpretation which is different from its intended meaning by the court. Proposes to use a more self-explanatory term or one which has already been subject to appropriate judicial interpretation in other relevant jurisdictions. <p><u>Proposed section 46 - Obligation of secrecy</u></p> <ul style="list-style-type: none"> The scope of disclosure provided under proposed section 46(2)(a) is too open-ended and could potentially undermine the effectiveness of the secrecy obligation under proposed section 46(1). |