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**Paper for the House Committee Meeting
on 27 June 2003**

**Legal Service Division Report on
Electronic Transactions (Amendment) Bill 2003**

I. SUMMARY

1. **Object of the Bill** To introduce miscellaneous amendments to the Electronic Transactions Ordinance (Cap. 553) (ETO) to ensure that Hong Kong has the most up-to-date legislative framework for the conduct of e-business.

2. **Comments**
 - (a) The amendments proposed in the Bill are introduced following a review of ETO and a public consultation on the proposals to improve and update ETO.

 - (b) The Bill proposes to give legal recognition to other forms of electronic signatures, apart from digital signature, for transactions not involving the Government.

 - (c) Proposal to accept service of documents in the form of electronic records as satisfying the requirement of service by post or in person under the statutory provisions set out in the proposed new Schedule 3 to ETO.

 - (d) Changes relating to assessment of certification authorities are introduced to improve the operation of the voluntary recognition scheme for certification authorities.

3. **Public Consultation** A public consultation was conducted in March and April 2002 on the policy proposals.

4. **Consultation with LegCo Panel** The Panel on Information Technology and Broadcasting was consulted on the policy proposals on 11 March 2002 and 7 November 2002.

5. **Conclusion** A Bills Committee is recommended to be formed to study the Bill in detail.

II. REPORT

Object of the Bill

To introduce miscellaneous amendments to the Electronic Transactions Ordinance (Cap. 553) following a review of the Ordinance to ensure that Hong Kong has the most up-to-date legislative framework for the conduct of e-business.

LegCo Brief Reference

2. ITBB/IT 107/4/1(03) Pt.29 dated 11 June 2003 issued by the Commerce, Industry and Technology Bureau.

Date of First Reading

3. 25 June 2003.

Background

4. The Electronic Transactions Ordinance (Cap. 553) (the Ordinance), which was enacted in January 2000, aims to facilitate the use of electronic transactions for commercial and other purposes by giving electronic records and digital signatures the same legal recognition as their paper-based counterparts. The Ordinance also establishes a framework to promote and facilitate the operation of certification authorities (CAs) so as to ensure trust and security in electronic transactions. At the resumption of Second Reading debate of the Electronic Transactions Bill, the Administration undertook to conduct a review of the Ordinance 18 months after its enactment in the light of operating experience, international e-business development and technological advancement in order to ensure that Hong Kong has the most up-to-date legal framework for the conduct of e-business.

5. Following the review on the implementation of the Ordinance, the Administration conducted a public consultation from March to April 2002 on its proposals to improve and update the Ordinance. The areas of the review include whether legal recognition should be given to other forms of electronic signatures and whether changes should be made to the scheme of recognition of CAs under the Ordinance.

Comments

6. The Bill contains the proposed amendments formulated by Administration after considering comments received during the public consultation. The proposed amendments are summarized as follows:

Legal recognition of other forms of electronic signatures

7. The Ordinance does not recognize all forms of electronic signatures; it only gives legal recognition to digital signatures generated by Public Key Infrastructure (PKI) technology. To enable the legal framework provided in the Ordinance and future development of e-business to better keep pace with technological advancement and to provide a wider range of options for satisfying signature requirements electronically, the Bill proposes to give legal recognition to all forms of electronic signatures in transactions not involving the Government subject to certain conditions as to reliability and appropriateness in relation to specific circumstances and consent of the parties concerned. In the case of contracts, if a contract contains a signature, it is proposed that the parties to the contract may use electronic signature to satisfy the signature requirement. These proposed amendments are consistent with the technology-neutral model adopted in the United Nations Commission on International Trade Law-Model Law on Electronic Commerce.

8. However, for transactions with the Government, the Administration considers it necessary to retain the technology-specific approach based on digital signature as it provides for clarity and certainty to the public as to the form of electronic signature to be used in transactions with the Government and it will be cost-effective for Government departments to be equipped to deal with only one form of electronic signature.

Service of documents by electronic means

9. In some existing legislation, there are provisions requiring documents to be served on the parties concerned either by post or in person. There is currently no provision either in those legislation or in the Ordinance which allows service of documents by electronic means.

10. To facilitate the implementation of E-government, the Bill proposes to provide that the service of documents in the form of electronic records would satisfy the requirement of service by post or in person under the statutory provisions set out in the proposed new Schedule 3 to the Ordinance. These provisions relate to the service of notice, application or other documents on or by the Commissioner of Rating and Valuation and related parties under Part IV of the Landlord and Tenant Ordinance (Consolidation) Ordinance (Cap. 7), the Rating Ordinance (Cap. 116) and the Government Rent (Assessment and Collection) Ordinance (Cap. 515). The new Schedule 3 may be amended by the Secretary for Commerce, Industry and Technology by order published in the Gazette.

Operation of the voluntary recognition scheme for CAs

11. Under the voluntary recognition scheme for CAs established under the Ordinance, the Director of Information Technology Services (the Director) may grant recognition to CAs which provide a trustworthy service. Any CA applying for recognition is required to furnish an assessment report prepared by an independent assessor approved by the Director on whether the applicant CA is capable of complying

with the relevant provisions of the Ordinance and the code of practice published by the Director. Recognized CAs are also required to furnish to the Director an assessment report once every 12 months.

12. To improve the operation of the voluntary recognition scheme for CAs, the following amendments are proposed in the Bill:

- (a) the requirement to engage qualified and independent assessors only applies to assessment of the trustworthiness of the certification service, such as system security, procedural safeguards and financial viability of the CA concerned, whereas other operational aspects may be dealt with through a statutory declaration to be made by a responsible officer of the CA concerned; and
- (b) the Director is empowered to require a recognized CA to furnish an assessment report and/or statutory declaration as appropriate if there are major changes to the operation of the CA concerned between two annual assessments.

Other amendments

13. Other provisions of the Bill relate to the following matters:

- (a) transferring the power to make orders excluding the application of the provisions of the Ordinance relating to electronic records and digital signatures from the Secretary for Commerce, Industry and Technology to the Permanent Secretary for Commerce, Industry and Technology (Communications and Technology); and
- (b) making consequential amendments to the Inland Revenue Ordinance (Cap. 112), the Securities and Futures (Financial Resources) Rules (L.N. 209 of 2002) and the Securities and Futures (Miscellaneous) Rules (L.N. 216 of 2002).

14. If enacted, the Bill will come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology by notice published in the Gazette.

Public Consultation

15. A public consultation on the review of the Ordinance was conducted in March and April 2002. According to paragraph 15 of the LegCo Brief, the views received from the public consultation are generally supportive and specific comments have been reflected in the Bill where appropriate.

Consultation with LegCo Panel

16. The proposals of the Bill and the outcome of the public consultation on the review of the Ordinance were discussed at the meetings of the Panel on Information Technology and Broadcasting on 11 March 2002 and 7 November 2002. Members of the Panel expressed concern over a number of issues, including the criteria and the transparency of the process of approving a qualified and independent person as assessor under the voluntary recognition scheme for CAs, and the measures taken by the Administration to foster the development of a competitive CA market so as to promote electronic transactions. Some members were concerned about the interface of the Ordinance with other legislation which might adopt other forms of electronic signatures pitched at a security level lower than that of digital signature. The Administration explained that the Ordinance only provided a generic legal framework for electronic transactions and it should not prevent other bureaux/departments from enacting legislation to cater for their specific needs in implementing electronic services. In such cases, specific legislation would be introduced in which concerns about security would be addressed.

Conclusion

17. The Bill introduces a number of amendments which are likely to have significant impact on electronic transactions and the implementation of the Ordinance. A Bills Committee is recommended to be formed to study the Bill in detail.

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