

**Proposed Amendments to "Documents and Information Required for Application to Engage A Qualified Person"**

**Introduction**

This paper sets out a number of proposed amendments to the "Documents and Information Required for Application to Engage A Qualified Person under the Electronic Transactions Ordinance (Cap. 553)" (the Requirements Document).

**Background**

2. Under section 20(3)(b) of the Electronic Transactions Ordinance (ETO), a certification authority (CA) applying for recognition must furnish to the Director of Information Technology Services (Director) an assessment report on the CA's capability to comply with the ETO and the Code of Practice for Recognized Certification Authorities. Under section 43(1) of the ETO, a recognized certification authority (RCA) must furnish to the Director an assessment report at least once in every 12 months. An assessment report must be prepared by a qualified person (i.e. an assessor) approved by the Director. Application for the Director to approve an assessor must be submitted by a CA applying for recognition or by an RCA.

3. The Director has published the Requirements Document setting out the documents and information required for application to engage an assessor. One of the requirements therein is related to the granting by a CA of a waiver of confidentiality and copyright licence to the Director for the Director to publish information from the assessment report. Under this requirement, the potential assessor, the individual responsible for the assessment (the responsible individual) and members of the assessment team must make and sign a statement acknowledging that there is no breach of any duty of confidence and no infringement of copyright if the CA grants the said waiver of confidentiality and copyright licence to the Director. Please refer to section 2(b) of the Requirements Document at Annex for details.

4. In a recent application submitted by an RCA for approval of its assessor, the assessor concerned indicated that intellectual property rights of the assessment report would rest with it rather than with its responsible individual and members of the assessment team. Therefore, its responsible individual and members of the assessment team were not in a position to make and sign the acknowledgement statement as required under section 2(b) of the Requirements Document. After consultation with government internal legal advice, we agreed with the assessor that its responsible individual and members of the assessment team could make and sign another statement instead of the one required under the said section 2(b). This other statement was to the effect that intellectual property rights in the assessment report will be owned by the assessor, and that consent or licence for the use or publication of the assessment report or waiver of confidentiality should be sought from the assessor.

5. Under the alternative arrangement as described in the above paragraph, the assessor was still required to make the statement set out under section 2(b) of the Requirements Document.

### **Proposed amendments to the Requirements Document**

6. To formally reflect that the aforesaid alternative arrangement is acceptable in respect of an application to engage an assessor, we intend to amend the Requirements Document by adding a new section 2(c) therein as set out at Annex.

7. We also take the opportunity to effect the following amendments in the Requirements Document:

- (a) to amend sections 2(a) and 2(b) to allow the statements required therein to be made and signed either jointly or separately by the potential assessor, the responsible individual and members of the assessment team, as the case may be; and
- (b) to clarify that under section 2(b), the name of the CA should be indicated in the statement required therein.

8. We intend to publish the revised Requirements Document with the aforesaid amendments with immediate effect.

**Advice Sought**

9. Members' comments are welcome with regard to the proposed amendments set out in this paper.

**Information Technology Services Department  
January 2003**

**Documents and Information Required  
for Application to Engage A Qualified Person  
under the Electronic Transactions Ordinance (Cap. 553)**

Section 20(3)(b) of the Electronic Transactions Ordinance (Cap. 553) (the Ordinance) specifies that a certification authority (CA) seeking recognition must furnish to the Director of Information Technology Services (the Director) a report prepared by a person acceptable to the Director as being qualified to give the report. The report must provide an assessment as to whether the CA is capable of complying with the provisions of the Ordinance applicable to a recognized CA and the Code of Practice for Recognized Certification Authorities (Code of Practice). Sections 43(1) and (2) of the Ordinance specify that at least once in every 12 months, a recognized CA must furnish to the Director a report containing an assessment as to whether the recognized CA has complied with the provisions of the Ordinance applicable to a recognized CA and the Code of Practice during the period for which the report is prepared. The report must be prepared by a person approved by the Director as being qualified to make such a report.

2. A CA or a recognized CA shall apply in writing to the Director for approval that the person whom the CA or the recognized CA intends to engage for the preparation of an assessment report is a qualified person under section 20(3)(b) or section 43(2) respectively. The CA or the recognized CA shall furnish the Director with the following documents and information in respect of the application:

- (a) ~~An~~ Original statement(s) jointly or separately made and signed by the person who wishes to be a qualified person (the Potential Assessor) and by the individual (the Responsible Individual) who will sign the assessment report, stating that:
  - i) the Responsible Individual together with members of the assessment team acting or working for the Potential Assessor will prepare the assessment report;
  - ii) the Responsible Individual together with members of the assessment team acting or working for the Potential Assessor shall meet the qualifications set out in paragraph 12.2 of the Code of Practice;

- iii) the Responsible Individual meets the requirements and shall bear the responsibilities set out in paragraph 12.3 of the Code of Practice;
- iv) the Responsible Individual will ensure that the assessment report is prepared in accordance with the Guidance Note on Compliance Assessment of Certification Authorities;
- v) the information provided in the statement is, to the best of the knowledge and belief of the Potential Assessor and the Responsible Individual, true and accurate up to the moment the Potential Assessor and the Responsible Individual sign the statement; and
- vi) the Potential Assessor and the Responsible Individual have read and understood section 47 of the Ordinance in respect of the consequences of making or furnishing any declaration, return, certificate or other document or information which is untrue, inaccurate or misleading.

Certified copies of the statement are not accepted.

- (b) ~~An~~ Original statement(s) jointly or separately made and signed by the Potential Assessor, the Responsible Individual and members of the assessment team acting or working for the Potential Assessor stating that:

"Under section 43(3) of the Ordinance, the Director must publish in the certification authority disclosure record for [name of the CA] the date of the assessment report and the material information in the assessment report, and under section 31(2) of the Ordinance, the Director must publish in the certification authority disclosure record information regarding [name of the CA] relevant for the purposes of the Ordinance. It is also acknowledged that, accordingly, [name of the CA] may be asked by the Director to grant him an express waiver of confidentiality and an express copyright licence enabling him to publish the material information in the assessment report. We/I acknowledge that [name of the CA] has the right to grant such a waiver of confidentiality and copyright to the Director, and that there is no breach of any duty of confidence owed by [name of the CA] to us/me and no infringement of our/my copyright of the assessment report by [name of the CA] if [name of the CA] grants such a waiver of confidentiality and copyright licence to the Director for the purpose of section 31(2) or 43(3) of the Ordinance."

(c) In case the Responsible Individual and members of the assessment team do not own the intellectual property rights of the assessment report, and therefore would not be in a position to make the statement as mentioned under (b) above, an original statement as mentioned under (b) above made and signed by the Potential Assessor AND original statement(s) jointly or separately made and signed by the Responsible Individual and members of the assessment team stating that:

“The assessment report for the independent assessment of the Certification Authority operated by [name of the CA] will be prepared by us/me in the course of our/my employment by [name of the Potential Assessor]. Copyright and other intellectual property rights in the assessment report shall be owned by [name of the Potential Assessor]. We/I declare that we/I do not own any copyright and any other intellectual property rights in the assessment report. Consent or licence for the use or publication of the assessment report (or any part thereof) or waiver of confidentiality for the disclosure of the assessment report (or any part thereof) should be sought from [name of the Potential Assessor].”

Certified copies are not accepted.

(de) An original letter from the professional organisation or association, which the Responsible Individual belongs to, confirming that the Responsible Individual is a member of the organisation or association with good standing and that the Responsible Individual is currently holding the relevant practising certificate. The letter should be issued by the organisation or association within one month from the date of application for approval as a qualifier person. Certified copies are not accepted.

(de) A list of members of the assessment team which will prepare the assessment report and their individual experiences and qualifications relevant for the preparation of the assessment report, with particular regards to the skills requirements set out in paragraph 12.2 of the Code of Practice. The experiences of members of the assessment team should be presented on a project-by-project basis, including without limitation:

- i) a brief description of each project, preferably with the name of the client;
- ii) the role and responsibility of each member of the assessment team

in each project; and

iii) duration of involvement by each member of the assessment team in each project.

(fe) For performing the financial review as part of the assessment, the team member concerned should be a registered member holding the relevant practising certificate of a professional organisation or association in the accounting discipline which meets the requirements as set out in 12.5 of the Code of Practice with documentary proof.

(gf) A description of the methodology and standards to be adopted for the purpose of performing the assessment.

(hg) If the Potential Assessor is a company incorporated under the Companies Ordinance (Cap. 32), a certified true copy of the certificate of incorporation and the business registration certificate of the Potential Assessor.

(ih) If the Potential Assessor is a partnership, a certified true copy of the business registration certificate of the Potential Assessor.

(ji) A certified true copy of the business registration certificate or its equivalent of the CA who submits the application for the Potential Assessor to be approved as qualified to prepare an assessment report.

(kj) If any of the above particulars and documents are to be certified, the particular and document shall be certified by an independent solicitor, commissioner for oaths or a notary public.

(Please note:

- a reference to a solicitor is a reference to a person who is a solicitor qualified to act as such under the Legal Practitioners Ordinance (Cap. 159);
- commissioner for oaths means a commissioner for oaths duly appointed by the Chief Justice under any enactment in force in Hong Kong; and
- notary public, in relation to Hong Kong, means a notary public registered by the Registrar of the High Court under section 40 of the

Legal Practitioners Ordinance (Cap 159), and in relation to a place outside Hong Kong, means a person duly authorized to take declarations under the laws of that place).

- (~~1k~~) If any of the particulars and documents are submitted via electronic mail, the submission would be governed by the provisions of the Electronic Transactions Ordinance (Cap. 553) and should be sent to the email address: caro@itsd.gov.hk.

**Information Technology Services Department**

~~August 2002~~ January 2003