

**Advisory Committee on Code of Practice for
Recognized Certification Authorities (ACCOP)**

Time Stamping Service

Purpose

This paper briefs Members on various views from the industry regarding the need to amend the Electronic Transactions Ordinance (Cap 553) (“ETO”) to provide legal backing for time stamping service, and seeks Members’ comments on the proposed way forward.

Background

2. At the meeting of Legislative Council Panel on Information Technology and Broadcasting held on 10 December 2012, a Panel Member suggested to consider the need to introduce legislative amendments for digital time-stamping, which could provide strong legal evidence of the timing of electronic documents or transactions and their authenticity.

Current Situation

3. Most economies’ e-commerce legislations (e.g. China, Singapore, Hong Kong, etc.) are based on the United Nations Commission on International Trade Law (UNCITRAL) - Model Law on Electronic Commerce¹, UNCITRAL - Model Law on Electronic Signatures² and the United Nations Convention on the Use of Electronic Communications in International Contracts³. Statutory provision for time stamping is not stipulated in these model laws and convention.

¹ http://www.uncitral.org/uncitral/uncitral_texts/electronic_commerce/1996Model.html

² http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2001Model_signatures.html

³ The UN Convention drew upon the rules contained in the Model Law on Electronic Commerce and is intended to supersede it (http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2005Convention.html).

4. At present, many economies such as Australia, Canada, China, Singapore, United Kingdom and United States do not have legislation on time stamping. Nevertheless, in a number of these economies, time stamping services are available in the market. For instance, Australia's VANguard⁴ offers Federal, State and local government agencies a range of authentication services, including time stamping services, to secure, improve and expand their delivery of online services to their business customers.

5. On the other hand, some economies such as India, Macau, Malaysia, Poland and Estonia have stipulated time stamping provisions in their electronic records/signature legislations.

Views from the Industry

6. We have consulted the industry, through meeting with some industry organisations as well as discussions with the two recognised certification authorities⁵ ("RCA") in Hong Kong.

7. There are views that time stamping provisions should be stipulated in ETO so as to provide strong evidence for the existence of an electronic record at a specific point-in-time. This might be particularly applicable to various types of secure transactions such as e-commerce, e-tendering, protection of intellectual property or any other e-business that require reliable and trusted time evidence. However, there has not been a clear proposal of how a time stamping regime under the ETO is going to operate in Hong Kong.

8. Others opined that interested organisations could indeed provide time stamping service to the community to satisfy specific business requirements and market demand. Amendment to the ETO is not a prerequisite.

9. The two RCAs have indicated that they currently have no plan to provide time stamping service due to lack of demand from the market rather than the lack of legal backing. One of the RCAs had in the past offered time stamping service and had ceased such service due to insufficient demand.

⁴ <http://www.vanguard.business.gov.au/pages/default.aspx>

⁵ Hongkong Post and Digi-Sign Certification Services Limited

Legal Implications

10. According to legal advice, an electronic record without time stamp or with non-statutory time stamp has the same status in evidence as any paper-based record. Such an electronic record can be admitted as evidence in court proceedings subject to authentication in accordance with the normal rules of evidence.

Way Forward

11. There is currently no substantial business demand for time stamping service in Hong Kong to justify the provision of a statutory time stamping regime under the ETO. Hence, we do not propose to amend the ETO to stipulate statutory provisions for time stamping. We will continue to keep in view industry development in respect of time stamping.

Advice Sought

12. Members' comments are invited on the above proposal.

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