

Publication of Report or Information Submitted by a Recognized Certification Authority

Introduction

This paper sets out proposed amendments to the following two documents in relation to the publication by the Director of Information Technology Services (the Director) of any report or information submitted by a recognized certification authority (CA):

- (a) Code of Practice for Recognized Certification Authorities (Code of Practice); and
- (b) Documents and Information Required for Application to Engage A Qualified Person (the Requirements Document).

Background

2. At the last meeting of the Advisory Committee on Code of Practice for Recognized Certification Authorities (ACCOP) held in September 2001, we briefed Members on ACCOP Paper No. 4/2001. In that paper, we proposed to amend the Code of Practice so that a recognized CA is deemed to have granted a copyright licence and to agree with the disclosure of information for the Director to publish any report or information submitted by the recognized CA. In the Annex to ACCOP Paper No. 4/2001, we presented corresponding requirements requesting an assessor, its responsible individual and its team members to grant a copyright licence and to agree with the disclosure of information for the Director to publish the whole or any part of the assessment report prepared by the assessor.

3. During discussions in respect of ACCOP Paper No. 4/2001, a Member expressed concern about the requirement for an assessor to grant any licence to the Director, and requested to be allowed more time to consider the

matter and to provide feedback after the meeting. Subject to the feedback to the contrary from the Member concerned, Members agreed with the amendments proposed in ACCOP Paper No. 4/2001.

Proposed Amendments to the Requirements Document

4. Subsequently, we discussed and considered the views expressed by the Member concerned. We had also obtained legal advice within Government. As a result, we intend to amend the Requirements Document as set out at Annex (with revisions marked therein).

5. Basically for the publication of an assessment report by the Director, we no longer require the assessor, its responsible individual and members of the assessment team (the Assessment Parties) to grant a copyright licence to the Director and to agree with the disclosure of information by the Director. Instead, we will require the Assessment Parties to acknowledge that the CA has the right to grant a waiver of confidentiality and copyright licence to the Director, and that there is no breach of any duty of confidence owed by the CA to the Assessment Parties and no infringement of the Assessment Parties' copyright of the assessment report by the CA if 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 Electronic Transactions Ordinance (Cap. 553).

6. With the above amendments, any copyright licence and waiver of confidentiality will be a matter between the CA and the Director, while the Assessment Parties acknowledge that the CA will not be in breach of its duty of confidence or will not be infringing on the Assessment Parties' rights in so doing.

7. We intend to make the above proposed amendments to the Requirements Document with immediate effect.

Proposed Amendments to the Code of Practice

8. On the part of a recognized CA, we basically intend to proceed with the amendments to the Code of Practice as proposed in ACCOP Paper No. 4/2001. After further consulting legal advice within Government, we intend to

revise the proposed new clauses to be inserted under Section 10 (Disclosure of Information) of the Code of Practice as follows:

- “10.7 On submission by a recognized CA of any report or information under the Ordinance or the Code of Practice, the recognized CA shall ensure that it has the necessary rights over such report or information so that it can grant or procure to grant a licence to the Director for the Director to reproduce and publish the whole or any part of the report or information for the purpose of the relevant provisions under the Ordinance. Upon request by the Director, the recognized CA shall grant or procure to grant the aforesaid licence to the Director. The recognized CA shall at its expense do such thing and execute such document (or procure the same be done or executed) as may be required by the Director to give effect to the aforesaid licence.
- 10.8 The recognized CA agrees to the disclosure of any such report or information by the Director as the Director thinks fit for the purpose of the relevant provisions under the Ordinance.
- 10.9 A recognized CA shall not attempt in any way to prevent the Director from publishing information for the purpose of the relevant provisions under the Ordinance.”

9. The above proposed new clauses now require an express copyright licence from the recognized CA, instead of deeming the recognized CA to have granted a copyright licence to the Director as was originally proposed in ACCOP Paper No. 4/2001. The new clauses will avoid a possible situation that after publishing a report or information submitted by a recognized CA, the Director subsequently discovers that the recognized CA has not obtained the necessary copyright or authority from the copyright holder of the report or information. The Director might then be susceptible to a claim on secondary infringement of the copyright of the copyright holder concerned.

10. We intend to make the above proposed amendments to the Code of Practice with immediate effect.

Advice Sought

11. We welcome Members' views on the proposed amendments to the Code of Practice and to the Requirements Document as set out in this paper.

Information Technology Services Department
June 2002

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

- (a) An original statement jointly 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 meet the qualifications set out in paragraph 12.2 of the Code of Practice (*the Responsible Individual and members of the assessment team are all included as paragraph 12.3 of the Code of Practice specifies that a qualified person may be an organisation comprising*

individuals that collectively possess all the requirements set out in paragraph 12.2);

- 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;
- 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;

~~vii) the Potential Assessor, the Responsible Individual and members of the assessment team agree to grant a licence to the Director, where they have the right to grant such licence, for the Director to reproduce and publish the whole or any part of the contents of the assessment report for the purpose of the relevant provisions under the Ordinance; and~~

~~viii) the Potential Assessor, the Responsible Individual and members of the assessment team agree to the disclosure of any information in the assessment report by the Director as the Director thinks fit for the purpose of the relevant provisions under the Ordinance.~~

Certified copies of the statement are not accepted.

(b) An original statement jointly signed by the Potential Assessor, the Responsible Individual and members of the assessment team stating that:

"Under section 43(3) of the Ordinance, the Director must publish in the certification authority disclosure record for 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 the CA relevant for the purposes of the Ordinance. It is also acknowledged that, accordingly, 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 acknowledge that 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 the CA to us and no infringement of our copyright of the assessment report by the CA if 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."

Certified copies are not accepted.

(bc) 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.

(ed) 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.

(~~de~~) 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.

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

(~~fg~~) 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.

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

(~~hi~~) 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.

(~~ij~~) 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).

- (jk) 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 2001~~ June 2002