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(Email: hklrc@hkreform.gov.hk)
The Secretary
Sub-committee on Cybercrime
The Law Reform Commission
4th floor, East Wing, Justice Place
18 Lower Albert Road
Central, Hong Kong

19 October 2022

Dear Sirs

**Consultation Paper on Cyber-Dependent Crimes and Jurisdictional Issues
("Consultation Paper")**

We refer to the Consultation Paper and the proposals of the Sub-committee on Cybercrime of the Law Reform Commission (the "Commission") on law reform to address matters relating to the potential for information technology, the computer and internet to be exploited for criminal activities ("**Proposals**"). In response to the Commission's invitation for comments, on behalf of the Hong Kong Women Professional and Entrepreneurs Association ("**HKWPEA**"), we set out our comments below to this consultation exercise ("**Consultation**").

As a non-profit organization representing local women professionals and entrepreneurs, HKWPEA is aware of the importance of Hong Kong's hard-earned position as an international financial centre. Over the last 23 years, HKWPEA strives to make timely responses to consultation by the HKSAR government and regulators. The views expressed in this submission are those of HKWPEA, based on consultation with our members, which include women professionals, business executives and entrepreneurs.

We agree that it is vital for Hong Kong as an international financial centre to be positioned at the forefront of combatting cybercrimes and enhancing confidence in the investment, commercial, and social environment offered by Hong Kong.

HKWPEA set up a task force to discuss the Consultation Paper. Views expressed herein are in line with HKWPEA's position on the relevant issues (though not necessarily that of each and every member).

Response to Consultation

Given that the last official study on cybercrime in Hong Kong dates back to more than 20 years ago, we agree that with the significant technological developments, the proposals are not only desirable, but critical, if Hong Kong is to keep up with its status as a global financial centre and international "smart" city. As a business and professional organization, we stress that we believe that the law must strike a balance between protection on the one hand, and being an enabler of business on the other.

Please find in the Appendix our response to the recommendations in the Proposal.

Yours faithfully



Helen Kan
President

Secretariat 秘書處

APPENDIX

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Recommendation 1

We agree that unauthorised access to program or data should be an offence under the new legislation and that there should be an aggravated offence the access is “with intent to carry out further criminal activity”.

Recommendation 2

We agree with the Recommendation.

We urge that the cybersecurity accreditation is a factor to consider in determining whether it has been proven that the person accessing the program or data has a lawful excuse, but it should not be a conclusive determinant that the defence has been successfully made out. The lawful excuse should be in respect of the action taken by the individual, and not the accreditation. In addition, the time to finalise the appropriate formulation for such accreditation will take time and require the input from the industry specialists, and should not be a factor which holds up the finalizing of this legislation and allowing it to take effect as soon as possible.

Recommendation 3

We agree with this Recommendation.

Recommendation 4

We agree with this Recommendation. Unauthorised interception should include interception which exceeds authority.

For interception in an employment scenario, we stress that it is necessary for the right of employers to intercept employee data and program to be confined to data located in the employee's working environment as well as data stored on the employee's computer. The concept of “computer” should avoid being too narrowly defined and instead there should be reference to cloud storage, mobile storage etc.

Recommendation 5

We agree with this Recommendation. However, for businesses who have such authority to intercept data with or without the approval of the customers, this involves infringing into privacy rights of an individual and should be carefully considered. There does not appear to be any particular reason why businesses should need to intercept data. Shopping malls may wish to monitor the flow of pedestrian traffic and shopping habits but the extent to which data needs to be intercepted for this purpose needs to be extremely limited.

It is possible to apply the defence may apply to law enforcement bodies during their investigation of criminal activities and matters of national interest/national security. Consideration can also be given to any business / organization which has legitimate belief that somebody is carrying activities which are against their interests but this defence would need to be couched strictly and narrowly.

Recommendations 6 and 7

We agree with these Recommendations.

Recommendation 8

We agree with this Recommendation. There can also be lawful excuses for non-security professionals in carrying out certain actions but these need to be tightly contained and subject to strict proof.

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For actions such as the scanning of a computer system on the internet by cybersecurity professionals without the knowledge or authorization of the owner of the target computer, these actions can be a lawful excuse but there must be satisfactory demonstration of the intention of the cybersecurity professional as to the purpose of the action.

Recommendation 9

We agree with this Recommendation.

Recommendation 10

We agree that by making available the use of computer data/ software that can be used to perform a cyber-attack can be a defence or exemption for offence if such software is being used to test the cybersecurity level against willful attacks.