

LEGISLATIVE COUNCIL BRIEF

ELECTRONIC TRANSACTIONS (EXCLUSION) (AMENDMENT) (No.2) ORDER 2000

INTRODUCTION

On 27 September 2000, the Secretary for Information Technology and Broadcasting (the Secretary) made the Electronic Transactions (Exclusion) (Amendment) (No.2) Order 2000 (“the Amendment Order”) set out in Annex A under section 11(1) of the Electronic Transactions Ordinance (“ETO”) (Cap. 553) to withdraw the exclusion of certain provisions of the Electoral Affairs Commission Ordinance (“EACO”) (Cap.541) from the application of sections 5 and 6 of the ETO.

BACKGROUND AND ARGUMENT

Background

2. The ETO was passed by the Legislative Council on 5 January 2000 and gazetted on 7 January 2000. Subject to certain requirements set out in sections 5-8 of the ETO (extract at Annex B), the ETO provides legal recognition to electronic records and digital signatures as that of their paper-based counterparts as follows -

- (a) section 5(1) of the ETO provides that if a rule of law requires information to be or given in writing, an electronic record satisfies the requirement;
- (b) section 5(2) of the ETO provides that if a rule of law permits information to be or given in writing, an electronic record satisfies that rule of law;

- (c) section 6 of the ETO provides that if a rule of law requires the signature of a person, a digital signature of the person satisfies the requirement;
- (d) section 7 of the ETO provides that if a rule of law requires that certain information be presented or retained in its original form, the requirement is satisfied by presenting or retaining the information in the form of electronic records; and
- (e) section 8 of the ETO provides that if a rule of law requires certain information to be retained, whether in writing or otherwise, the requirement is satisfied by retaining electronic records.

3. Government departments took the lead in setting a good example in adopting electronic transactions by accepting electronic submission under the bulk of the statutory provisions in the laws of Hong Kong starting from 7 April 2000. However, for some specific statutory provisions concerning the operation of individual Government departments, there is a genuine and practical need to make exclusion for them from the electronic process. To ensure that the Government departments concerned would continue to operate smoothly, the Secretary made an Electronic Transactions (Exclusion) Order 2000 (“the Exclusion Order”) under section 11(1) of the ETO to exclude 195 statutory provisions in respect of 39 Ordinances and one Order (out of a total of around 650 Ordinances in the laws of Hong Kong) from the application of sections 5-8 of the ETO. The Exclusion Order (a subsidiary legislation) was published in the Gazette on 3 March 2000 and came into effect on 7 April 2000 after negative vetting by the Legislative Council.

4. The statutory provisions excluded in the Exclusion Order can be classified into the following five categories -

- (a) provisions which have to be excluded due to the solemnity of the matter or document involved, e.g.

provisions concerning the electoral process;

- (b) provisions which have to be excluded on operational grounds, e.g. provisions concerning the production of documents to Government authorities on the spot;
- (c) provisions which have to be excluded due to the involvement of voluminous submissions and complex plans which would be difficult to handle electronically, e.g. provisions concerning submission of documents and plans to the works departments;
- (d) provisions which have to be excluded because of international practices, e.g. provisions concerning documents to be kept by the flight crew for air navigation purposes; and
- (e) provisions which have to be excluded to ensure that Government would be able to meet its contractual obligations, e.g. provisions on the submission of trade-related documents which concern the franchise of the Tradelink.

Currently, over 30 provisions of the EACO are excluded from the application of sections 5 and 6 of the ETO due to the solemnity of the electoral process and operational difficulties faced by the Registration and Electoral Office (“REO”) in handling electronic submissions.

5. When the Exclusion Order was submitted to the Legislative Council for negative vetting, the Government made the commitment to withdraw the exclusions where appropriate in future.

Electronic Service Delivery Scheme

6. The Government will be launching the Electronic Service Delivery (“ESD”) Scheme before the end of the year to provide a wide

range of public services to the community online through the Internet and other electronic means. The aim of the scheme is to enhance the quality and efficiency in the delivery of public services and to pump-prime the development of electronic commerce in Hong Kong.

7. The ESD scheme will, inter alia, enable the REO to electronically handle applications made by natural persons for registration as voters or electors. It will also enable the REO to electronically handle requests made by voters and electors to alter their personal particulars recorded in the relevant registers maintained by the REO, e.g. address. These matters are currently excluded from the electronic process by the Exclusion Order. To cater for the implementation of the ESD scheme, we need to withdraw the exclusion of the relevant provisions of the EACO before the scheme is to be launched.

Electronic Transactions (Exclusion) (Amendment) (No.2) Order 2000

8. The Electronic Transactions (Exclusion) (Amendment) (No. 2) Order at Annex A withdraws the exclusion of sections 11(1) and 17(1) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap.541 sub. leg.) and sections 26(1) and 33(1) of the Electoral Affairs Commission (Registration) (Electors for Functional Constituencies) (Voters for Subsectors) (Members of Election Committee) (Legislative Council) Regulation (Cap.541 sub. leg.) from the application of section 5 of the ETO. These provisions enable a voter or an elector in a Legislative Council or District Council election whose particulars are recorded in a final register or whose name is or is to be recorded in a provisional register to request the Electoral Registration Officer to alter any entry relating to him. The effect of withdrawing the exclusion is that a voter or an elector can make the request electronically.

9. The Amendment Order also withdraws the exclusion of section 4(1) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap.541 sub. leg.) and section 19(1)(a)-(d) of the Electoral Affairs Commission (Registration) (Electors for Functional

Constituencies) (Voters for Subsectors) (Members of Election Committee) (Legislative Council) Regulation (Cap.541 sub. leg.) from the application of section 6 of the ETO. The effect of withdrawing the exclusion is to permit applications by natural persons to register as voters or electors in the provisional register to be signed with the use of a digital signature.

LEGISLATIVE TIMETABLE

10. The Amendment Order was gazetted on 29 September 2000 and will be tabled in the Legislative Council on 4 October 2000 for negative vetting. It will come into operation on 9 November 2000 to cater for the launching of the ESD scheme before the end of the year.

BASIC LAW IMPLICATIONS

11. The Department of Justice advises that the proposed Amendment Order does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

12. The Department of Justice advises that the proposed Amendment Order is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

13. There are no additional financial or staffing implications to the Government arising from the making of the Amendment Order.

PUBLIC CONSULTATION

14. The withdrawal of the exclusions provides the public with an alternative means for obtaining service from the REO through the ESD scheme. We indicated our intention to withdraw the exclusion with the launch of the ESD scheme when we submitted the current Exclusion Order to the Legislative Council for negative vetting in March 2000. The Electoral Affairs Commission also noted the proposed withdrawal.

PUBLICITY

15. We will publicise the withdrawal of the exclusions through the homepage of the REO. There will also be a large-scale promotion campaign to publicise the services available under the ESD scheme.

ENQUIRIES

16. Any enquiries on this brief should be addressed to Ms Joyce Tam, Principal Assistant Secretary for Information Technology and Broadcasting, at 2189 2287 or by facsimile at 2511 1458.

Information Technology and Broadcasting Bureau
September 2000

**ELECTRONIC TRANSACTIONS (EXCLUSION)
(AMENDMENT) (NO.2) ORDER 2000**

(Made under section 11(1) of the Electronic Transactions Ordinance
(Cap. 553))

1. Commencement

This Order shall come into operation on 9 November 2000.

**2. Provisions excluded from application of
section 5 of Ordinance**

Schedule 1 to the Electronic Transactions (Exclusion) Order (L.N. 58 of 2000) is amended in column 3(E001)

- (a) in item 54, by repealing "Sections 5(2), 11(1) and 17(1)" and substituting "Section 5(2)";
- (b) in item 55, by repealing "Sections 21(2), 26(1) and 33(1)" and substituting "Section 21(2)".

**3. Provisions excluded from application of
section 6 of Ordinance**

Schedule 2 is amended in column 3(E001)

- (a) in item 13, by repealing "4(1),";
- (b) in item 14, by repealing "19(1)" and substituting "19(1)(e)".

(Mrs Carrie Yau)
Secretary for Information Technology
and Broadcasting

27 September 2000

Explanatory Note

The object of this Order is to amend Schedules 1 and 2 to the Electronic Transactions (Exclusion) Order (L.N. 58 of 2000) that set out the statutory provisions excluded from the operation of sections 5 and 6 respectively of the Electronic Transactions Ordinance (Cap.553).

2. The amendment removes from Schedule 1 sections 11(1) and 17(1) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541 sub. leg.) and sections 26(1) and 33(1) of the Electoral Affairs Commission (Registration) (Electors for Functional Constituencies) (Voters for Subsectors) (Members of Election Committee) (Legislative Council) Regulation (Cap. 541 sub. leg.). Those sections enable a person whose particulars are recorded in a final register or whose name is or is to be recorded in a provisional register maintained under those Regulations to request the Electoral Registration Officer to alter the entry relating to that person. The effect of removing them from Schedule 1 is that a person can make the request electronically.

3. The amendment removes from Schedule 2 section 4(1) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541 sub. leg.) and section 19(1)(a) to (d) of the Electoral Affairs Commission (Registration) (Electors for Functional Constituencies) (Voters for Subsectors) (Members of Election Committee) (Legislative Council) Regulation (Cap. 541 sub. leg.). The effect of removing them from Schedule 2 is to permit applications for registration of natural persons in the provisional register maintained under each of those Regulations to be signed with a digital signature.

Extracts from the Electronic Transactions Ordinance

5. Requirement for writing

(1) If a rule of law requires information to be or given in writing or provides for certain consequences if it is not, an electronic record satisfies the requirement if the information contained in the electronic record is accessible so as to be usable for subsequent reference.

(2) If a rule of law permits information to be or given in writing, an electronic record satisfies that rule of law if the information contained in the electronic record is accessible so as to be usable for subsequent reference.

6. Digital signatures

(1) If a rule of law requires the signature of a person or provides for certain consequences if a document is not signed by a person, a digital signature of the person satisfies the requirement but only if the digital signature is supported by a recognized certificate and is generated within the validity of that certificate.

(2) In subsection (1), "within the validity of that certificate" (在該證書的有效期內) means that at the time the digital signature is generated –

- (a) the recognition of the recognized certificate is not revoked or suspended;
- (b) if the Director has specified a period of validity for the recognition of the recognized certificate, the certificate is within that period; and
- (c) if the recognized certification authority has specified a period of validity for the recognized certificate, the certificate is within that period.

7. Presentation or retention of information in its original form

(1) Where a rule of law requires that certain information be presented or retained in its original form, the requirement is satisfied by presenting or retaining the information in the form of electronic records if –

- (a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form; and
 - (b) where it is required that information be presented, the information is capable of being displayed in a legible form to the person to whom it is to be presented.
- (2) For the purposes of subsection (1)(a) –
- (a) the criterion for assessing the integrity of the information is whether the information has remained complete and unaltered, apart from the addition of any endorsement or any change which arises in the normal course of communication, storage or display; and
 - (b) the standard for reliability of the assurance is to be assessed having regard to the purpose for which the information was generated and all the other relevant circumstances.
- (3) This section applies whether the requirement in subsection (1) is in the form of an obligation or whether the rule of law merely provides consequences for the information not being presented or retained in its original form.

8. Retention of information in electronic records

- (1) Where a rule of law requires certain information to be retained, whether in writing or otherwise, the requirement is satisfied by retaining electronic records, if –
- (a) the information contained in the electronic record remains accessible so as to be usable for subsequent reference;
 - (b) the relevant electronic record is retained in the format in which it was originally generated, sent or received, or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and
 - (c) the information which enables the identification of the origin and destination of the electronic record and the date and time when it was sent or received, is retained.
- (2) This section applies whether the requirement in subsection (1) is in the form of an obligation or whether the rule of law merely provides consequences for the information not being retained.