

**財經事務及庫務局
(庫務科)**

香港下亞厘畢道
中區政府合署

**FINANCIAL SERVICES AND THE
TREASURY BUREAU
(The Treasury Branch)**

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2 January 2003

Mr Arthur CHEUNG
Senior Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Fax: 2877 5029)

Dear Mr Cheung,

Inland Revenue (Amendment) (No. 2) Bill 2001

Thank you for your letter of 30 December 2002 and your comments on the drafting aspects of the Bill.

Our response to your comments are as follows:

- (a) New section 2(5) is a general construction clause that extends the act of signing to the adoption of devices (digital signatures and passwords being devices) other than a manual signature. There is no need to associate the device with the return in this context, apart from stating the purpose of such adoption. New section 51AA(6)(b), however, empowers the Commissioner to specify the details on how to attach the device to a return. The context of the two provisions are different. In fact, the derivative of "adopt" is modelled on the definition of "sign", "signature" and "digital signature" in Electronic Transactions Ordinance (ETO). We believe that there should be no complication in interpretation.
- (b) In the proposed new section 51AA(5)(b), the words "person" and "return" can be in singular form. Examples of such are found in

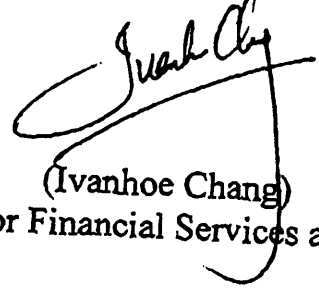


section 29(3) of the Plant Varieties Protection Ordinance, Cap. 490 [in which a reference is made to "a specified class or description of person"], and section 61(2) of the Immigration Ordinance, Cap. 115 ["The Director of Immigration may exempt from subsection (1) any person or any class or description of person"]. On the other hand, section 11(3) of the ETO uses the plural form ["The Secretary may specify different requirements under subsection (2)(a) or (b) in relation to persons or cases of different classes or descriptions"]. We have no objection to your proposal to change the words "person" and "return" in the proposed new section 51AA(5)(b) to the plural form.

- (c) We consider that other than under the new section 2(5) [i.e. "for the purpose of authenticating or approving the return"], the Commissioner's act of approving a password and/or designating any system will have no legal consequences under the Inland Revenue Ordinance (IRO) and will in no way prejudice any taxpayer. An approved password may only commit a taxpayer and attach legal consequences if, and to the extent that, the taxpayer adopts it in furnishing a tax return under the IRO. Therefore, we do not consider it necessary to change the current formulation.

Please feel free to let me know if you have any other questions.

Yours sincerely,



(Ivanhoe Chang)
for Secretary for Financial Services and the Treasury

cc. Clerk to Bills Committee (Attn.: Mrs Constance LI) (Fax: 2509 0775)