

**IMPORT AND EXPORT (ELECTRONIC
TRANSACTIONS) ORDINANCE 2002**

CONTENTS

Section	Page
1. Short title and commencement.....	A1901
2. Amendment of Import and Export Ordinance—(Schedule 1)	A1901
3. Amendment of Reserved Commodities Ordinance—(Schedule 2).....	A1901
4. Amendment of Industrial Training (Clothing Industry) Ordinance— (Schedule 3)	A1903
5. Amendment of Protection of Non-Government Certificates of Origin Ordinance—(Schedule 4).....	A1903
Schedule 1 Amendment of Import and Export Ordinance.....	A1903
Schedule 2 Amendment of Reserved Commodities Ordinance.....	A1911
Schedule 3 Amendment of Industrial Training (Clothing Industry) Ordinance	A1919
Schedule 4 Amendment of Protection of Non-Government Certificates of Origin Ordinance.....	A1921

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 24 OF 2002

L.S.

TUNG Chee-hwa
Chief Executive
18 July 2002

An Ordinance to amend various Ordinances to provide for the use of electronic means in carrying out certain transactions under those Ordinances; and for connected purposes.

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Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Import and Export (Electronic Transactions) Ordinance 2002.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology by notice published in the Gazette.

2. Amendment of Import and Export Ordinance—(Schedule 1)

The Import and Export Ordinance (Cap. 60) is amended as specified in Schedule 1.

3. Amendment of Reserved Commodities Ordinance—(Schedule 2)

The Reserved Commodities Ordinance (Cap. 296) is amended as specified in Schedule 2.

**4. Amendment of Industrial Training
(Clothing Industry) Ordinance—
(Schedule 3)**

The Industrial Training (Clothing Industry) Ordinance (Cap. 318) is amended as specified in Schedule 3.

**5. Amendment of Protection of Non-Government
Certificates of Origin Ordinance—
(Schedule 4)**

The Protection of Non-Government Certificates of Origin Ordinance (Cap. 324) is amended as specified in Schedule 4.

SCHEDULE 1

[s. 2]

AMENDMENT OF IMPORT AND EXPORT ORDINANCE

1. Interpretation

Section 2 of the Import and Export Ordinance (Cap. 60) is amended—

- (a) in the definition of “manifest”, by repealing “document” where it twice appears and substituting “record”;
- (b) in the definition of “security device”, by repealing everything after “person” and substituting “to be used for authenticating that person as the sender of information using services provided by a specified body;”;
- (c) by adding—
 - ““electronic record” (電子紀錄) has the meaning given to that term by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);
 - “information” (資料) has the meaning given to that term by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);”.

2. Section substituted

Section 2B is repealed and the following substituted—

**“2B. Presumption regarding information
sent using services provided
by specified body**

(1) Where information received by the Commissioner or the Director was sent using services provided by a specified body, evidence which shows that the identity of the sender of the information was authenticated by the use of a security device is, in the absence of evidence to the contrary—

- (a) proof that the person issued with the security device furnished the information; and
- (b) proof that the person issued with the security device made a statement or declaration contained in the information.

(2) Where information received by the Commissioner or the Director and sent using services provided by a specified body was sent by a specified agent who has obtained an authorization in accordance with section 2D—

- (a) a person named in the information as the person who furnished the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who furnished the information; and

- (b) a person named in the information as the person who made a statement or declaration contained in the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who made the statement or declaration.”.

3. Safekeeping of security device

Section 2C is amended by repealing everything after “device—” and substituting—

- “(a) shall not authorize or allow any other person to use the device in connection with the sending of information to the Commissioner or the Director under this Ordinance using services provided by a specified body;
- (b) shall take all reasonable steps and exercise due diligence to prevent any other person from using the device in connection with the sending of information to the Commissioner or the Director under this Ordinance using services provided by a specified body.”.

4. Delivery of import licence and manifest to the Director

(1) Section 8(2)(b) is repealed and the following substituted—

- “(b) shall, within 7 days after receiving the import licence—
- (i) deliver the import licence to the Director; and
- (ii) deliver to the Director, using services provided by a specified body, a copy or extract of the manifest of the vessel, aircraft or vehicle in or on which the article was imported.”.

(2) Section 8 is amended by adding—

“(2A) The requirement under subsection (2)(b)(ii) is deemed to have been complied with if at the time of delivering the import licence under subsection (2)(b)(i) the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 11 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body.”.

5. Delivery of import licence and manifest in the case of part shipments

(1) Section 9(2)(b) is amended by repealing everything after “declaration—” and substituting—

- “(i) endorse the licence and return it to the person to whom it was issued;
- (ii) deliver the declaration to the Director; and
- (iii) deliver to the Director, using services provided by a specified body, a copy or extract of the manifest of the vessel, aircraft or vehicle in or on which the article was imported.”.

(2) Section 9 is amended by adding—

“(2A) The requirement under subsection (2)(b)(iii) is deemed to have been complied with if at the time of delivering the declaration under subsection (2)(b)(ii) the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 11 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body.”.

6. Delivery of export licence and manifest to the Director

(1) Section 11(2) is amended by repealing everything after “shall” and substituting—

- (a) where he has obtained a notification sent by the Director under section 10(1)(b) that is still in force, within 14 days after the day on which the article is exported—
- (i) inform the Director of the export licence number; and
- (ii) deliver to the Director, using services provided by a specified body, a copy or extract of the manifest of the vessel, aircraft or vehicle in or on which the article has been exported; or

- (b) in any other case, within 14 days after the day on which the article is exported—
 - (i) deliver the export licence to the Director; and
 - (ii) deliver to the Director, using services provided by a specified body, a copy or extract of the manifest of the vessel, aircraft or vehicle in or on which the article has been exported.”.

(2) Section 11 is amended by adding—

“(2A) The requirements under subsection (2)(a)(ii) and (b)(ii) are deemed to have been complied with if, at the time of informing the Director of the export licence number under subsection (2)(a)(i) or delivering the export licence under subsection (2)(b)(i), the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 12 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body.”.

7. Section added

The following is added—

“11A. Director to have access to manifests lodged with Commissioner

The Director shall have access to any information contained in a manifest of cargo that has been lodged under this Ordinance with the Commissioner or with an officer appointed by the Commissioner.”.

8. Duty to provide particulars of all cargo

(1) Section 15(1) is amended by repealing everything from “The master” to “shall, on” and substituting “A person specified in subsection (1A) in relation to a vessel, aircraft or vehicle shall, on any occasion that the vessel, aircraft or vehicle is”.

(2) Section 15 is amended by adding—

“(1A) The following persons are specified for the purposes of subsection (1)—

- (a) in the case of a vessel, the master or agent of the vessel;
- (b) in the case of an aircraft, the commander or the owner of the aircraft;
- (c) in the case of a vehicle other than a train, the person in charge of the vehicle;
- (d) in the case of a train, the handling agent in Hong Kong for the cargo carried by the train.

(1B) For the purpose of any requirement under subsection (1)(a) to furnish a member of the Customs and Excise Service with a manifest, the manifest may—

- (a) be given to the member of the Customs and Excise Service in paper form;
- (b) be given or sent to the member of the Customs and Excise Service in the form of an electronic record, but only if the manner and format in which the information is given or sent comply with any requirements specified under section 11(2) of the Electronic Transactions Ordinance (Cap. 553) in relation to this Ordinance; or
- (c) be sent to the member of the Customs and Excise Service using services provided by a specified body.

(1C) In this section, “manifest” (艙單) means a record prepared as a manifest and containing such of the particulars prescribed under section 17 as the member of the Customs and Excise Service considers sufficient for his purposes.”.

9. Requirement that articles may be removed from vessel etc. for examination

Section 20B(6) is repealed and the following substituted—

“(6) Any notice, notification or information of any kind under this section or section 20A shall contain or include such information and be given in such manner as may be prescribed.”.

10. Power to make regulations

(1) Section 31(1)(*ia*) is amended by repealing “Commissioner to specify any form or requirement for giving information required to be given” and substituting “Commissioner or the Director to specify any form or requirement for giving information required to be given to the Commissioner or the Director respectively”.

(2) Section 31 is amended by adding—

“(1A) Regulations made for the purposes of subsection (1)(x) or (*aa*) may provide that any fee or charge payable in connection with information that is sent using services provided by a specified body shall be paid in such manner as may be agreed between the Government and the specified body.”.

11. Sections added

The following are added immediately before section 33—

**“32A. Provision of information where use of services provided
by specified body is not practicable**

(1) This section applies to any information that under a provision of this Ordinance (a “relevant provision”) is required to be given to another person by using services provided by a specified body.

(2) Where the Commissioner considers that—

(a) it is not practicable for any information to which this section applies to be given in the manner specified in subsection (1), he may determine that the information shall be given in paper form and shall not be given by using services provided by a specified body; or

(b) it is not practicable for any information to which this section applies to be given solely in the manner specified in subsection (1), he may determine that the information shall be given either in paper form or by using services provided by a specified body,

and where a determination has been made under this subsection, the relevant provision shall have effect subject to that determination.

(3) Notice of a determination made under subsection (2) shall be published in the Gazette within 14 days of the determination having been made.

(4) A determination made under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(5) A determination made under subsection (2) may make different provision in relation to different classes of persons or information.

**32B. Provision of manifest information relating to cargo
carried in a road vehicle**

(1) This section applies to any information that is contained in the manifest of cargo carried in or on a vehicle other than a train and that under this Ordinance is required to be given to the Commissioner or the Director, or to an officer appointed by the Commissioner, by using services provided by a specified body.

(2) The Commissioner may, by notice published in the Gazette, specify that any information to which this section applies shall be given in paper form and, where a notice published under this subsection has effect, the information shall, in accordance with the provisions of this Ordinance as read together with the notice, be given in paper form only.

(3) A notice published under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(4) A notice published under subsection (2) is not subsidiary legislation.”.

12. **Section added**

The following is added—

“42. **Transitional**

(1) Any provision of section 8, 9 or 11 requiring that information given under those sections be given by using services provided by a specified body shall, in respect of the period specified in subsection (2), but subject to any determination made under section 32A(2)(a) or notice published under section 32B(2), be construed as requiring that the information be given either in paper form or by using services provided by a specified body.

(2) The period specified for the purposes of subsection (1) is the period beginning with the commencement of the Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) and ending at midnight on a date to be specified by the Commissioner for the purposes of this subsection by notice published in the Gazette.

(3) A notice under subsection (2) may specify different dates in relation to different classes of persons or information.

(4) A notice published under subsection (2) is subsidiary legislation.”.

Consequential Amendments

Import and Export (Amendment) Ordinance 1995

13. **Power to make regulations**

Section 11(c) of the Import and Export (Amendment) Ordinance 1995 (30 of 1995) is repealed.

SCHEDULE 2

[s. 3]

AMENDMENT OF RESERVED COMMODITIES ORDINANCE

1. **Interpretation**

- (1) Section 2(1) of the Reserved Commodities Ordinance (Cap. 296) is amended by adding—
- ““electronic record” (電子紀錄) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);
 - “information” (資料) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);
 - “information system” (資訊系統) has the meaning given to that term in section 2(1) of the Electronic Transactions Ordinance (Cap. 553);
 - “manifest” (艙單) means a record prepared as a manifest containing the particulars prescribed under section 17 of the Import and Export Ordinance (Cap. 60) but does not include any record, containing the same or similar particulars, which is not specifically prepared as a manifest;
 - “recognized electronic service” (認可電子服務) means a service for the interchange of electronic records that is provided by a specified electronic services provider;
 - “security device” (保安裝置) means a device issued to a person to be used for authenticating that person as the sender of information using a recognized electronic service;
 - “specified electronic services agent” (指明電子服務代理人) means a person specified under Schedule 2;
 - “specified electronic services provider” (指明電子服務提供者) means a person specified under Schedule 1;”.

(2) Section 2 is amended by adding—

“(3) The Secretary for Commerce, Industry and Technology may, by notice published in the Gazette, amend Schedule 1 or 2; and a notice under this subsection is subsidiary legislation.”.

2. Sections added

The following are added—

“2A. Presumption regarding information sent using recognized electronic service

(1) Where information received by the Director was sent using a recognized electronic service, evidence which shows that the identity of the sender of the information was authenticated by the use of a security device is, in the absence of evidence to the contrary—

(a) proof that the person issued with the security device furnished the information; and

(b) proof that the person issued with the security device made a statement or declaration contained in the information.

(2) Where information received by the Director and sent using a recognized electronic service was sent by a specified electronic services agent who has obtained an authorization in accordance with section 2C—

(a) a person named in the information as the person who furnished the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who furnished the information; and

(b) a person named in the information as the person who made a statement or declaration contained in the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who made the statement or declaration.

2B. Safekeeping of security device

(1) A person who has been issued with a security device shall not authorize or allow any other person to use the device in connection with the sending of information to the Director under this Ordinance using a recognized electronic service.

(2) A person who has been issued with a security device shall take all reasonable steps and exercise due diligence to prevent any other person from using the device in connection with the sending of information to the Director under this Ordinance using a recognized electronic service.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

2C. Duty of specified electronic services agent

(1) A specified electronic services agent shall not send on behalf of any person information using a recognized electronic service unless the agent has obtained from the person an authorization in writing to do so.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 3.”.

3. Regulations

Section 3(1) is amended by adding—

“(la) empowering the Director to specify any form or requirement for giving information required to be given in respect of any reserved commodity;”.

4. **Section added**

The following is added—

“6A. Proof of contents of electronic record

- (1) A document purporting—
 - (a) to be a reproduction of any information sent in the form of an electronic record and retrieved from an information system operated by the Government or by a person on behalf of the Government; and
 - (b) to be certified by the Director as to the matters mentioned in paragraph (a), shall be admitted in any proceedings under this Ordinance before a court or magistrate on its production without further proof.
- (2) Where a document is produced and admitted as evidence under subsection (1)—
 - (a) the court or magistrate before which it is produced shall, until the contrary is proved, presume—
 - (i) that the document was certified by the Director as provided in subsection (1)(b);
 - (ii) that the document is a true reproduction of the information sent in the form of an electronic record; and
 - (iii) that the reproduction was duly made on the date and at the time referred to in the document; and
 - (b) the document is evidence of the contents of the information sent by the sender in the form of an electronic record.
- (3) Where a document is produced and admitted as evidence under subsection (1), the court or magistrate may, if it or he thinks fit, on its or his own motion or on the application of any party to the proceedings, summon the person who certified the document and examine him as to its subject-matter.”.

5. **Section added**

The following is added—

“10A. Powers in relation to information in electronic form

- (1) A power conferred under section 10(1)(c)(ii) to seize, remove and detain anything that is suspected to be or to contain evidence of an offence includes, where the evidence consists of information that is stored or capable of being retrieved in the form of an electronic record, the power to require that the information be produced in a form in which it can be removed and in which it is either legible or capable of being retrieved on a computer, and to seize, remove and detain the material so produced.
- (2) A power conferred under section 10(1)(e) to require the production of and examine any document includes the power to require the production in a legible form of information that is stored or capable of being retrieved in the form of an electronic record and to examine the information or material so produced.
- (3) A power conferred by this Ordinance to seize, remove and detain anything found in any premises or place entered under section 10(1)(a) shall be construed as including the power—
 - (a) to require that any information stored in the form of an electronic record and accessible from the premises or place be produced in a form in which it is either legible or capable of being retrieved on a computer and in which it can be removed; and
 - (b) to remove anything produced pursuant to a requirement made under paragraph (a).”.

6. **Sections added**

The following are added—

“14. Provision of information where use of recognized electronic service is not practicable

(1) This section applies to any information that under a provision of this Ordinance (a “relevant provision”) is required to be given to another person using a recognized electronic service.

(2) Where the Commissioner considers that—

(a) it is not practicable for any information to which this section applies to be given in the manner specified in subsection (1), he may determine that the information shall be given in paper form and shall not be given using a recognized electronic service; or

(b) it is not practicable for any information to which this section applies to be given solely in the manner specified in subsection (1), he may determine that the information shall be given either in paper form or using a recognized electronic service,

and where a determination has been made under this subsection, the relevant provision shall have effect subject to that determination.

(3) Notice of a determination made under subsection (2) shall be published in the Gazette within 14 days of the determination having been made.

(4) A determination made under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(5) A determination made under subsection (2) may make different provision in relation to different classes of persons or information.

15. Provision of manifest information relating to cargo carried in a road vehicle

(1) This section applies to any information that is contained in the manifest of cargo carried in or on a vehicle other than a train and that under this Ordinance is required to be given to the Director using a recognized electronic service.

(2) The Commissioner may, by notice published in the Gazette, specify that any information to which this section applies shall be given in paper form and, where a notice published under this subsection has effect, the information shall, in accordance with the provisions of this Ordinance as read together with the notice, be given in paper form only.

(3) A notice published under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(4) A notice published under subsection (2) is not subsidiary legislation.”.

7. **Schedules 1 and 2 added**

The following are added—

“SCHEDULE 1

[s. 2]

SPECIFIED ELECTRONIC SERVICES PROVIDERS

1. Tradelink Electronic Commerce Limited

SCHEDULE 2

[s. 2]

SPECIFIED ELECTRONIC SERVICES AGENTS

1. Tradelink Electronic Commerce Limited”.

SCHEDULE 3

[s. 4]

AMENDMENT OF INDUSTRIAL TRAINING (CLOTHING
INDUSTRY) ORDINANCE

1. **Interpretation**

Section 2 of the Industrial Training (Clothing Industry) Ordinance (Cap. 318) is amended—

- (a) in the definition of “security device”, by repealing everything after “person” and substituting “to be used for authenticating that person as the sender of information using services provided by a specified body;”;

- (b) by adding—

““information” (資料) has the meaning given to that term by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);”.

2. **Section substituted**

Section 30A is repealed and the following substituted—

**“30A. Presumption regarding information sent
using services provided by
specified body**

(1) Where information received by the Commissioner was sent using services provided by a specified body, evidence which shows that the identity of the sender of the information was authenticated by the use of a security device is, in the absence of evidence to the contrary—

- (a) proof that the person issued with the security device furnished the information; and
- (b) proof that the person issued with the security device made a statement or declaration contained in the information.

(2) Where information received by the Commissioner and sent using services provided by a specified body was sent by a specified agent who has obtained an authorization in accordance with section 30C—

- (a) a person named in the information as the person who furnished the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who furnished the information; and
- (b) a person named in the information as the person who made a statement or declaration contained in the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who made the statement or declaration.”.

3. **Safekeeping of security device**

Section 30B is amended by repealing everything after “device—” and substituting—

- “(a) shall not authorize or allow any other person to use the device in connection with the sending of information to the Commissioner under this Ordinance using services provided by a specified body;

- (b) shall take all reasonable steps and exercise due diligence to prevent any other person from using the device in connection with the sending of information to the Commissioner under this Ordinance using services provided by a specified body.”.

SCHEDULE 4

[s. 5]

AMENDMENT OF PROTECTION OF NON-
GOVERNMENT CERTIFICATES OF
ORIGIN ORDINANCE

1. Interpretation

Section 2 of the Protection of Non-Government Certificates of Origin Ordinance (Cap. 324) is amended—

- (a) in the definition of “security device”, by repealing everything after “person” and substituting “to be used for authenticating that person as the sender of information using services provided by a specified body;”;
- (b) by adding—
““information” (資料) has the meaning given to that term by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);”.

2. Section substituted

Section 2A is repealed and the following substituted—

**“2A. Presumption regarding information sent
using services provided by
specified body**

(1) Where information received by an approved body was sent using services provided by a specified body, evidence which shows that the identity of the sender of the information was authenticated by the use of a security device is, in the absence of evidence to the contrary—

- (a) proof that the person issued with the security device furnished the information;
and
- (b) proof that the person issued with the security device made a statement or declaration contained in the information.

(2) Where information received by an approved body and sent using services provided by a specified body was sent by a specified agent who has obtained an authorization in accordance with section 2C—

- (a) a person named in the information as the person who furnished the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who furnished the information; and
- (b) a person named in the information as the person who made a statement or declaration contained in the information is, in the absence of evidence to the contrary, regarded for the purposes of this Ordinance as the person who made the statement or declaration.”.

3. Safekeeping of security device

Section 2B is amended by repealing everything after “device—” and substituting—

- “(a) shall not authorize or allow any other person to use the device in connection with the sending of information to an approved body under this Ordinance using services provided by a specified body;
- (b) shall take all reasonable steps and exercise due diligence to prevent any other person from using the device in connection with the sending of information to an approved body under this Ordinance using services provided by a specified body.”.