

LEGISLATIVE COUNCIL BRIEF

ELECTRONIC TRANSACTIONS (EXCLUSION) (AMENDMENT) ORDER 2001

INTRODUCTION

On 11 December 2001, the Secretary for Information Technology and Broadcasting (the Secretary) made the Electronic Transactions (Exclusion) (Amendment) Order 2001 at Annex A under section 11(1) of the Electronic Transactions Ordinance (ETO) (Cap. 553) to exclude from the application of sections 5 and 6 of the ETO certain provisions of the subsidiary legislation to the Electoral Affairs Commission Ordinance (Cap. 541) and the Chief Executive Election Ordinance (Cap. 569) relating to the Election Committee Subsector elections.

BACKGROUND AND ARGUMENT

Background

2. Subject to certain requirements set out in sections 5-8 of the ETO (extract at Annex B), the ETO provides the same 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 supported by a recognized certificate 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 have been taking 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 since the ETO came into effect on 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 Government departments concerned would continue to operate smoothly, the Secretary made an Electronic Transactions (Exclusion) Order 2000 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 piece of 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 covered by 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.

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 and noted the need to make new exclusions in respect of new legislation enacted. Accordingly, the Secretary made two amendment orders in 2000 to amend the Exclusion Order to provide for new exclusions and to withdraw exclusions made that were no longer necessary.

Electronic Transactions (Exclusion) (Amendment) Order 2001

6. The Chief Executive Election Ordinance (CEEO), which was enacted in July 2001 and came into effect on 21 September 2001, provides for the formation of the Election Committee that is responsible for election of the Chief Executive. Several pieces of subsidiary legislation were subsequently made under the CEEO and under the Electoral Affairs Commission Ordinance (EACO), to provide for the procedures of the Election Committee subsector elections. The Electronic Transactions (Exclusion) (Amendment) Order 2001 (the Amendment Order) at Annex A excludes from the application of sections 5 and 6 of the ETO certain provisions of five pieces of subsidiary legislation relating to the following documents to be used in the Election Committee subsector elections:

- (a) appeal notice lodged by a voter against a decision of the Electoral and Registration Officer not to register as a replacement or a substitute a person appointed by it as an authorised representative;
- (b) application for advice of a Nominations Advisory Committee;

- (c) authorisation to a person on the applicant's behalf to make representations to a Nominations Advisory Committee;
- (d) advice given by a Nominations Advisory Committee to the Returning Officer;
- (e) nomination form for religious subsector and other subsectors;
- (f) notice of withdrawal of candidature;
- (g) notice of appointment of and revocation of appointment of an election agent;
- (h) authorisation of and notice of revocation of election expense agent to incur election expenses;
- (i) notice of appointment of and revocation of appointment of a polling agent;
- (j) notice of appointment of and revocation of appointment of a counting agent;
- (k) declaration in respect of free postage service for candidates;
- (l) declaration in respect of the display, distribution and use of an election advertisement;
- (m) notice of hearing issued by a Revising Officer;
- (n) written representation made by the appellant regarding his claim, objection or appeal to a Revising Officer;
- (o) authorisation to a person to make representations on the appellant's behalf to a Revising Officer;
- (p) appeal notice to a Revising Officer against the result of an Election Committee subsector election; and
- (q) written representation made by the appellant regarding his objection to the registration of a declared member as a member of the Election Committee.

7. These provisions need to be exempt from the ETO as they involve important procedures in the election process and the parties involved may not be ready to accept electronic records and/or digital signatures in respect of the documents mentioned in paragraph 6 above. Similar provisions in respect of the Legislative Council elections and District Council elections are currently exempt from the ETO. In fact, of the current five sets of subsidiary legislation in question, two have replaced the repealed subsidiary legislation to the EACO and the Legislative Council Ordinance (Cap. 542). As the corresponding provisions of the repealed legislation had been exempt from the ETO, we need to re-provide the exemptions for the provisions in the new pieces of subsidiary legislation. To ensure smooth operation of the Election Committee subsector elections, the exemptions in question are considered

necessary.

8. The Amendment Order will come into effect on the day it is gazetted (i.e. 14 December 2001) so that the exclusions will be in place when the nomination period of the Election Committee Subsector by-elections commences on 14 December 2001.

LEGISLATIVE TIMETABLE

9. The Amendment Order will be gazetted on 14 December 2001 and tabled before the Legislative Council on 19 December 2001.

BASIC LAW IMPLICATIONS

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

HUMAN RIGHTS IMPLICATIONS

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

FINANCIAL AND STAFFING IMPLICATIONS

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

PUBLIC CONSULTATION

13. The principles for making exclusions from the electronic process set out in paragraph 4 above were noted by the Legislative Council when the Electronic Transactions (Exclusion) Order 2000 was made. The exemptions in question follow these established principles and are in line with existing exemptions for other election-related legislation. No special public consultation is thus necessary.

PUBLICITY

14. We will publicise the exclusions through the homepages of

Electoral Affairs Commission and the Registration and Electoral Office.

ENQUIRIES

15. Any enquiries on this brief should be addressed to Miss Adeline Wong, Principal Assistant Secretary for Information Technology and Broadcasting, at 2189 2207 or by facsimile at 2511 1458.

Information Technology and Broadcasting Bureau
12 December 2001

59B. Electoral Affairs Sections 23(5)
Commission (Electoral and (9), 25(2),
Procedure) (Election 42(8) and (10)
Committee) Regulation and 64(8) and
(L.N. 210 of 2001) (10)";

(d) by repealing item 62;

(e) by adding -

"66. Election Committee Sections 4(1)
(Appeals) Regulation and 5(1) and
(L.N. 196 of 2001) (2)(c)

67. Election Committee Section 3(1)
(Registration) (Voters and (2)(c)".
for Subsectors) (Members
of Election Committee)
(Appeals) Regulation
(L.N. 197 of 2001)

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

Schedule 2 is amended -

(a) in item 14 -

(i) by repealing column 2 and substituting -

Committee) Regulation and (9), 25(4)
(L.N. 210 of 2001) and (9), 42(8)
and (10), 64(8)
and (10),
99(2)(b) and
100(4)";

(d) by adding -

"23. Election Committee Section 3(2)".
(Appeals) Regulation
(L.N. 196 of 2001)



(Mrs. Carrie Yau)
Secretary for Information Technology
and Broadcasting

11 December, 2001

Explanatory Note

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

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.