

## **LEGISLATIVE COUNCIL BRIEF**

### **ELECTRONIC TRANSACTIONS (EXCLUSION) (AMENDMENT) (No. 2) ORDER 2001**

#### **INTRODUCTION**

On 19 December 2001, the Secretary for Information Technology and Broadcasting (the Secretary) made the Electronic Transactions (Exclusion) (Amendment) (No. 2) 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 Electoral Procedure (Chief Executive Election) Regulation (L.N. 233 of 2001).

#### **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 and one amendment order in 2001 to amend the Exclusion Order to provide for new exclusions with the enactment of new legislation and to withdraw exclusions made that were no longer necessary.

#### **Electronic Transactions (Exclusion) (Amendment) (No. 2) Order 2001**

6. The Electoral Procedure (Chief Executive Election) Regulation, which was tabled before the Legislative Council on 14 November 2001 and will come into effect on 21 December 2001, provides for the electoral procedure of the Chief Executive election conducted under the Chief Executive Election Ordinance (Cap. 569). The Electronic Transactions (Exclusion) (Amendment) (No. 2) Order 2001 (the Amendment Order) at Annex A excludes from the application of sections 5 and 6 of the ETO certain provisions of the Electoral Procedure (Chief Executive Election) Regulation relating to the following documents to be used in the Chief Executive election:

- (a) nomination form;
- (b) notice of withdrawal of candidature;
- (c) notice of appointment of an election agent;
- (d) notice of appointment of an election expense agent;
- (e) notice of revocation of appointment of agents;
- (f) notice of appointment of polling agents;
- (g) notice of appointment of counting agents;
- (h) declaration for posting of election-related letters; and
- (i) declaration of election advertisements.

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. To ensure smooth operation of the Chief Executive election, the exemptions in question are considered necessary.

8. The Amendment Order will come into effect on the day it is gazetted (i.e. 21 December 2001) so that the exclusions will be in place when the Electoral Procedure (Chief Executive Election) Regulation comes into effect.

### **LEGISLATIVE TIMETABLE**

9. The Amendment Order will be gazetted on 21 December 2001 and tabled before the Legislative Council on 9 January 2002.

### **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 the 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**  
**20 December 2001**

**ELECTRONIC TRANSACTIONS (EXCLUSION)  
(AMENDMENT) (NO.2) ORDER 2001**

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

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

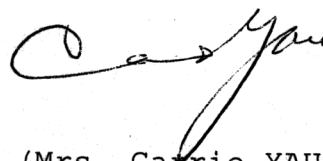
Schedule 1 to the Electronic Transactions Exclusion) Order  
(Cap. 553 sub. leg. is amended by adding

"59C. Electoral Procedure (Chief Executive Election) Regulation (L.N. 233 of 2001	Sections 4(1), 9(2), 14(3) and 5), 25(5 and 7), 44(4 and (6), 80(2) and 81(1 (b) "
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**2. Provisions excluded from application  
of section 6 of Ordinance**

Schedule 2 is amended by adding

"18C Electoral Procedure (Chief Executive Election) Regulation L.N. 233 of 2001	Sections 4(1), 9(2), 14(3) and (5), 25(5) and 7), 44(4 and (6), 80(2) 81 1 (b) "
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(Mrs. Carrie YAU)  
Secretary for Information  
Technology and Broadcasting

19 December 2001

**Explanatory Note**

This Order amends Schedules 1 and 2 to the Electronic Transactions (Exclusion Order (Cap. 553 sub. leg. to exclude certain provisions of the Electoral Procedure (Chief Executive Election) Regulation (L.N. 233 of 2001 from the application of sections 5 and 6 of the Electronic Transactions Ordinance (Cap. 553)). The effect is that the election-related documents provided for in those provisions have to be in paper form and the signatures on such documents must not be digital signatures.

**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.