

**For information**

**Panel on Security of the Legislative Council**

**Handling of incoming electronic mails from the public after the implementation of the Application and Investigation Easy System (APPLIES) and the Electronic Records Programme (ERP)**

**PURPOSE**

This paper sets out our response to the following issues raised by Members at the Panel meeting on 16 March 2004 -

- (a) To advise on the circumstances under which an incoming electronic mail would be permanently stored in the new system of ImmD, its legal status under local legislation, and whether it fell within the meaning of a record of ImmD in claims for right of abode; and
- (b) To provide information on the criteria for classifying an electronic mail as an enquiry or an application and how applications not submitted with the use of suitable forms would be dealt with.

**RESPONSE**

2. Since there are overlapping areas between the two issues mentioned above, the following paragraphs deal with them together, rather than separately.

3. Implementation of APPLIES and ERP will allow members of the public to communicate with ImmD through electronic means. E-mails sent to ImmD will be captured and stored electronically under the proposed system with acknowledgement receipts sent to senders. The Electronic Transactions Ordinance, Cap.553, provides a general legal basis for the acceptance of electronic submissions and digital signature to satisfy rule of law requirements

for information in writing and signature etc., including those immigration-related matters. Specifically, under the Electronic Transactions Ordinance, Cap.553, a legal requirement for information to be given in writing, or for the presentation or retention of information in its original form, can be satisfied by an electronic record<sup>1</sup> if it complies with specified requirements.<sup>2</sup> Under the same Ordinance, digital signatures can satisfy legal requirements for signatures if they comply with specified requirements.<sup>3</sup> Nevertheless, whether a piece of electronically stored information will constitute a record proving that some other activities have taken place will depend, among other factors, on the overall context and the laws applicable to such activities. In dealing with claims relating to the Right of Abode, for example, ImmD has been following, and will continue to follow judgements laid down by our courts.

4. The length of the period in which a piece of electronically stored information is to be retained by ImmD, as under the present paper/microfilm records system, will in turn depend on the nature and possible use of such information. In principle, a piece of electronically stored information will be retained in the system for as long as their retrieval may be required for the processing of an application and the taking of follow up and other actions as may be envisaged. For example, information relating to an application for verification of eligibility for permanent identity cards will be permanently retained under the new system, whereas images of supporting documents relating to the processing of applications for entry or extension of stay for employment will normally be purged when the cases concerned have become inactive for three years.

5. When applying for services provided by ImmD, members of the public are encouraged to use standard forms made available by ImmD, as this will help to ensure the timely and adequate provision of information required and allow processing to proceed without delay. Standard forms in an electronic format will also be made available under the proposed system to

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<sup>1</sup> “Electronic record” means a record generated in digital form by an information system, which can be (a) transmitted within an information system or from one information system to another; and (b) stored in an information system or other medium.

<sup>2</sup> Sections 5 and 7 of the Electronic Transactions Ordinance, Cap.553.

<sup>3</sup> Section 6 of the Electronic Transactions Ordinance, Cap.553. It should be noted that exclusions to Sections 5, 6 and 7 are set out in Schedules 1, 2 and 3 to the Electronic Transactions (Exclusion) Order, Cap.553B respectively.

facilitate applicants who wish to submit applications through electronic means. In this connection, it should be noted that electronically submitted information not using a standard form, just like written information not submitted on standard form, will continue to be processed having regard to the context and content of such information. If ImmD finds a submission, whether made by electronic or traditional means, unclear or incomplete, it would, where circumstances permit, seek clarification from the person making the submission before processing it further.

Security Bureau

11 May 2004