

LEGISLATIVE COUNCIL BRIEF

ELECTRONIC TRANSACTIONS (EXCLUSION) (AMENDMENT) ORDER 2010

INTRODUCTION

On 27 April 2010, the Permanent Secretary for Commerce and Economic Development (Communications and Technology) (the Permanent Secretary) made the Electronic Transactions (Exclusion) (Amendment) Order 2010 set out in **Annex A** under section 11(1) of the Electronic Transactions Ordinance (Cap. 553) (ETO) to repeal certain exemptions from the Electronic Transactions (Exclusion) Order (the Exclusion Order). This implies that, as from 1 August 2010, the making of liquor licence and club liquor licence applications can be processed by electronic means, as an alternative to paper submissions.

CONSIDERATIONS

Background

2. The ETO was enacted in January 2000 and came into full operation in April 2000. The ordinance gives electronic records and electronic/digital signatures used in electronic transactions the same legal status as that of their paper-based counterparts, subject to specified requirements and exemptions. The key provisions are as follows –

- (a) Section 5 of the ETO provides that if a rule of law requires or permits information to be or given in writing, the use of electronic records satisfies the rule of law.

- (b) Section 6(1) of the ETO provides that if a rule of law requires a signature of a person on a document and neither the person whose signature is required nor the person to whom the signature is to be given is or is acting on behalf of a government entity, an electronic signature satisfies the requirement.
- (c) Section 6(1A) of the ETO provides that if a rule of law requires a signature of a person on a document and the person whose signature is required and/or the person to whom the signature is to be given is/are acting on behalf of a government entity/entities, a digital signature satisfies the requirement.
- (d) Section 7 of the ETO provides that if a rule of law requires certain information to be presented or retained in its original form, that requirement is satisfied by presenting or retaining the information in the form of electronic records.
- (e) Section 8 of the ETO provides that if a rule of law requires certain information to be retained, that requirement is satisfied by retaining electronic records.
- (f) Section 15(1) of the ETO provides that if an Ordinance requires information to be given by a person to another and neither person is or is acting on behalf of a government entity, section 5(1) applies only if the person to whom the information is to be given consents to it being given in the form of an electronic record.

The Exclusion Order

3. Government departments took the lead in adopting electronic transactions by accepting electronic submission under the bulk of the statutory provisions in the laws of Hong Kong. However, for some specific statutory provisions concerning the operation of individual government departments, there is a genuine and practical need to exclude electronic submissions/transmissions because of operational, technological or other reasons. To ensure that the government departments concerned would continue to operate smoothly, the

Permanent Secretary¹ has been given the power under section 11(1) of the ETO to exclude by order published in the Gazette specific statutory provisions from the application of sections 5, 6, 7 or 8 of the ETO. The Exclusion Order 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 Exclusion Order covers –

- (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 at present, e.g. provisions concerning submission of documents and plans to the works departments; and
- (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.

5. When the Exclusion Order was first made in 2000, the Government made a commitment to withdraw the exemptions where appropriate, while noting the need to make new exemptions with the enactment of new legislation where circumstances so merit. So far, eight amendment orders have been made either to withdraw exemptions

¹ The power to amend the Exclusion Order under section 11(1) of the ETO has been transferred from the then Secretary for Commerce, Industry and Technology to the then Permanent Secretary for Commerce, Industry and Technology (Communications and Technology) through the Electronic Transactions (Amendment) Ordinance 2004 which has become effective from 30 June 2004. Since the re-organisation of policy bureaux with effect from 1 July 2007, the power has been transferred to the Permanent Secretary for Commerce and Economic Development (Communications and Technology).

that were no longer necessary or to provide for new exemptions with the enactment of new legislation.

THE ORDER

6. We propose to withdraw two exempted provisions from the Exclusion Order, relating to the making of liquor licence and club liquor licence applications, as from 1 August 2010. The Electronic Transactions (Exclusion) (Amendment) Order 2010 is at **Annex A**. Details of the amendments are explained in **Annex B**.

LEGISLATIVE TIMETABLE

7. The Electronic Transactions (Exclusion) (Amendment) Order 2010 will be gazetted on 14 May 2010 and will be tabled before the Legislative Council on 19 May 2010. The target commencement date of the order falls on 1 August 2010.

IMPLICATIONS OF THE PROPOSAL

8. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. Repealing exemptions that have become unnecessary do not give rise to any financial or staffing implications.

PUBLIC CONSULTATION

9. The amendments will give the Government and the public the option of satisfying the requirements under certain statutory provisions by electronic means, in addition to the existing option of using the paper form. The relevant trades, including restaurants and bars, have been consulted on the adoption of electronic means for that purpose.

10. The principles for making exclusions from the electronic process set out in paragraph 4 above were noted by the Legislative Council when the Exclusion Order was first made, and the proposed repeal of existing exemptions follows these established principles.

PUBLICITY

11. We will publicize the provisions repealed from the Exclusion Order through the relevant websites, including the Liquor Licensing Board's and the Food and Environmental Hygiene Department's websites, and other publicity materials relating to the concerned provisions.

ENQUIRIES

12. Any enquiries on this brief should be addressed to Mr. Jason Pun, Chief Systems Manager, Digital Economy Facilitation Division, at 2582 4589 or by facsimile at 2802 4549.

**Office of the Government Chief Information Officer
Commerce and Economic Development Bureau
May 2010**

**ELECTRONIC TRANSACTIONS (EXCLUSION)
(AMENDMENT) ORDER 2010**

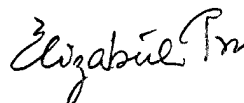
(Made by the Permanent Secretary for Commerce and Economic Development (Communications and Technology) under section 11(1) of the Electronic Transactions Ordinance (Cap. 553))

1. Commencement

This Order comes into operation on 1 August 2010.

2. Provisions excluded from application of section 5 of Ordinance

Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) is amended by repealing item 7.



Permanent Secretary for Commerce
and Economic Development
(Communications and Technology)

27 April 2010

Explanatory Note

Section 5 of the Electronic Transactions Ordinance (Cap. 553) (“the Ordinance”) provides that if a rule of law requires or permits information to be or given in writing, the use of electronic records satisfies that rule of law. The statutory provisions excluded from the application of section 5 of the Ordinance are listed in Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) (“the principal Order”).

2. This Order deletes regulations 15 and 26 of the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B) from Schedule 1 to the principal Order. Those provisions will no longer be so excluded and electronic records can be used for the purposes of section 5 of the Ordinance.

Exemptions to be Withdrawn from the Exclusion Order

Details of the provisions to be withdrawn from the Exclusion Order are set out below.

Applications for liquor licences and club liquor licences

2. Under regulation 15 of the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B), any person seeking a liquor licence, or any renewal, transfer or amendment thereof, shall make application in writing to the Liquor Licensing Board (the Board) in accordance with the form determined by the Board. Regulation 26 provides that, upon application by the secretary of a club in accordance with the form determined by the Board, the Board may, on payment of the prescribed fee and subject to such conditions as it thinks fit, issue a club liquor licence to the secretary or other person nominated by the club for the purpose. Pursuant to the completion of a computer system (namely the Liquor Licence Processing System (LLPS)) for processing liquor licence and club liquor licence applications, the exemption of regulations 15 and 26 of the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B) from section 5 of the ETO can be withdrawn in order for section 5 of the ETO to apply to liquor licence and club liquor licence applications submitted to the Board in the capacity as a government entity via the LLPS.

3. In this connection, the Board would ensure, from the technical point of view, that applications submitted via the LLPS comply with all the requirements specified by the Permanent Secretary for Commerce and Economic Development (Communications and Technology) in the notice published in the Gazette pursuant to section 11 of the ETO, in particular the requirement in part (I)6 that an electronic record given under a statutory provision must be signed with a digital signature if the provision requires the submission to be made in a specified form and the specified form has a signature requirement. Separately, the Board will also give explicit consent to applicants who opt for submission of applications for liquor licences and club liquor licences in the form of an electronic record in the LLPS pursuant to section 15(1) of the ETO.