

LEGISLATIVE COUNCIL BRIEF

ELECTRONIC TRANSACTIONS (EXCLUSION) (AMENDMENT) ORDER 2012

INTRODUCTION

On 3 May 2012, the Permanent Secretary for Commerce and Economic Development (Communications and Technology) (the Permanent Secretary) made the Electronic Transactions (Exclusion) (Amendment) Order 2012 set out at **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). The Order gives statutory effect to the electronic submissions concerning Buildings Department, Environmental Protection Department and Civil Aviation Department set out at **Annex B**.

CONSIDERATIONS

Background

2. The ETO was enacted in January 2000 and came into full operation in April 2000. The ETO 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.

The Exclusion Order

3. Government departments have been 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 Secretary 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 as soon as practicable, while noting the need to make new exemptions with the enactment of new legislation where circumstances so merit. So far, nine amendment orders have been made either to withdraw exemptions that were no longer necessary or to provide for new exemptions with the enactment of new legislation.

THE ORDER

6. We propose the following amendments to the Exclusion Order.
 - (a) withdrawal of 26 currently exempted provisions from Schedule 1 of the Exclusion Order, relating to submissions of applications under the Buildings Ordinance and the

Environmental Impact Assessment Ordinance, submissions of aviation-related documents under the Dangerous Goods (Consignment by Air) (Safety) Regulations and Air Navigation (Hong Kong) Order 1995, and a provision under the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation which has been repealed;

- (b) withdrawal of six currently exempted provisions from Schedule 2 of the Exclusion Order, relating to submissions of buildings-related applications and aviation-related documents; and
- (c) withdrawal of one currently exempted provision from Schedule 4 of the Exclusion Order, relating to submissions of aviation-related documents.

The Order provides that, as from 1 August 2012, electronic submissions concerning Buildings Department, Environmental Protection Department and Civil Aviation Department set out at **Annex B** will carry the same statutory effect to their paper counterparts.

7. The Electronic Transactions (Exclusion) (Amendment) Order 2012 is at **Annex A**. Details of the amendments are explained at **Annex B**.

LEGISLATIVE TIMETABLE

8. The Electronic Transactions (Exclusion) (Amendment) Order 2012 will be gazetted on 11 May 2012 and will be tabled before the Legislative Council on 16 May 2012 for negative approval. The Order is scheduled to commence on 1 August 2012.

IMPLICATIONS OF THE PROPOSAL

9. 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

10. 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.

11. 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

12. The B/Ds concerned will publicise their readiness to accept e-submissions and e-documentation through their websites and circulars to the affected parties as the case may be.

ENQUIRIES

13. Any enquiries on this brief should be addressed to Ms. Joyce Mok, Assistant Government Chief Information Officer (Digital Economy Facilitation), at 2810 2626 or by facsimile at 3153 2666.

**Office of the Government Chief Information Officer
Commerce and Economic Development Bureau
May 2012**

Annex A

Electronic Transactions (Exclusion) (Amendment) Order 2012

Electronic Transactions (Exclusion) (Amendment) Order 2012

(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 2012.

2. Electronic Transactions (Exclusion) Order amended

The Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) is amended as set out in sections 3, 4 and 5.

3. Schedule 1 amended (provisions excluded from application of section 5 of Ordinance)

(1) Schedule 1, item 9—

Repeal

“8B(1), 8C(2), 8D(2), 17(1) (Column B), 19(1) and (4), 20(2), 21(2), 25(1) and 42(2)”

Substitute

“17(1) (Column B), 20(2) and 21(2)”.

(2) Schedule 1, item 10—

Repeal

“, 11, 18(1), 18A, 23(1A) and (2), 29(1), 31(1), 33(1), 38 and 47”

Substitute

“and 11”.

(3) Schedule 1, item 11—

Repeal

“, 53(1)”.

(4) Schedule 1—

Repeal items 12, 13, 14 and 45.

(5) Schedule 1, item 52—

Repeal

“4(5), 5(1), (2) and (4), 6(2), 7(1)(a), 8(1) and 13(1)”

Substitute

“5(1) and (2), 6(2) and 7(1)(a)”.

(6) Schedule 1, item 59—

Repeal

“28(3), (9)”

Substitute

“28(3)”.

4. Schedule 2 amended (provisions excluded from application of section 6 of Ordinance)

(1) Schedule 2, item 5—

Repeal

“Regulations 12(1), (2), (3) and (5), 18(2), 20(1), 25(2), (3) and (4), 26(2) and 28”

Substitute

“Regulation 12(1), (2), (3) and (5)”.

(2) Schedule 2—

Repeal item 10.

5. Schedule 4 amended (provisions excluded from application of section 8 of Ordinance)

Schedule 4, item 2—

Repeal

“and Schedule 16, Regulation 4”.



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

3 May 2012

Explanatory Note

Section 5 of the Electronic Transactions Ordinance (Cap. 553) (*the principal Ordinance*) provides that if a rule of law requires or permits information to be or given in writing, the use of electronic records containing the information satisfies that rule of law. The statutory provisions excluded from the application of section 5 of the principal Ordinance are specified in Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) (*the principal Order*). Section 3 of this Order removes the following provisions from Schedule 1 to the principal Order, so that they are no longer so excluded and electronic records may be used for the purposes of section 5 of the principal Ordinance—

- (a) sections 8B(1), 8C(2), 8D(2), 19(1) and (4), 25(1) and 42(2) of the Buildings Ordinance (Cap. 123);
- (b) regulations 18(1), 18A, 23(1A) and (2), 29(1), 31(1), 33(1), 38 and 47 of the Building (Administration) Regulations (Cap. 123 sub. leg. A);
- (c) regulation 53(1) of the Building (Planning) Regulations (Cap. 123 sub. leg. F);
- (d) regulation 28 of the Building (Private Streets and Access Roads) Regulations (Cap. 123 sub. leg. G);
- (e) regulations 62(1) and 73(1) of the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations (Cap. 123 sub. leg. I);
- (f) regulations 6(1) and 10(2) of the Building (Oil Storage Installations) Regulations (Cap. 123 sub. leg. K);
- (g) regulation 6(1)(b) of the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A);
- (h) sections 4(5), 5(4), 8(1) and 13(1) of the Environmental Impact Assessment Ordinance (Cap. 499); and

- (i) section 28(9) of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541 sub. leg. F).
- 2. Section 6 of the principal Ordinance provides that if a rule of law requires the signature of a person on a document, an electronic signature or a digital signature of that person satisfies that requirement. The statutory provisions excluded from the application of section 6 of the principal Ordinance are specified in Schedule 2 to the principal Order. Section 4 of this Order removes the following provisions from Schedule 2 to the principal Order, so that they are no longer so excluded and electronic signatures and digital signatures may be used for the purposes of section 6 of the principal Ordinance—
 - (a) regulations 18(2), 20(1), 25(2), (3) and (4), 26(2) and 28 of the Building (Administration) Regulations (Cap. 123 sub. leg. A); and
 - (b) regulation 6(3) of the Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A).
- 3. Section 8 of the principal Ordinance provides that if a rule of law requires information to be retained, whether in writing or otherwise, the requirement is satisfied by retaining electronic records containing the information. The statutory provisions excluded from the application of section 8 of the principal Ordinance are specified in Schedule 4 to the principal Order. Section 5 of this Order removes Regulation 4 in Schedule 16 to the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) from Schedule 4 to the principal Order, so that that Regulation 4 is no longer so excluded and electronic records may be retained for the purposes of section 8 of the principal Ordinance.

Annex B

Exemptions to be Withdrawn from the Exclusion Order

Exemptions to be Withdrawn from the Exclusion Order

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

Buildings Department (BD)

2. Applications for registration as contractors, renewal of registration as contractors and restoration of names to the register of contractors under the following sections of the Buildings Ordinance (Cap. 123) (BO) –

- (a) Under sections 8B(1), 8C(2) and 8D(2), an applicant shall make application in the specified form for registration as a contractor, renewal of registration as a contractor and restoration of name to the register of a contractor.

3. Applications for commencement of urgent work, resumption of suspended works, occupation of new building, change in the use of buildings, exemption under the following sections of the BO respectively –

- (a) Under section 19(1), the owner or the person as described therein shall give notice in the specified form to the Building Authority (BA) regarding commencement of the urgent work, and under section 19(4), the authorized person (AP) shall give the BA as soon as practicable after the urgent work arises notice of the urgent work, material deviation from supervision plan, a revised supervision plan and any further amendments to the supervision plan arising out of the urgent work;
- (b) Under section 25(1), a notice in the specified form shall be given for carrying out any intended material change in the

use of a building; and

- (c) Under section 42(2), an application shall be made in the specified form to request for BA's permit to grant exemption or modifications of the provisions of the BO.

4. Submissions of certificates and notifications, and applications for approval of plans and commencement of works under the following regulations of Building (Administration) Regulations (Cap. 123 sub. leg. A) respectively –

- (a) Under regulations 18(1) and (2), the AP and registered structural engineer (RSE) shall submit a stability certificate in the specified form where building works consist of repairs, alterations or additions to a building;
- (b) Under regulation 18A, the AP, RSE or registered geotechnical engineer (RGE) shall submit a certificate in the specified form to certify their preparation of the plans or supervision of preparation of the plans;
- (c) Under regulation 20(1), the AP shall submit a notification of the appointment of the registered general building contractor (RGBC), registered specialist contractor (RSC) or registered minor works contractor (RMWC) in the specified form before the commencement of any building works or street works;
- (d) Under regulation 23(1A), the person for whom the building works or street works are to be carried out shall submit to the BA a notice of appointment of an AP, RSE or RGE to carry out the building works or street works, and regulation 23(2), the AP, RSE or RGE so appointed shall submit to the BA a notification of nomination of another AP, RSE or RGE to act in his stead;
- (e) Under regulations 25(2), (3) and (4) and 26(2), an AP, RSE, RGE, and RGBC/RSC/RMWC shall submit a certificate in

the specified form certifying that the building works or street works had been completed in accordance with the BO and regulations and the plans approved;

- (f) Under regulation 28, an AP, RSE, RGE and RGBC/RSC/RMWC shall submit a certificate in the specified form certifying their engagement to supervise and carry out emergency work;
- (g) Under regulation 29(1), an application shall be made in the specified form for the approval of plans of building works or street works;
- (h) Under regulations 31(1) and 33(1), an application shall be made in the specified form for commencement of any building works or street works; or alterations or additions to those works;
- (i) Under regulation 38, the AP shall submit the notice delivered to him under regulation 24 in respect of the RGBC, RSC or RMWC who ceases to be appointed; and
- (j) Under regulation 47, notice under section 25 of the BO (change in use of buildings) shall be accompanied by a block plan.

5. Applications for permission to erect contractor's sheds under the following regulation of Building (Planning) Regulations (Cap. 123 sub. leg. F) –

- (a) Under regulation 53(1), the contractor shall submit an application in the specified form for permission to erect contractor's sheds during the execution of building works.

6. Applications for waiving the requirements of regulation 16 under the following regulation of Building (Private Streets and Access Roads) Regulations (Cap. 123 sub. leg. G) –

- (a) Under regulation 28, an application shall be made in the specified form to request for waiving the requirements of regulation 16 (surfacing of private streets, cul-de-sacs and access roads).

7. Applications for disposal of effluent and testing of drainage works under the following regulations of Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations (Cap. 123 sub. leg. I) –

- (a) Under regulation 62(1), the owner of any building shall apply for approval of the method for the disposal of effluent and sludge from the septic tank; and
- (b) Under regulation 73(1), the RGBC or RSC shall apply for the testing of drainage works upon its completion.

8. Applications for licenses of oil storage installation and restriction on repairs, alterations or additions to an oil storage installation under the following regulations of Building (Oil Storage Installations) Regulations (Cap. 123 sub. leg. K) –

- (a) Under regulation 6(1), an application shall be made in the specified form for a license in respect of any oil storage installation; and
- (b) Under regulation 10(2), an application shall be made for authorization to carry out any alterations or additions to an oil storage installation.

Civil Aviation Department (CAD)

9. Submission of dangerous goods transport documents under regulations 6(1)(b) and 6(3) of Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap. 384 sub. leg. A) and schedule 16 regulation 4 of Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C) –

- (a) The dangerous goods transport document is an industry

document submitted by the shipper to the aircraft operator with copies retained by the respective parties. The format of the document is set out in the provisions of the Technical Instructions in these two Regulations. In October 2011, CAD arranged a legislative amendment to clarify the certification requirements of the dangerous goods transport document so as to facilitate electronic submission of such document in Hong Kong. The amendment comes into operation in January 2012.

Constitutional and Mainland Affairs Bureau (CMAB)

10. Authorization to incur election expenses on the candidate's behalf under section 28 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541 sub. leg. F) –

- (a) As section 28(9) was repealed by the Electoral Affairs Commission in 2007, it can be removed from the Exclusion Order accordingly.

Environmental Protection Department (EPD)

11. Submission of Environmental Impact Assessment (EIA) report, application, approval and variation of environmental permit under the following sections of the Environmental Impact Assessment Ordinance (Cap. 499) –

- (a) Under section 4(5), a person or associated persons may apply for confirmation as to whether contiguous projects proposed are to be treated as designated projects;
- (b) Under section 5(4), an applicant shall give further information concerning the project profile regarding its direct application for the environmental permit or application for the EIA study brief;
- (c) Under section 8(1), an applicant shall furnish further information to EPD for its decision on the approval for the

environmental impact assessment report; and

- (d) Under section 13(1), the person holding an environmental permit or assuming responsibility for a designated project may apply for a variation of the conditions of the environmental permit.