

**For Discussion
on 10 November 2014**

**Legislative Council Panel
on Information Technology and Broadcasting**

**Amendment to Electronic Transactions Ordinance
to Facilitate the Implementation of E-cheque**

Purpose

This paper briefs Members on the proposal to amend Schedule 1 of the Electronic Transactions Ordinance (Cap. 553) (ETO) to give e-cheque the same legal status as paper cheque.

The Electronic Transactions Ordinance

2. Enacted in 2000, the ETO provides the statutory backup for the conduct of electronic transactions in Hong Kong and amongst others, gives electronic records and electronic signatures the same legal status as that of their paper-based counterparts. Despite its wide application, by virtue of Section 3 and Schedule 1 of the ETO, specific provisions in the ETO do not apply to generic items like wills, trusts, statutory declarations, affidavits, power of attorney, court orders, warrants, negotiable instruments, documents or instruments concerning land or property transactions etc. Such non-application is a recognition that certain types of transactions would preferably be conducted through conventional means because of their solemnity, significance or complexity of the transactions as well as the readiness of the parties involved to handle the related documents in electronic form.

3. Section 50 of the ETO provides that the Secretary for Commerce and Economic Development may by order published in the Gazette amend Schedule 1.

E-cheque

4. Cheque is one of the commonly used payment instruments in Hong Kong. In view of the increasing popularity of Internet banking, Hong Kong Monetary Authority (HKMA) and the banking sector are developing e-cheque for use on the Internet.

5. E-cheque is an electronic counterpart of paper cheque that will be issued by a drawee bank according to a drawer's instruction. It is non-negotiable, and presented in the format and manner specified in the Clearing House Rules of Hong Kong Interbank Clearing Limited (HKICL). It will be digitally signed by both the drawer and the drawee bank, using the digital certificates issued by the recognized certification authorities under the ETO. It can be presented either through the Internet banking platform of the payee bank or the centralised presentment portal operated by HKICL for free. In comparison with other means of the electronic payment, e-cheque does not require the payee to provide particulars of his/her bank account, hence enjoying greater flexibility of use.

6. HKMA has conducted rounds of consultation with the banking sector through Hong Kong Association of Banks (HKAB) and participated in a number of seminars to gauge market feedback on the proposal to implement e-cheque in Hong Kong. Comments received are supportive in general. System development is making good progress and it is expected that the e-cheque will be launched in end 2015.

Legislative Proposal

7. Currently, "negotiable instruments", covering promissory notes and bills of exchange (e.g. cheques), is among the exempted items set out in Schedule 1 of the ETO. To allow e-cheques to carry the same statutory effect as their paper-based counterparts, amendments to Schedule 1 of the ETO are needed (see **Annex**).

Way Forward

8. Subject to Members' views, we aim to gazette the amendment order on 21 November 2014. The order will be tabled on 26 November 2014 for negative vetting by the Legislative Council and will be brought into force on 1 April 2015 for the launch of e-cheque in end 2015.

**Office of the Government Chief Information Officer
Commerce and Economic Development Bureau
November 2014**

**Electronic Transactions Ordinance (Amendment of
Schedule 1) Order 2014**

(Made by the Secretary for Commerce and Economic Development under
section 50 of the Electronic Transactions Ordinance (Cap. 553))

1. Commencement

This Order comes into operation on 1 April 2015.

2. Electronic Transactions Ordinance amended

The Electronic Transactions Ordinance (Cap. 553) is amended as
set out in section 3.

**3. Schedule 1 amended (matters excluded from application of
sections 5, 5A, 6, 7, 8 and 17 of this Ordinance under section 3
of this Ordinance)**

Schedule 1—

Repeal section 13

Substitute

“13. Negotiable instruments (but excluding cheques that bear the
words “not negotiable”).”.

Secretary for Commerce and
Economic Development

2014

Explanatory Note

Section 3 of the Electronic Transactions Ordinance (Cap. 553) (*Ordinance*) excludes from the application of sections 5, 5A, 6, 7, 8 and 17 of the Ordinance certain matters set out in Schedule 1 to the Ordinance so that they cannot be executed by an electronic transaction in satisfying a rule of law in those matters.

2. Section 3 of this Order repeals section 13 in Schedule 1 to the Ordinance and substitutes it with new section 13. The new section 13 excludes cheques that bear the words “not negotiable” from negotiable instruments, so that those cheques are no longer excluded from the application of sections 5, 5A, 6, 7, 8 and 17 of the Ordinance.