

LEGISLATIVE COUNCIL BRIEF

ELECTRONIC TRANSACTIONS ORDINANCE (AMENDMENT OF SCHEDULE 1) ORDER 2014

INTRODUCTION

On 19 November 2014, the Secretary for Commerce and Economic Development (the Secretary) made the Electronic Transactions (Amendment of Schedule 1) Order 2014 (the Amendment Order), at **Annex A**, to amend Schedule 1 of the Electronic Transactions Ordinance (Cap. 553) (ETO) to give e-cheque the same legal status as paper cheque.

BACKGROUND

2. Enacted in 2000, the ETO provides 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 may by order published in the Gazette amend Schedule 1.

E-CHEQUE

4. Cheque is an established and common payment instrument in Hong Kong. In view of the increasing popularity of Internet banking, Hong Kong Monetary Authority (HKMA) and the banking sector plan to introduce e-cheque as an alternative payment method.

5. E-cheque is an electronic counterpart of paper cheque. It will be issued by a paying bank according to a payer's instruction, and presented in the format and manner specified in the Clearing House Rules of Hong Kong Interbank Clearing Limited (HKICL). Both the payer and the paying bank are required to sign on the e-cheque by using digital certificates issued by the recognized certification authorities¹ 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. The proposed operating model of e-cheque is summarised at **Annex B**. Due to the limited usage of negotiable cheque² in Hong Kong, the system being developed to process e-cheque caters for non-negotiable cheque only.

6. E-cheque provides an efficient and convenient alternative for bank customers to make and receive payments without depriving their rights to use paper cheque or other payment methods. In comparison with other e-payment methods, e-cheque does not require the payee to provide particulars of his/her bank account to the payer. Stringent measures will be put in place to ensure the security of the process, such as the use of recognized digital certificate to ensure the authenticity, integrity and non-repudiation of e-cheque. Generally speaking, both payer and

¹ At present, there are two recognized certification authorities, namely Hongkong Post as public certification authority mandated under ETO and Digi-Sign Certification Services Limited, a commercial certification authority recognised under section 21 of ETO.

² Negotiable cheque refers to a cheque that can be transferred from one person to another in such a manner as to constitute the transferee the holder of the cheque.

payee will agree on the type of payment means for a particular transaction before a payment is made. If the payee does not prefer to receive payment by paper cheque or e-cheque, he/she may ask the payer to use other payment means to honour the payment.

7. With the proposed amendment to the ETO, e-cheque will be covered under the definition of cheque and can satisfy the requirements under the Bills of Exchange Ordinance (Cap. 19).

LEGISLATIVE PROPOSAL

8. Currently, “negotiable instruments”, covering promissory notes and bills of exchange (e.g. cheques), is one of 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, amendment to Schedule 1 of the ETO is necessary. Apart from this, no other legislative amendment is required for the purpose of rolling out the e-cheque initiative.

THE AMENDMENT ORDER

9. We propose to amend section 13 of Schedule 1 of the ETO by replacing “Negotiable instruments” with “Negotiable instruments (but excluding cheques that bear the words “not negotiable”)”. This would confine e-cheques to non-negotiable cheques (i.e. cheques which are payable to the specific payee only but not any third party).

10. The Amendment Order is at **Annex A**.

LEGISLATIVE TIMETABLE

11. The Amendment Order will be gazetted on 28 November 2014 and will be tabled before the Legislative Council on 3 December 2014 for negative vetting. The Amendment Order is scheduled to commence on 1 April 2015.

IMPLICATIONS

12. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of the ETO and does not give rise to any financial or staffing implications.

PUBLIC CONSULTATION

13. 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 proposals to implement e-cheque in Hong Kong. Comments received are supportive.

14. We briefed the Legislative Council Panel on Information Technology and Broadcasting on the proposed legislative amendment and the e-cheque initiative on 10 November 2014. The Panel generally supported the proposed legislative amendment. Some Members were concerned about bank customers' awareness of and readiness to use e-cheque. In this connection, HKMA will collaborate with HKAB to prepare guidelines and best practices, and conduct consumer education programmes to engage the business sectors and bank customers regarding the need and the right to choose payment methods that suits transaction circumstances.

PUBLICITY

15. HKMA will formulate a publicity plan to promote the launch of e-cheque. For instance, it will collaborate with HKAB to conduct a series of consumer education programmes in the run-up to the launch of e-cheque in end 2015. This will enhance the acceptance of e-cheque and the confidence of the business sectors and general public in this alternative payment method.

ENQUIRIES

16. Any enquiries on this brief should be addressed to Mr. Dominic KWONG, Chief Systems Manager, Industry Facilitation Division at 2810 3299 or by fax at 3153 2666.

**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

19 November 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.

Operating Model of e-Cheque

Issuance of e-cheque

1. Payer gives payment instruction, including payee name, cheque date and cheque amount, to paying bank through the Internet banking platform or other authenticated means.
2. Upon confirmation of the identity of payer, paying bank will prepare an e-cheque based on his/her instruction.
3. Paying bank generates an e-cheque with payer's digital signature³. It will also carry paying bank's digital signature to certify the genuineness of e-cheque.

Delivery of e-cheque

4. Payer can ask paying bank to send the e-cheque to payee directly after the generation of e-cheque. Alternatively, payer can download the e-cheque and send the e-cheque to the payee through electronic means.

Presentment of e-cheque

5. Upon receipt of e-cheque, payee can present it either through the Internet banking platform or the centralized presentment portal operated by HKICL.

³ For the purpose of e-cheque signing, payer can either ask paying bank to apply, renew and keep custody of a digital certificate on his/her behalf or directly apply for a digital certificate from one of the recognized certificate authorities under the ETO.

6. Where an e-cheque is presented through the Internet banking platform, collecting bank will verify the genuineness of e-cheque by checking the digital signature of paying bank, verify if the payee name matches with bank account holder name, check with HKICL to ascertain if the e-cheque has been presented or settled earlier, and posts the transaction to the payee's account. Collecting bank will proceed to submit the e-cheque information to HKICL for interbank clearing.

7. Where an e-cheque is presented through the centralized presentment portal, payee has to provide the bank name and bank account number for the deposit of e-cheque. HKICL will verify the genuineness of e-cheque by checking the digital signature of paying bank, ascertain if the e-cheque has been presented or settled earlier, and passes the e-cheque information to the collecting bank for further processing. The e-cheque will then go through interbank clearing process.

Interbank clearing and settlement

8. The interbank clearing process for paper cheque and e-cheque are the same. HKICL will submit the presented e-cheques to paying banks to check if there are sufficient funds in payers' bank accounts to honour the payment obligations.

Diagrammatic Illustration

Diagram 1: Operating model of e-cheque
(for presentment of e-cheque through the Internet banking platform)

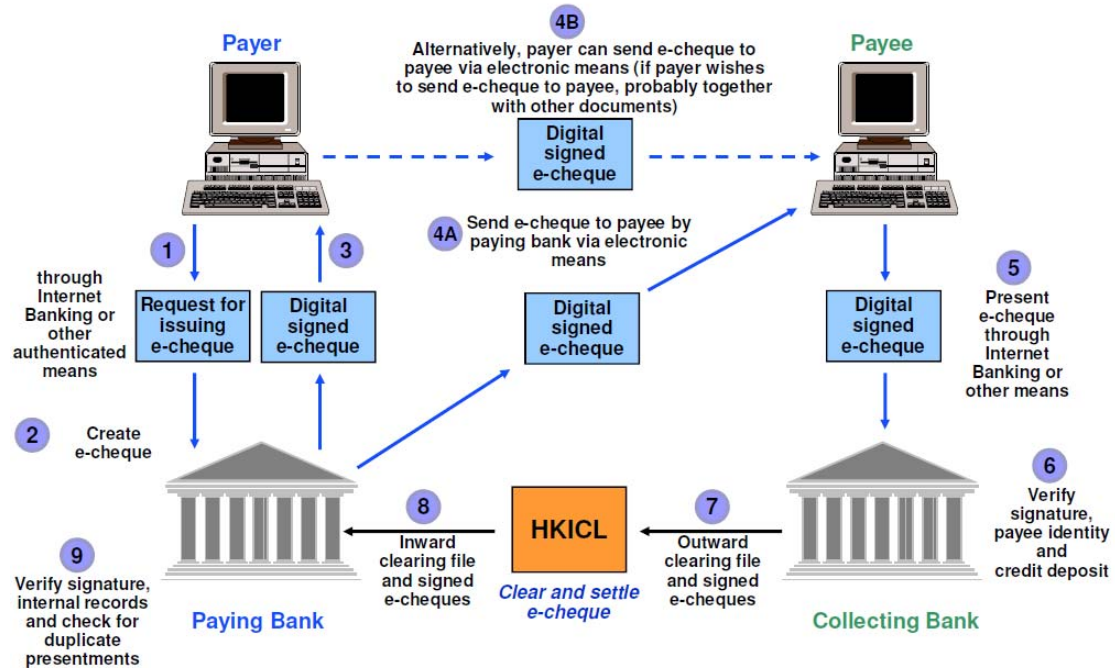


Diagram 2: Operating model of e-cheque
(for presentment of e-cheque through the centralized presentment portal)

