

## **LEGISLATIVE COUNCIL BRIEF**

### **ELECTRONIC TRANSACTIONS (EXCLUSION) (AMENDMENT) ORDER 2015**

#### **INTRODUCTION**

On 29 September 2015, the Permanent Secretary for Commerce and Economic Development (Communications and Technology) (the Permanent Secretary) made the Electronic Transactions (Exclusion) (Amendment) Order 2015 (the Amendment Order) 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 (Cap. 553B) (the Exclusion Order). The Amendment Order enables electronic submission of applications for the Town Planning Board (the Board)'s permission, review of the Board's decision, or review of the decision of the Director of Planning.

#### **BACKGROUND**

2. Enacted in 2000, the ETO provides a legal framework to give electronic records and electronic or digital signatures the same legal status as that of their paper-based counterparts, subject to specified requirements and exemptions. The key provisions of the ETO 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 electronic records containing the information satisfy that requirement or 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.

3. Government bureaux and departments accept electronic submissions for most statutory processes. However, for some statutory provisions, there is a genuine and practical need to exclude electronic submissions because of operational, technical or solemnity reasons. 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 provisions which have to be excluded —

- (a) due to the solemnity of the matter or document involved, e.g. provisions concerning the electoral process;
- (b) on operational grounds, e.g. provisions concerning the production of documents to government authorities on the spot;
- (c) due to the involvement of voluminous submissions and complex plans which would be difficult to handle electronically, e.g. provisions concerning submission of documents and plans to the works departments; and

- (d) 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, while noting the need to make new exemptions with the enactment of new legislation when circumstances so merit. So far, 11 amendment orders to amend the Exclusion Order have been made either to withdraw exemptions that were no longer necessary or to provide for new exemptions for new legislation.

## **THE AMENDMENT ORDER**

6. We propose to withdraw three currently exempted provisions from Schedule 1 to the Exclusion Order with the effect that they will no longer be excluded from the application of section 5 of the ETO, relating to —

- (a) submission under section 16(2) of the Town Planning Ordinance (Cap. 131) to the secretary to the Board of an application for grant of permission for any purpose as provided for in plans;
- (b) submission under section 17(1) of the Town Planning Ordinance (Cap. 131) to the secretary to the Board of an application for a review of a decision of the Board; and
- (c) submission under section 24(1) of the Town Planning Ordinance (Cap. 131) to the Secretary for Development of an application for a review of a decision of the Director of Planning.

7. The Amendment Order is at **Annex A**. Details of the amendments are explained at **Annex B**.

## **LEGISLATIVE TIMETABLE**

8. The Amendment Order will be gazetted on 9 October 2015 and will be tabled before the Legislative Council on 14 October 2015 for negative vetting. The Amendment Order is scheduled to commence on 18 December 2015.

## **IMPLICATIONS**

9. 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. Repeal of the relevant exemptions that have become unnecessary does 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 bureau and department concerned will publicise their readiness to accept electronic submissions through their websites and other communication channels to inform the affected parties as the case may be.

## **ENQUIRIES**

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

**Office of the Government Chief Information Officer  
Commerce and Economic Development Bureau  
October 2015**

## Electronic Transactions (Exclusion) (Amendment) Order 2015

(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 18 December 2015.
2. **Electronic Transactions (Exclusion) Order amended**  
The Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) is amended as set out in section 3.
3. **Schedule 1 amended (provisions excluded from application of section 5 of Ordinance)**  
Schedule 1—  
**Repeal item 18.**

*Sue Ho*

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

*29 September 2015*

### Explanatory Note

Section 5 of the Electronic Transactions Ordinance (Cap. 553) (*principal Ordinance*) provides that if a rule of law requires or permits information to be or given in writing, the use of an electronic record containing the information satisfies that rule of law provided that the information contained in the electronic record is accessible so as to be usable for subsequent reference. 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) (*principal Order*).

2. Section 3 of this Order removes sections 16(2), 17(1) and 24(1) of the Town Planning Ordinance (Cap. 131) from Schedule 1 to the principal Order, so that those sections are no longer excluded from the application of section 5 of the principal Ordinance.

**Exemptions to be Withdrawn from the Exclusion Order**

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

Planning Department

- (a) submission under section 16(2) of the Town Planning Ordinance (Cap. 131) to the secretary to the Board of an application for grant of permission for any purpose as provided for in a draft plan or approved plan.
- (b) submission under section 17(1) of the Town Planning Ordinance (Cap. 131) to the secretary to the Board of an application for a review of a decision of the Board made under section 16 or 16A of the Town Planning Ordinance (Cap. 131).

Development Bureau

- (a) submission under section 24(1) of the Town Planning Ordinance (Cap. 131) to the Secretary for Development of an application for a review of a decision of the Director of Planning made under section 23(3) or 23(4) of the Town Planning Ordinance (Cap. 131).