

立法會參考資料摘要 《2000年電子交易(豁免)(修訂)令》

引言

資訊科技及廣播局局長(下文簡稱「局長」)於二零零零年五月十五日根據《電子交易條例》(第553章)第11(1)條訂立附件 A所載的《2000年電子交易(豁免)(修訂)令》，將《選舉(舞弊及非法行為)條例》(第554章)第37(1)及(2)條豁除於《電子交易條例》第5條的適用範圍之外。

背景和論據

背景

2. 《電子交易條例》(下文簡稱「條例」)於二零零零年一月五日獲立法會通過，並於二零零零年一月七日在憲報刊登。在符合條例第5至8條所載的有關規定(摘錄於附件 B)下，條例給予電子紀錄及數碼簽署等同書面紀錄及簽署的法律地位如下 -

- (a) 條例第5(1)條訂明，如任何法律規則規定資訊須是書面形式，或須以書面形式提供，則電子紀錄屬符合該規定；
- (b) 條例第5(2)條訂明，如任何法律規則准許資訊可以是書面形式或以書面形式提供，則電子紀錄屬符合該規則；
- (c) 條例第6條訂明，如任何法律規則規定須由任何人作出簽署，則該人的數碼簽署屬符合該規定；
- (d) 條例第7條訂明，如任何法律規則規定某些資訊須以其原狀出示或保留，則以電子紀錄形式出示或保留該等資訊屬符合該規定；及

- (e) 條例第 8 條訂明，如任何法律規則規定某些資訊須予保留(不論是以書面或其他形式保留)，則以電子紀錄保留該等資訊屬符合該規定。

3. 為樹立良好榜樣，鼓勵各界採納電子交易，政府部門已由二零零零年四月七日開始，率先在香港法律大部分法例條文下接受以電子方式提交資訊。不過，對於一些涉及個別政府部門運作的法例條文而言，卻有真正和實際需要在接受以電子方式提交資訊方面，對它們作出豁免。為確保有關的政府部門能繼續如常運作，局長根據條例第 11(1)條訂立《電子交易(豁免)令》，將香港法律(大約共有 650 項條例)內其中 39 項條例及 1 項法令下共 195 項法例條文豁除於條例第 5-8 條的適用範圍之外。該法令(屬於附屬法例)已於二零零零年三月三日在憲報刊登，及經立法會以如不廢除或不提出修訂即屬通過的程序審議，並於二零零零年四月七日生效。

4. 《電子交易(豁免)令》所豁除的法例條文，可分為以下 5 類 -

- (a) 因涉及性質莊嚴的事宜或文件而須予以豁免的條文，例如與選舉程序有關的條文；
- (b) 基於運作理由而須予以豁免的條文，例如有關要即場向政府當局出示文件的條文；
- (c) 因涉及提交大量文件和複雜圖則而難以採用電子方式處理而須予以豁免的條文，例如有關向工務部門提交文件及圖則的條文；
- (d) 因跟隨國際慣例而須予以豁免的條文，例如飛機上的工作人員為航行目的而須保存的文件；及
- (e) 為確保政府能依約履行法律責任而須予以豁免的條文，例如關乎提交與貿易通專營權有關的貿易文件的條文。

5. 在制定該豁免令時，政府亦表明可能需要就新制定的法例作出豁免。

《2000年電子交易(豁免)(修訂)令》

6. 載於附件 A的《2000年電子交易(豁免)(修訂)令》，把新近訂立的《選舉(舞弊及非法行為)條例》第37(1)及(2)條豁除於條例第5條的適用範圍之外。《選舉(舞弊及非法行為)條例》第37(1)條規定候選人必須向總選舉事務主任提交選舉申報書，列出其選舉開支及其在與該項選舉有關連的情況下收取的捐贈；第37(2)條則訂明，選舉申報書必須在選舉結果公布日期後30天內提交，並須就每項100元或以上的選舉開支夾附有關的收據及發票，及就每項1,000元以上的捐贈夾附有關收據。當局必須就該兩項條文作出豁免，以維持選舉程序的莊嚴性、方便選舉事務處審核選舉申報書，及利便廉政公署調查可能違反法例規定的個案。根據過往的選舉經驗，所提交的選舉申報書通常附有大量發票和收據，因此若該類文件以電子方式提交，將會難以處理。

7. 修訂令預算於二零零零年六月二十九日開始生效，使有關豁免在訂於二零零零年七月九日舉行的選舉委員會界別分組選舉和訂於二零零零年九月十日舉行的立法會選舉前生效。

立法程序時間表

8. 修訂令將於二零零零年五月十九日在憲報刊登，並於二零零零年五月二十四日提交立法會省覽。

與基本法的關係

9. 修訂令沒有抵觸基本法內對人權並無影響的條文。

LEGISLATIVE COUNCIL BRIEF

ELECTRONIC TRANSACTIONS (EXCLUSION) (AMENDMENT) ORDER 2000

INTRODUCTION

On 15 May 2000, the Secretary for Information Technology and Broadcasting (the Secretary) made the Electronic Transactions (Exclusion) (Amendment) Order 2000 set out in Annex A under section 11(1) of the Electronic Transactions Ordinance (ETO) (Cap. 553) to exclude section 37(1) and (2) of the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) (Cap.554) from the application of section 5 of the ETO.

BACKGROUND AND ARGUMENT

Background

2. The ETO was passed by the Legislative Council on 5 January 2000 and gazetted on 7 January 2000. Subject to certain requirements set out in sections 5-8 of the ETO (extract at Annex B), the ETO provides legal recognition to electronic records and digital signatures as that of their paper-based counterparts as follows -

- (a) section 5(1) of the ETO provides that if a rule of law requires information to be or given in writing, an electronic record satisfies the requirement;
- (b) section 5(2) of the ETO provides that if a rule of law permits information to be or given in writing, an electronic record satisfies that rule of law;

- (c) section 6 of the ETO provides that if a rule of law requires the signature of a person, a digital signature of the person satisfies the requirement;
- (d) section 7 of the ETO provides that if a rule of law requires that certain information be presented or retained in its original form, the requirement is satisfied by presenting or retaining the information in the form of electronic records; and
- (e) section 8 of the ETO provides that if a rule of law requires certain information to be retained, whether in writing or otherwise, the requirement is satisfied by retaining electronic records.

3. Government departments took the lead in setting a good example in adopting electronic transactions by accepting electronic submission under the bulk of the statutory provisions in the laws of Hong Kong starting from 7 April 2000. However, for some specific statutory provisions concerning the operation of individual Government departments, there is a genuine and practical need to make exclusion for them from the electronic process. To ensure that Government departments concerned would continue to operate smoothly, the Secretary made an Electronic Transactions (Exclusion) Order 2000 under section 11(1) of the ETO to exclude 195 statutory provisions in respect of 39 Ordinances and one Order (out of a total of around 650 Ordinances in the laws of Hong Kong) from the application of sections 5-8 of the ETO. The Exclusion Order (a subsidiary legislation) 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 statutory provisions excluded in the Order can be classified into the following five categories -

- (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, e.g. provisions concerning submission of documents and plans to the works departments;
- (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; and
- (e) provisions which have to be excluded to ensure that Government would be able to meet its contractual obligations, e.g. provisions on the submission of trade-related documents which concern the franchise of the Tradelink.

5. When making the Exclusion Order, the Government has also noted that new exclusion may need to be made in respect of new legislation enacted.

Electronic Transactions (Exclusion) (Amendment) Order 2000

6. The Electronic Transactions (Exclusion) (Amendment) Order 2000 at Annex A excludes section 37 (1) and (2) of the newly enacted ECICO from the application of section 5 of the ETO. Section 37(1) of the ECICO requires a candidate to submit election returns to the Chief Electoral Officer in relation to the expenses he incurred and the donations he received in connection with an election. Section 37(2) of the ECICO stipulates that the election returns must be made within 30 days after the publication of the election results, and, among other things, have to be accompanied by receipts and invoices for

each expense of \$100 or more and by receipt only for each donation of a value more than \$1,000. The exclusion for these two sub-sections is needed to ensure the solemnity of the electoral process and to facilitate vetting of these election returns by the Registration and Electoral Office (REO) as well as investigation by the Independent Commission Against Corruption for possible cases of non-compliance with the legal requirements. Experiences of past elections show that election returns were normally accompanied by a large volume of invoices and receipts which would be difficult to handle if they were submitted in electronic form.

7. The Amendment Order is intended to come into effect on 29 June 2000 so that the exclusion would be in place before the Election Committee Subsector election to be held on 9 July 2000 and the Legislative Council election to be held on 10 September 2000.

LEGISLATIVE TIMETABLE

8. The Amendment Order will be gazetted on 19 May 2000 and tabled in the Legislative Council on 24 May 2000.

BASIC LAW IMPLICATIONS

9. The Amendment Order does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

10. The Amendment Order is not inconsistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

11. There are no additional financial or staffing implications to the Government arising from the making of the Amendment Order.

PUBLIC CONSULTATION

12. The principles for making exclusion from the electronic process set out in paragraph 4 above were noted by the Legislative Council when the Electronic Transactions (Exclusion) Order 2000 was made. Since it is a generally accepted practice for election returns to be submitted and processed in paper form, we do not consider it necessary to consult the public on this specific exclusion.

PUBLICITY

13. We will publicise the exclusion through the briefing sessions for candidates and the homepage of REO. A press release will also be issued on 19 May 2000 when the Amendment Order is gazetted.

ENQUIRIES

14. Any enquiries on this brief should be addressed to Mr Alan Siu, Deputy Secretary for Information Technology and Broadcasting, at 2189 2288 or by facsimile at 2519 9780.

**Information Technology and Broadcasting Bureau
May 2000**

**ELECTRONIC TRANSACTIONS (EXCLUSION) (AMENDMENT)
ORDER 2000**

(Made under section 11(1) of the Electronic Transactions
Ordinance (Cap. 553))

1. Commencement

This Order shall come into operation on 29 June 2000.

**2. Provisions excluded from application
of section 5 of Ordinance**

Schedule 1 to the Electronic Transactions (Exclusion) Order
(L.N. 58 of 2000) is amended by adding -

"64. Elections (Corrupt and Section 37(1) and (2)".
Illegal Conduct)
Ordinance (10 of 2000)

(Eva Cheng)

Secretary for Information Technology
and Broadcasting

15 May 2000

Explanatory Note

This Order amends Schedule 1 to the Electronic Transactions (Exclusion) Order (L.N. 58 of 2000) so that section 37(1) and (2) of the Elections (Corrupt and Illegal Conduct) Ordinance (10 of 2000) is excluded from the application of section 5 of the Electronic Transactions Ordinance (Cap. 553).

Extracts from the Electronic Transactions Ordinance

5. Requirement for writing

(1) If a rule of law requires information to be or given in writing or provides for certain consequences if it is not, an electronic record satisfies the requirement if the information contained in the electronic record is accessible so as to be usable for subsequent reference.

(2) If a rule of law permits information to be or given in writing, an electronic record satisfies that rule of law if the information contained in the electronic record is accessible so as to be usable for subsequent reference.

6. Digital signatures

(1) If a rule of law requires the signature of a person or provides for certain consequences if a document is not signed by a person, a digital signature of the person satisfies the requirement but only if the digital signature is supported by a recognized certificate and is generated within the validity of that certificate.

(2) In subsection (1), "within the validity of that certificate" (在該證書的有效期內) means that at the time the digital signature is generated –

- (a) the recognition of the recognized certificate is not revoked or suspended;
- (b) if the Director has specified a period of validity for the recognition of the recognized certificate, the certificate is within that period; and
- (c) if the recognized certification authority has specified a period of validity for the recognized certificate, the certificate is within that period.

7. Presentation or retention of information in its original form

(1) Where a rule of law requires that certain information be presented or retained in its original form, the requirement is satisfied by presenting or retaining the information in the form of electronic records if –

- (a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form; and
 - (b) where it is required that information be presented, the information is capable of being displayed in a legible form to the person to whom it is to be presented.
- (2) For the purposes of subsection (1)(a) –
- (a) the criterion for assessing the integrity of the information is whether the information has remained complete and unaltered, apart from the addition of any endorsement or any change which arises in the normal course of communication, storage or display; and
 - (b) the standard for reliability of the assurance is to be assessed having regard to the purpose for which the information was generated and all the other relevant circumstances.
- (3) This section applies whether the requirement in subsection (1) is in the form of an obligation or whether the rule of law merely provides consequences for the information not being presented or retained in its original form.

8. Retention of information in electronic records

- (1) Where a rule of law requires certain information to be retained, whether in writing or otherwise, the requirement is satisfied by retaining electronic records, if –
- (a) the information contained in the electronic record remains accessible so as to be usable for subsequent reference;
 - (b) the relevant electronic record is retained in the format in which it was originally generated, sent or received, or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and
 - (c) the information which enables the identification of the origin and destination of the electronic record and the date and time when it was sent or received, is retained.
- (2) This section applies whether the requirement in subsection (1) is in the form of an obligation or whether the rule of law merely provides consequences for the information not being retained.

對人權的影響

10. 修訂令符合基本法內有關人權的條文。

對財政和人手的影響

11. 訂立修訂令對政府的財政和人手並無影響。

公眾諮詢

12. 立法會已知悉上文第 4 段所載有關在接受以電子方式提交資訊方面作出豁免的原則。由於以書面形式提交及處理選舉申報書是公眾普遍接受的做法，因此我們認為無必要就這項特定豁免諮詢公眾。

宣傳安排

13. 我們會藉着為候選人舉行的簡報會及透過選舉事務處的網頁，宣傳上述豁免。我們亦會於修訂令在二零零零年五月十九日在憲報刊登當日，發出有關的新聞稿。

查詢

14. 如對這份參考資料摘要的內容有任何查詢，請向資訊科技及廣播局副局長蕭如彬先生提出(電話號碼：2189 2288；傳真號碼：2519 9780)。

資訊科技及廣播局
二零零零年五月