

## **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.