

**Bills Committee on
Import and Export (Electronic Transactions) Bill 2001**

**Follow-up actions arising from
The meeting on 21 February 2002**

Below is the Administration's response to the list of follow-up actions arising from the meeting of the Bills Committee on 21 February 2002.

Views of consultees on the proposed EMAN fees

2. Tradelink's discussion with carriers on EMAN fees is ongoing. Some carriers are still concerned about the fees to be charged and are negotiating with Tradelink for possible reduction.

3. The latest pricing proposal offered by Tradelink is as follows –

	Ocean / Air / Rail (HK\$/ manifest)			River (HK\$/ manifest)
	1 st – 200 th manifests in a month	201 st – 1000 th manifests in a month	1001 st or above manifests in a month	Regardless of volume of manifests
Standard	28.6	17.2	8.6	14.3
3-year contract	24.3	14.6	7.3	12.2
5-year contract	21.5	12.9	6.4	10.7
7-year contract	18.6	11.2	5.6	9.3

EMAN fees in Singapore and Taiwan

4. According to Tradelink, the EMAN fee of Taiwan is as follows.

	Taiwan ¹	
	Ocean (HK\$/ manifest)	Air (HK\$/ manifest)
Transaction charge	125 ²	34.6 ³
Mailbox charges ⁴ (HK\$ per month)	1,111.1	1,111.1
Minimum service charge (HK\$ per month)	555.6	555.6
Total minimum charge per month (HK\$ per month)	1,666.7	1,666.7

5. In Singapore, there is no separate charge for EDI submission of manifests. As such, it is not possible to compare the manifest charges between Singapore and Hong Kong. For Members' reference, the trade declaration per EDI transaction charge for Singapore is S\$6.4 (about HK\$27.7). In Hong Kong, the trade declaration per EDI transaction charge is HK\$12.9

Revised section 15(1B) of Cap. 60

6. Taking into account Members' views, we propose to revise section 15(1B) of the Import and Export Ordinance (Cap. 60) (section 7, Schedule 1 to the Bill) as per Annex A. Under the revised section 15(1B), a manifest to be furnished to a member of the Customs and Excise Service by a carrier on entering or leaving Hong Kong under section 15(1)(a) may be given in paper form, electronic record form (the manner and format in which the information is given must comply with section 11(2) of the Electronic Transactions Ordinance) or by using services provided by a specified body, at the option of the carrier.

7. The Customs would address any practical difficulty of receiving

¹ The exchange rate adopted in the calculation is HK\$1 = NT\$4.5.

² Ocean manifest is charged by the service provider on the basis of message size (NT\$7.5 per Kilobytes) and the charge shown assumes an average manifest message size of 75 Kilobytes.

³ Assumptions adopted in the calculation are –

(a) The average manifest contains 34 master air waybills (as revealed in questionnaires returned to Tradelink from air carriers).

(b) Average message amendment rate is 5% (used in performance test conducted by Tradelink).

⁴ It was assumed that each carrier subscribes one mailbox only for manifest submission.

electronic manifests on board a vessel by appropriate administrative measures to ensure enforcement actions would not be compromised.

Replacement of section 19A by proposed new section 11A

8. We have taken on board Members' suggestion to replace section 19A by new section 11A at Annex B. This new section provides that the Director shall have access to information contained in a manifest lodged with the Commissioner. There is no need to create any new offence.

9. Consequential amendments to sections 4, 5 and 6 of Schedule 1 to the Bill (sections 8, 9 and 11 of Cap. 60) are made following the deletion of section 19A. The revised provisions are at Annex C.

Revised section 32A of Cap. 60

10. We have further revised proposed new section 32A (Annex D) of Cap. 60 (section 12 of Schedule 1 to the Bill) submitted at the last meeting. The revision is only textual.

11. The revised section 32A is in line with a similar provision in the Dutiable Commodities (Amendment) Regulation 2001. The exercise of the Commissioner's power under this section is limited to cases where it is not practicable for information to be given using services provided by a specified body (for example, where the computer system breaks down completely for an extended period) or for the information to be given by that means only (for example, where the computer system breaks down partially for an extended period).

12. Subject to Members' views on the revised section 32A, we would make corresponding changes to a similar provision in section 6 of Schedule 2 to the Bill.

Submission of manifests in respect of road mode carriers
– proposed new section 32B of Cap. 60

13. The feasibility study on electronic submission of road mode manifests is due to be completed in the second quarter this year. If a decision is made to implement such a system, electronic submission would first be

made optional. Any decision to make electronic submission for road mode manifests mandatory would be subject to the scrutiny of the Legislative Council.

14. To reflect the above policy, we have drawn up the proposed new section 32B of Cap. 60 at Annex E. Under the proposed new section 32B, the Commissioner could, by notice published in the Gazette under section 32B(2), specify that manifest information in relation to the road mode shall be given in paper form only. Our plan is that a notice to this effect should come into force at the same time as the commencement of this Bill so that the road mode carriers would continue submitting manifests in paper form only as at present. If we make the decision to implement electronic system for road mode manifests, the notice will be revoked by another similar notice under section 32B(2). The transitional provisions under section 42 of Cap. 60 will then apply, allowing the information to be given either in paper form or by using services provided by a specified body.

15. When it is decided to make electronic submission of road mode manifests mandatory, the Commissioner will publish a notice in the Gazette under section 42(2). Such notice will be subsidiary legislation according to section 42(4), and is subject to the scrutiny of the Legislative Council.

Revised section 42 of Cap. 60

16. We have taken the opportunity to make minor amendment to section 13 of Schedule 1 to the Bill (Annex F), to put it beyond doubt that the proposed new section 32A(2)(a) and 32B(2) of Cap. 60 should prevail over section 42 of Cap. 60. This ensures that the transitional provision does not defeat the purpose of the power given to the Commissioner under section 32A(2)(a) or section 32B(2) to determine the giving of information in paper form only.

IMPORT AND EXPORT (ELECTRONIC TRANSACTIONS) BILL 2001
Proposed committee stage amendments
(“As if amended” version)

Annex A

Revision of new s.15(1B) of Cap. 60
(Bill: section 7(2) of Schedule 1)

(1B) For the purpose of any requirement under subsection (1)(a) to furnish a member of the Customs and Excise Service with a manifest, the manifest may --

- (a) be given to the member in paper form;
- (b) be given or sent to the member in the form of an electronic record, but only if the manner and format in which the information is given or sent comply with any requirements specified under section 11(2) of the Electronic Transactions Ordinance (Cap. 553) in relation to this Ordinance; or
- (c) be sent to the member using services provided by a specified body.

Annex B

**New section 11A of Cap. 60 added -- Director's right of access to manifest information provided to the Commissioner
(Bill: New section 6A of Schedule 1)**

11A. Director to have access to manifests lodged with Commissioner

The Director shall have access to any information contained in a manifest of cargo that has been lodged under this Ordinance with the Commissioner or with an officer appointed by the Commissioner.

Annex C

Amendment of s. 8, 9 & 11 of Cap. 60, consequential to the replacement of section 19A of Cap. 60 by section 11A (Bill: sections 4(2), 5(2) & 6(2) of Schedule 1)

(a) Section 8 of Cap. 60 (Bill: section 4(2) of Schedule 1)

(2) Section 8 is amended by adding –

“(2A) The requirement under subsection (2)(b)(ii) does not apply where at the time of delivering the import licence under subsection (2)(b)(i) the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 11 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body.”.

(b) Section 9 of Cap. 60 (Bill: section 5(2) of Schedule 1)

(2) Section 9 is amended by adding –

“(2A) The requirement under subsection (2)(b)(iii) does not apply where at the time of delivering the declaration under subsection (2)(b)(ii) the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 11 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body.”.

(c) Section 11 of Cap. 60 (Bill: section 6(2) of Schedule 1)

(2) Section 11 is amended by adding –

“(2A) The requirements under subsection (2)(a)(ii) and (b)(ii) do not apply where at the time of informing the Director of the export licence number under subsection (2)(a)(i) or delivering the export licence under subsection (2)(b)(i), as the case may be, the manifest has been lodged with the Commissioner, or with an officer appointed by the Commissioner, under regulation 12 of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.) and was so lodged using services provided by a specified body.”.

Annex D

Revision of proposed new section 32A of Cap. 60 (Bill: section 12 of Schedule 1)

32A. Provision of information where use of services provided by specified body is not practicable

(1) This section applies to any information that under a provision of this Ordinance (a “relevant provision”) is required to be given to another person by using services provided by a specified body.

(2) Where the Commissioner considers that—

- (a) it is not practicable for any information to which this section applies to be given in the manner specified in subsection (1), he may determine that the information shall be given in paper form and shall not be given by using services provided by a specified body; or
- (b) it is not practicable for any information to which this section applies to be given solely in the manner specified in subsection (1), he may determine that the information shall be given either in paper form or by using services provided by a specified body,

and where a determination has been made under this subsection, the relevant provision shall have effect subject to that determination.

(3) Notice of a determination made under subsection (2) shall be published in the Gazette within 14 days of the determination having been made.

(4) A determination made under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(5) A determination made under subsection (2) may make different provision in relation to different classes of persons or information.

Annex E

Proposed new s. 32B of Cap. 60 -- paper form submission of manifest information relating to cargo carried by road vehicles (Bill: section 12 of Schedule 1)

32B. Provision of manifest information relating to cargo carried in a road vehicle

(1) This section applies to any information that is contained in the manifest of cargo carried in or on a vehicle other than a train and that under this Ordinance is required to be given to the Commissioner or the Director, or to an officer appointed by the Commissioner or the Director, by using services provided by a specified body.

(2) The Commissioner may, by notice published in the Gazette, specify that any information to which this section applies shall be given in paper form and, where a notice published under this subsection has effect, the information shall, in accordance with the provisions of this Ordinance as read together with the notice, be given in paper form only.

(3) A notice published under subsection (2) may require that the information to be given in paper form be certified as correct or that the document containing the information be certified as a true copy, as may be appropriate, by the person giving the information or by some other person.

(4) A notice published under subsection (2) is not subsidiary legislation.

Annex F

**Revision of proposed new section 42(1) of Cap. 60
(Bill: section 13 of Schedule 1)**

(1) Any provision of section 8, 9 or 11 requiring that information given under those sections be given by using services provided by a specified body shall, in respect of the period specified in subsection (2), but subject to any determination made under section 32A(2)(a) or notice published under section 32B(2), be construed as requiring that the information be given either in paper form or by using services provided by a specified body.

