

CTB/IT 107/4/1 (03) Pt.31

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Dear Miss Fung,

**Electronic Transactions (Amendment) Bill 2003**

Thank you for your letter dated 16 January. Please find below the information that you requested.

Clause 3 – new section 5A and Schedule 3

*Point (a)*

As stated in the Legislative Council brief on the Bill (file ref: ITBB/IT 107/4/1 (03) Pt.29) dated 11 June 2003, some legislation at present contains references to or requirements of serving documents on the parties concerned by post or in person. These legal provisions were enacted at the time when electronic transactions were not prevalent. In some cases, there are now no justifications to exclude the electronic means for serving the documents and these legal provisions have become an impediment to the adoption of electronic means and implementation of E-government. However, it is not efficient for

the concerned bureaux and departments to amend these legal provisions individually, many of which would involve amendments to principal legislation, in order to accept electronic submissions. We therefore propose to provide a more convenient vehicle for bureaux and departments to remove such impediment by way of the new section 5A and Schedule 3 proposed in the Bill (the latter may be amended by the Secretary for Commerce, Industry and Technology by order published in the Gazette, which is subsidiary legislation).

At this stage, we propose to include section 119Y(1)(a) and (b) of the Landlord and Tenant (Consolidation) Ordinance (LTO) (Cap. 7), section 50(1) of the Rating Ordinance (RO) (Cap. 116), and section 45(1) of the Government Rent (Assessment and Collection) Ordinance (GRO) (Cap. 515) in the new Schedule 3. These provisions, which are under the purview of the Commissioner for Rating and Valuation (the Commissioner), provide how the service of the relevant documents etc. under Part IV of the LTO, the RO and the GRO may be effected. These provisions were drafted at the time when electronic transactions were not prevalent, and the intention was not to exclude the electronic means. With reference to section 50(1) of the RO and section 45(1) of the GRO, the Commissioner is now prepared to accept service of the documents on him by electronic means.

*Point (b)*

Section 19 is a general section providing for the sending and receipt of electronic records. We agree that not all the provisions under section 19 could apply to the new section 5A. They will apply to the new section 5A where applicable. For example, for the new section 5A to apply, the recipient must designate an information system for receiving the electronic record. The time of receipt of the electronic record should therefore be determined in accordance with section 19(2)(a)(i).

While some of the documents served under Part IV of the LTO are served by landlords on tenants and vice versa, i.e. not involving government entities, the case is similar for other relevant sections, such as section 5. Section 5 applies to both government entities and non-government entities and where it is necessary to determine the sending and receipt of the electronic record, section 19 applies. No specific provisions for the sending and receipt of electronic record are made in section 5. We consider that, in the case of new section 5A, section 19 should be relied on if it is necessary to determine

the sending and receipt of electronic record and there is no need to make separate provisions in new section 5A to cover these matters.

*Point (c)*

Not all the provisions set out in the new Schedule 3 “refer to how the service of a document required to be served under the Ordinances may be effected”. Section 119Y(1)(a) and (b) of the LTO (i.e. item 1 of the new Schedule 3) provides that service of any notice, application, certificate or other document under Part IV of that Ordinance or of a notice to quit in respect of a periodic tenancy to which that Part applies may be effected by (a) personal service or (b) by post, addressed to the last known place of business or residence of the person to be served. Therefore, the new section 5A does not refer to “a document required to be served”.

*Point (d)*

“Rule of law”, as defined in section 2 of the Electronic Transactions Ordinance (ETO) (Cap. 553), includes “an Ordinance”. Section 3 of the Interpretation and General Clauses Ordinance (Cap.1) defines “Ordinance” to include “any provision or provisions of any such Ordinance or subsidiary legislation”. Legally, it is therefore appropriate to use “rule of law” in the new section 5A. Moreover, the proposed use of “rule of law” in the new section 5A is consistent with the approach adopted in the general section providing for the giving of information in the form of electronic record, i.e. section 5. We consider that “rule of law” should be used for the sake of consistency.

Clauses 4 and 18

“Withdraw” and “withdrawal” in section 37 are proposed to be substituted with “revoke or suspend” and “revocation or suspension” respectively because “revoke a certificate” or “suspend a certificate”, but not “withdraw a certificate”, are commonly used in the certification authority (CA) industry. The proposed amendment is a tidying-up exercise.

While the Postmaster General (PMG), who is a recognized CA for the purpose of the ETO, has a duty under section 37 to use a trustworthy system in performing its CA services, he is also empowered to designate a certificate

issued by him as a recognized certificate under the ETO. “Withdrawn” is included in the proposed new section 6(2)(aa) as a generic term used in relation to PMG’s designation of a certificate as a recognized certificate, not in relation to a certificate (whereas revocation/suspension is used in relation to a CA terminating or suspending the validity of a certificate).

## Clause 21

### *Point (a)*

The existing section 46 is overly embracing and restrictive with regard to the disclosure of records and information, etc. under the ETO. The proposed amendment to section 46(1) serves to clarify the scope of the information the disclosure of which is prohibited, i.e. any information relating to another person contained in the records etc. shall not be disclosed, save under the circumstances provided for under section 46(2). With the proposed amendment, for example, the Certification Authority Recognition Office of the Information Technology Services Department may publish the aggregate number of recognized certificates issued by all recognized CAs.

In the example cited in your letter under reference, we consider that deletion of the references to the name and other particulars of the person to whom a piece of information is related does not change the fact that the information is related to that person, nor will it render disclosure of such information permissible following the enactment of the proposed amendment.

### *Point (b)*

The proposed amendment “or any other Ordinance” is intended to allow the relevant parties to fulfil the requirements specified in other Ordinances, for example, disclosure requirement to other regulators.

## Drafting matters

### *Point (a)*

We consider that the suggested amendment is unnecessary. The approach in the new section 6(1A)(b) is consistent with that in the existing section 15(1), (2) and (4).

*Points (b) and (c)*

We have no objection to the suggested changes to sections 43(2), (3A) and (3B) and 43A(2), (4) and (5), i.e. adding “有關” before “核證機關”. We will move Committee Stage Amendments to this effect.

*Point (d)*

The use of “上述” in the new section 43A(3) is appropriate in the context and consistent with the approach in the existing section 43(3).

I attach at Annex examples of the documents to be served by personal service or by post under the relevant legal provisions set out in the new Schedule 3.

Please let me know if you require further information.

Yours sincerely,

( Miss Adeline Wong )  
for Secretary for Commerce, Industry and Technology

**Documents to be served by personal service or by post  
under the provisions in new Schedule 3  
to the Electronic Transactions Ordinance**

**Examples of documents to be served by personal service or by post under  
section 119Y(1)(a) and (b) of the Landlord and Tenant (Consolidation)  
Ordinance (LTO)**

<b><u>Type/Nature</u></b>	<b><u>LTO reference</u></b>
Documents relating to the application for a certificate of primary user of premises	s.115A(3),(4), (7)(a) and (7)(b)
Notices, requests and applications relating to the termination or renewal of tenancies	s.117(2), s.119(1) & (4), s.119A(1) & (6), s.119B(1) & (2), s.119C(2), s.119M(2) and s. 119P(2)
Notices relating to new letting or renewal agreement	s.119L(1)*
Requisitions issued by the Commissioner of Rating and Valuation	s.119T(1)(a)

\* Subject to technical amendments under the Landlord and Tenant (Consolidation) (Amendment) Bill 2003

**Examples of documents to be served by personal service or by post under section 50(1) of the Rating Ordinance (RO) and section 45(1) of the Government Rent (Assessment and Collection) Ordinance (GRO)**

<b><u>Type/Nature</u></b>	<b><u>RO reference</u></b>	<b><u>GRO reference</u> (unless otherwise specified)</b>
Notices relating to correction to the Valuation List / Government Rent Roll	s.16(2)	s.23(2)
Notices relating to apportionment of Rateable Value	s.21(7)	s.10(4) of GRR*
Notices relating to deletion from the Valuation List / Government Rent Roll or interim valuation	s.26(1)	s.24(3)
Notices relating to a proposal for alteration to the Valuation List / Government Rent Roll	s.39(1)	s.21(1)
Notices relating to an objection to an interim valuation, a deletion from or correction to the Valuation List / Government Rent Roll	s.40(2)(b)	s.25(3)(b)
Notices relating to refund of rates	s.30(3)(a)&(b)	

\* GRR stands for Government Rent (Assessment and Collection) Regulation,