

LEGISLATIVE COUNCIL BRIEF

Electronic Transactions Ordinance (Chapter 553)

ELECTRONIC TRANSACTIONS (AMENDMENT) BILL 2003

INTRODUCTION

A At the meeting of the Executive Council on 3 June 2003, the Council ADVISED and the Chief Executive ORDERED that the Electronic Transactions (Amendment) Bill 2003 (the Bill), at **Annex A**, should be introduced into the Legislative Council, to update and improve the Electronic Transactions Ordinance (the Ordinance) in order to facilitate the use of electronic transactions.

JUSTIFICATIONS

Background

2. The Ordinance, enacted on 5 January 2000, aims to provide a clear legal framework for the conduct of electronic transactions by giving electronic record and digital signature the same legal recognition as that of their paper-based counterparts. It also establishes a voluntary recognition scheme for certification authorities (CAs), which enhances public confidence in the adoption of electronic transactions. We have committed to the Legislative Council to conduct a review of the Ordinance 18 months after its enactment, in the light of operating experience, international e-business development and technological advancement, to ensure that Hong Kong has the most up-to-date legal

framework for the conduct of e-business.

3. Following an internal review within the Government to seek the views of individual bureaux and departments on the implementation of the Ordinance, we conducted a public consultation from March to April 2002 to consult the public on a set of proposals to improve and update the Ordinance. After considering the views received during the public consultation, we have formulated a package of proposed amendments to the Ordinance. Details of the proposed amendments are set out in paragraphs 4 to 11 below.

Signature Requirements

4. The Ordinance differentiates between two kinds of transactions, i.e. those that pertain to a requirement under a rule of law and those that pertain to a case of contract. In this context, the Ordinance stipulates specifically that digital signature¹ as a form of electronic signature² satisfies a signature requirement under a rule of law. Such an approach is therefore technology-specific. On the other hand, the Ordinance is silent on the technology to be used to generate electronic signature in the case of contract, if there is such signature in the electronic record. The common law position is that this is a matter to be determined by the parties concerned and implicitly, a technology neutral approach is adopted.

5. Our view is that we should as far as possible encourage a technology-neutral approach in promoting electronic transactions generally and in defining signature requirements specifically. The rationale is that such an accommodating approach would enable the legislative framework and future development of e-business within it to better keep pace with technological advancement, as well as provide a

¹ Digital signature is a secure form of electronic signature supported by public key infrastructure technology which is readily available in the market.

² Under the Ordinance, an electronic signature means any letters, characters, numbers or other symbols in digital form attached to or logically associated with an electronic record, and executed or adopted for the purpose of authenticating or approving the electronic record. Digital signature is one form of electronic signature.

wider range of options for satisfying signature requirements electronically.

6. However, a technology-specific approach based on digital signature should continue to apply to transactions with the Government under a rule of law. This is necessary and defensible. It provides for certainty and clarity to members of the public as to the form of electronic signature to be used for transactions with the Government. It will be cost-effective for Government departments to be equipped to deal with only one specified form of electronic signature. In other words, to maintain the status quo in transactions with the Government under a rule of law will be in the public interest.

7. To reflect the above approach, we propose to amend the Ordinance to clearly provide for the following:

- (a) for transactions under a rule of law involving Government entities, we will continue to require digital signature;
- (b) for all other cases, the signature requirement under law is met by any form of electronic signature, subject to certain conditions as to reliability and appropriateness in relation to specific circumstances and consent of parties concerned; and
- (c) in the case of contract, for the avoidance of doubt, if the contract contains a signature, the parties may use electronic signature.

This should make it clear to all parties concerned that we adopt a technology-neutral approach and all types of electronic signature are accepted except in the case of transactions with the Government, where only digital signature is accepted for practical reasons.

Legal Requirement of Serving Documents “by Post or in Person”

8. 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 such legal provisions have indeed become an impediment to electronic transactions and the implementation of e-Government.

9. Against this background, we seek to provide a new schedule in the Ordinance specifying, with qualifying conditions, the acceptance of electronic records satisfying the requirements in law of serving documents by post or in person. Initially we intend to include in the new schedule provisions which provide for serving notice, application or other documents by the Commissioner of Rating and Valuation and related parties under Part IV of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), the Rating Ordinance (Cap. 116) and the Government Rent (Assessment and Collection) Ordinance (Cap. 515). The schedule will be expanded over time through an ongoing process of including relevant legal provisions on appropriate transactions.

Voluntary Recognition Scheme for Certification Authorities

10. Under the voluntary recognition scheme for CAs set up under the Ordinance, the Director of Information Technology Services (the Director) may grant recognition to CAs which provide a trustworthy service. A CA applying for recognition needs to engage an independent assessor approved by the Director to submit to him an assessment report on its compliance with the relevant provisions of the Ordinance and the Code of Practice for Recognized Certification Authorities (Code of Practice) published by the Director under the Ordinance. Recognized CAs also have to furnish to the Director an assessment report once every 12 months and when they apply for renewal of recognition. The relevant provisions in the Ordinance and the Code of Practice generally fall into two categories relating respectively to trustworthiness (e.g. system security, procedural safeguard and financial viability, etc.) and other operational aspects (e.g. the requirement to take care of the needs of persons with disabilities). There is also no provision in the Ordinance which allows the Director to require a recognized CA to furnish an assessment report when there are major changes to its operation in between two annual assessments. Such changes could have a bearing on suitability for recognition.

11. We propose to simplify the preparation of the assessment report so that the requirement to engage qualified and independent assessors only applies to the assessment of trustworthiness, whereas other operational aspects may be dealt with through a statutory declaration to be made by a responsible officer of the concerned CA. We also propose that the Director should be empowered to require a recognized CA to furnish an assessment report and/or a statutory declaration as appropriate if there are major changes to its operation between two annual assessments.

THE BILL

12. The main provisions of the Bill are as follows:

- (a) **Clause 3** provides for the service of a document in the form of an electronic record having the same effect as service by post or in person for the purposes of the provisions set out in the proposed Schedule 3 to the Ordinance (paragraph 9 above);
- (b) **Clause 4** sets out the signature requirements under a rule of law for transactions with the Government and between non-Government parties. In the case of the former, digital signature is stipulated. In the case of the latter, a technology-neutral approach without specifying the form of electronic signature to be used is provided for (paragraph 7(a) and (b) above);
- (c) **Clauses 6 and 7** transfer powers under the Ordinance technical in nature and with no policy implications from the Secretary for Commerce, Industry and Technology to the Permanent Secretary for Commerce, Industry and Technology (Communications and Technology)³;

³ The post of Permanent Secretary for Commerce, Industry and Technology (Information Technology and Broadcasting) will be retitled to Permanent Secretary for Commerce, Industry and Technology (Communications and Technology) upon the re-organisation of the Commerce, Industry and Technology Bureau on 1 July 2003.

- (d) **Clause 9** provides for certainty for the use of electronic signature in contract formation (paragraph 7(c) above);
- (e) **Clauses 10, 14 and 19** split the assessment reports required for recognition or renewal of recognition and annual assessments into two parts so that the first part concerning trustworthiness are prepared by a qualified and independent person, and the second part concerning other operational aspects are dealt with by a statutory declaration to be made by a responsible officer of the concerned CA (paragraph 11 above); and
- (f) **Clause 20** empowers the Director to require a recognized CA to furnish an assessment report prepared by a qualified and independent person and/or a statutory declaration as appropriate in the event of major changes to its operation (paragraph 11 above).

B The existing provisions being amended are at **Annex B**.

LEGISLATIVE TIMETABLE

13. The legislative timetable will be –

Publication in the Gazette	13 June 2003
First Reading and commencement of Second Reading debate	25 June 2003
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE BILL

14. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effects of the Ordinance. It also has no financial or civil service implications, and no significant sustainability implications. We expect

that the Bill will have positive economic, productivity and environmental implications in the longer term as it will be conducive to wider adoption of paperless transactions and e-business which will in turn enhance productivity in various economic sectors and Hong Kong's overall competitiveness in the international market.

PUBLIC CONSULTATION

15. We conducted a public consultation in March and April 2002 on the review of the Ordinance. We received 40 submissions on the review. The views received are generally supportive and specific comments have been reflected in the Bill where appropriate.

16. We also briefed the Legislative Council Panel on Information Technology and Broadcasting and the Information Infrastructure Advisory Committee Working Group on Enabling Environment for IT Development in November 2002 on the major comments received during the public consultation and our proposals set out above. No adverse comments were received.

PUBLICITY

17. We will issue a press release. The Bill will also be posted on the website of the Commerce, Industry and Technology Bureau and other relevant websites. A spokesman will be available to answer public and media enquiries.

ENQUIRIES

18. For enquiries, please contact Miss Adeline Wong, Principal Assistant Secretary for Commerce, Industry and Technology (Information Technology and Broadcasting), at 2189 2207 or by facsimile at 2511 1458.

Information Technology and Broadcasting Branch
Commerce, Industry and Technology Bureau
11 June 2003

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A BILL

To

Amend the Electronic Transactions Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Electronic Transactions (Amendment) Ordinance 2003.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology by notice published in the Gazette.

2. Interpretation

Section 2(1) of the Electronic Transactions Ordinance (Cap. 553) is amended -

(a) by repealing the definition of "accept a certificate" and substituting -

"accept" (接受), in relation to a certificate -

(a) in the case of a person named or identified in the certificate as the person to whom the certificate is issued, means to -

(i) confirm the accuracy of the information on the person as

contained in the
certificate;

(ii) authorize the
publication of the
certificate to any
other person or in a
repository;

(iii) use the certificate;
or

(iv) otherwise demonstrate
the approval of the
certificate; or

(b) in the case of a person to be
named or identified in the
certificate as the person to
whom the certificate is issued,
means to -

(i) confirm the accuracy
of the information on
the person that is to
be contained in the
certificate;

(ii) authorize the
publication of the
certificate to any
other person or in a
repository; or

(iii) otherwise demonstrate
the approval of the
certificate;"

(b) in paragraph (e) of the definition of
"certificate", by repealing "a responsible officer
of";

(c) by repealing the definition of "issue" and
substituting -

"issue" (發出), in relation to a certificate,

means to -

(a) create the certificate, and
then notify the person named or
identified in the certificate
as the person to whom the
certificate is issued of the
information on the person as
contained in the certificate;

or

(b) notify the person to be named
or identified in the
certificate as the person to
whom the certificate is issued
of the information on the
person that is to be contained
in the certificate, and then
create the certificate,

and then make the certificate available
for use by the person;" ;

(d) by adding -

"consent" (同意), in relation to a person,
includes consent that can be reasonably
inferred from the conduct of the person ;
"government entity" (政府單位) means a public
officer or a public body ;
"Permanent Secretary" (常任秘書長) means the
Permanent Secretary for Commerce,
Industry and Technology (Communications
and Technology) ;".

3. Section added

The following is added -

"5A. Service of documents

(1) Without limiting the generality of section 5, if a rule of law under a provision set out in Schedule 3 requires a document to be served on a person by personal service or by post (whether or not there is any further specification as to the address or place at which such service is to be effected), the provision shall be construed as also providing that service of the document in the form of an electronic record to an information system designated by the person satisfies the requirement under the provision if the information contained in the electronic record is accessible so as to be usable for subsequent reference.

(2) Without limiting the generality of section 5, if a rule of law under a provision set out in Schedule 3 permits a document to be served on a person by personal service or by post (whether or not there is any further specification as to the address or place at which such service is to be effected), the provision shall be construed as also providing that service of the document in the form of an electronic record to an information system designated by the person is permitted under the provision if the information contained in the electronic record is accessible so as to be usable for subsequent reference."

4. Electronic signatures, digital signatures, etc.

Section 6 is amended -

(a) by repealing subsection (1) and substituting -

"(1) Where -

(a) a rule of law requires the signature of a person ("the first mentioned person") on a document or provides for certain consequences if the document is not signed by the first mentioned person; and

(b) neither the first mentioned person nor the person to whom the signature is to be given ("the second mentioned person")

is or is acting on behalf of a
government entity,

an electronic signature of the first mentioned
person satisfies the requirement if -

- (c) the first mentioned person uses
a method to attach the
electronic signature to or
logically associate the
electronic signature with an
electronic record for the
purpose of identifying himself
and indicating his
authentication or approval of
the information contained in
the document in the form of the
electronic record;
- (d) having regard to all the
relevant circumstances, the
method used is reliable, and is
appropriate, for the purpose
for which the information
contained in the document is
communicated; and
- (e) the second mentioned person
consents to the use of the
method by the first mentioned
person.

(1A) Where -

(a) a rule of law requires the signature of a person on a document or provides for certain consequences if the document is not signed by the person; and

(b) either or both of the person mentioned in paragraph (a) and the person to whom the signature is to be given is or are or is or are acting on behalf of a government entity or government entities,

a digital signature of the person mentioned in paragraph (a) satisfies the requirement if the digital signature is -

(c) supported by a recognized certificate;

(d) generated within the validity of that certificate; and

(e) used in accordance with the terms of that certificate.";

(b) in subsection (2) -

(i) by repealing "(1)" and substituting "(1A)(d)";

(ii) in paragraph (a), by adding "by the Director, and the certificate is not revoked or suspended by the recognized

certification authority that issues the certificate" after "suspended";

(iii) by adding -

"(aa) in the case of a recognized certificate that is a certificate designated as a recognized certificate issued by the recognized certification authority referred to in section 34, the designation is not withdrawn by the certification authority;".

5. Part heading amended

The heading to Part IV is amended by adding "5A," after "5,".

6. Permanent Secretary may make orders excluding application of section 5, 6, 7 or 8, etc.

Section 11 is amended -

(a) in subsection (1), by repealing "Secretary" and substituting "Permanent Secretary";

(b) in subsection (2) -

(i) by repealing "Secretary" and substituting "Permanent Secretary";

(ii) by repealing "this Ordinance" and substituting "section 5, 5A, 6, 7 or 8";

(c) in subsection (3), by repealing "Secretary" and substituting "Permanent Secretary".

7. Electronic record to comply with specified requirements to satisfy sections 5, 5A, 6, 7 and 8

Section 12 is amended by repealing "Secretary" and substituting "Permanent Secretary".

8. Consent required for sections 5, 5A and 7 to apply to transactions between persons who are not government entities

Section 15 is amended -

(a) by adding -

"(2A) If an Ordinance requires a document to be served by a person on another by personal service or by post and neither person is or is acting on behalf of a government entity, section 5A(1) applies only if the person on whom the document is to be served consents to it being served in the form of an electronic record.

(2B) If an Ordinance permits a document to be served by a person on another by personal service or by post and neither person is or is acting on behalf of a government entity, section 5A(2) applies only if the person on whom the document is to be served consents to it being served in the form of an electronic record.";

(b) by repealing subsections (3) and (5).

9. Formation and validity of electronic contracts

Section 17 is amended by adding -

"(2A) For the avoidance of doubt, it is declared that in the context of the formation of contracts, if an offer or the acceptance of an offer is in whole or in part expressed by means of an electronic record, an electronic signature attached to or logically associated with the electronic record shall not be denied legal effect on the sole ground that it is an electronic signature."

10. Certification authority may apply to Director for recognition

Section 20 is amended -

(a) in subsection (3) -

(i) in paragraph (a) -

(A) by repealing "and" at the end;

(B) by adding "提供" before "根";

(ii) by repealing paragraph (b) and substituting -

"(b) a report which -

(i) contains an assessment as to whether the applicant is capable of complying with such provisions of this Ordinance and of the

code of practice as
are specified in the
code of practice for
the purposes of this
subparagraph; and

(ii) is made by a person
approved by the
Director as being
qualified to make
such a report; and

(c) a statutory declaration which -

(i) states whether the
applicant is capable
of complying with
such provisions of
this Ordinance and of
the code of practice
as are specified in
the code of practice
for the purposes of
this subparagraph;
and

(ii) is made by a
responsible officer
of the applicant.";

(iii) by repealing "長提供" and substituting
"長";

(b) by adding -

"(3A) Any report or statutory declaration required to be furnished under subsection (3) must be made at the expense of the applicant.";

(c) in subsection (4)(b), by adding "or statutory declaration" after "report".

11. Director may on application recognize certification authorities

Section 21(4)(d) is repealed and the following substituted -

"(d) any report or statutory declaration furnished by the applicant under section 20(3);".

12. Director may recognize certificates

Section 22(10) is amended by adding "as they apply to an application for recognition" after "subsection (9)".

13. Matters Director may take into account in revoking or suspending a recognition

Section 25(c) is repealed and the following substituted -

"(c) any report or statutory declaration furnished by the certification authority under section 43(1) or 43A(1).".

14. Director may renew recognition of certification authority

Section 27 is amended -

(a) in subsection (4), by repealing everything after "renewal" and substituting "must be made in the

prescribed manner and in a form specified by the Director.";

(b) by adding -

"(5A) An applicant must furnish to the Director -

(a) the relevant particulars and documents specified under section 30;

(b) a report which -

(i) contains an assessment as to whether the applicant is and is capable of complying with such provisions of this Ordinance and of the code of practice as are specified in the code of practice for the purposes of this subparagraph; and

(ii) is made by a person approved by the Director as being qualified to make such a report; and

(c) a statutory declaration which -

(i) states whether the applicant is and is capable of complying with such provisions of this Ordinance and of the code of practice as are specified in the code of practice for the purposes of this subparagraph; and

(ii) is made by a responsible officer of the applicant.

(5B) Any report or statutory declaration required to be furnished under subsection (5A) must be made at the expense of the applicant.";

(c) in subsection (6), by adding "or (5A)" after "(4)";

(d) by adding -

"(6A) In determining an application for renewal, the Director shall, in addition to any other matter the Director considers relevant, take into account -

(a) any matter set out in section 21(4)(a), (b), (c), (e) or (f) which applies to the application for renewal as it

applies to an application for recognition, subject to necessary modifications; and

- (b) any report or statutory declaration furnished by the applicant under subsection (5A).

(6B) Where -

- (a) an applicant has furnished to the Director a report for the purpose of complying with the requirements referred to in section 43(1)(a) or 43A(1)(c); and
- (b) the Director considers that had the report been furnished for the purpose of complying with the requirements referred to in subsection (5A)(b), it would have satisfied those requirements,

the Director may accept the report, and the report shall, for all purposes, be regarded as a report that is furnished under subsection (5A)(b) and that satisfies the requirements referred to in that subsection.

(6C) Where -

- (a) an applicant has furnished to the Director a statutory declaration for the purpose of complying with the requirements referred to in section 43(1)(b) or 43A(1)(d); and
- (b) the Director considers that had the statutory declaration been furnished for the purpose of complying with the requirements referred to in subsection (5A)(c), it would have satisfied those requirements, the Director may accept the statutory declaration, and the statutory declaration shall, for all purposes, be regarded as a statutory declaration that is furnished under subsection (5A)(c) and that satisfies the requirements referred to in that subsection.";
- (e) by repealing subsection (7) and substituting -
 - "(7) In renewing the recognition of a certification authority, the Director may -
 - (a) attach conditions to the renewal of the recognition; or
 - (b) specify a period of validity for the renewed recognition."

15. Director to specify particulars and documents by notice in the Gazette

Section 30(1) is amended by repealing "27(4)" and substituting "27(5A)".

16. Section substituted

Section 33 is repealed and the following substituted -

"33. Director may issue code of practice

(1) The Director may issue a code of practice -

(a) specifying standards and procedures for carrying out the functions of recognized certification authorities;

(b) specifying the provisions of this Ordinance and of the code of practice for the purposes of -

(i) section 20(3)(b)(i) and (c)(i);

(ii) section 27(5A)(b)(i) and (c)(i);

(iii) section 43(1)(a)(i) and (b)(i); and

(iv) section 43A(1)(c)(i) and (d)(i).

(2) The code of practice issued under subsection (1) may make different provisions for different circumstances and provide for different cases or classes of cases.

(3) The Director may from time to time amend the whole or any part of the code of practice issued under subsection (1), and any reference in this Ordinance to the code shall, unless the context otherwise requires, be construed as a reference to the code as so amended."

17. Section substituted

Section 36 is repealed and the following substituted -

"36. Publication of issued and accepted certificates

Where a person named or identified, or to be named or identified, in a recognized certificate as the person to whom the certificate is issued -

- (a) accepts the certificate, the recognized certification authority concerned must publish the certificate in a repository as soon as reasonably practicable after it issues the certificate;
- (b) does not accept the certificate, the recognized certification authority concerned must not publish the certificate."

18. Recognized certification authority to use trustworthy system

Section 37 is amended -

- (a) in paragraph (a), by repealing "or withdraw" and substituting ", revoke or suspend";
- (b) in paragraph (b), by repealing "or withdrawal" and substituting ", revocation or suspension".

19. Recognized certification authority to furnish report and statutory declaration on compliance with Ordinance and code of practice

Section 43 is amended -

- (a) by repealing subsections (1) and (2) and substituting -

"(1) At least once in every 12 months, a recognized certification authority must furnish to the Director -

- (a) a report which -

(i) contains an assessment as to whether the certification authority has, from the specified date until the last day of the period to which the report relates, complied with such provisions of this Ordinance and of the code of practice as are specified in the code of practice for the purposes of this subparagraph; and

(ii) is made by a person approved by the Director as being qualified to make such a report; and

(b) a statutory declaration which -

(i) states whether the certification authority has, from the specified date until the last day of the period to which the statutory declaration relates, complied with such provisions of this Ordinance and of the code of practice as are specified in the code of practice for the purposes of this subparagraph; and

(ii) is made by a responsible officer of the certification authority.

(2) Any report or statutory declaration required to be furnished under subsection (1) must be made at the expense of the certification authority.";

(b) in subsection (3) -

- (i) by repealing "date of the report" and substituting "respective dates of the report and statutory declaration";
 - (ii) by adding "and statutory declaration" after "in the report";
- (c) by adding -
- "(3A) Where -
 - (a) the certification authority has furnished to the Director a report for the purpose of complying with the requirements referred to in section 27(5A)(b) or 43A(1)(c); and
 - (b) the Director considers that had the report been furnished for the purpose of complying with the requirements referred to in subsection (1)(a), it would have satisfied those requirements,
- the Director may accept the report, and the report shall, for all purposes, be regarded as a report that is furnished under subsection (1)(a) and that satisfies the requirements referred to in that subsection.
- (3B) Where -
 - (a) the certification authority has furnished to the Director a

statutory declaration for the purpose of complying with the requirements referred to in section 27(5A)(c) or 43A(1)(d); and

- (b) the Director considers that had the statutory declaration been furnished for the purpose of complying with the requirements referred to in subsection (1)(b), it would have satisfied those requirements,

the Director may accept the statutory declaration, and the statutory declaration shall, for all purposes, be regarded as a statutory declaration that is furnished under subsection (1)(b) and that satisfies the requirements referred to in that subsection.";

- (d) by repealing subsection (4) and substituting -

"(4) In subsection (1), "specified date"

(指明日期) means -

- (a) the date on which recognition is granted under section 21 or section 34 comes into operation; or
- (b) the day following the last day of the period for which the

last report or last statutory
declaration, as the case may
be, was furnished under that
subsection,

as the case may require.".

20. Section added

The following is added -

**"43A. Recognized certification authority
to furnish report and statutory
declaration when required by
Director**

(1) Where the Director considers that there have been
or will be -

(a) major changes in -

- (i) the financial status of a recognized
certification authority for
operating as such in accordance with
this Ordinance and the code of
practice;
- (ii) the arrangements put in place by a
recognized certification authority
to cover any liability that may
arise from its activities relevant
for the purposes of this Ordinance;
or
- (iii) the system, procedure, security
arrangements and standards used by a

recognized certification authority
to issue recognized certificates; or

(b) any other major changes that may affect the
determination of the Director as to whether
to -

(i) revoke under section 23(1) the
recognition of any certification
authority or the recognition of any
certificate issued by a recognized
certification authority; or

(ii) suspend under section 24(1) the
recognition of any certification
authority or the recognition of any
certificate issued by a recognized
certification authority,

the Director may, by notice given to the certification
authority, specify the major changes and require the
certification authority to furnish to the Director within the
period specified in such notice all or any of the following -

(c) a report which -

(i) contains an assessment as to -

(A) whether, having regard to the
major changes that have
occurred, the certification
authority is and is capable of
complying;

(B) whether, having regard to the
major changes that will occur,

the certification authority is capable of complying, with such provisions of this Ordinance and of the code of practice as are specified in the code of practice for the purposes of this subparagraph; and

(ii) is made by a person approved by the Director as being qualified to make such a report; and

(d) a statutory declaration which -

(i) states -

(A) whether, having regard to the major changes that have occurred, the certification authority is and is capable of complying;

(B) whether, having regard to the major changes that will occur, the certification authority is capable of complying,

with such provisions of this Ordinance and of the code of practice as are specified in the code of practice for the purposes of this subparagraph; and

(ii) is made by a responsible officer of the certification authority.

(2) Any report or statutory declaration required to be furnished under subsection (1) must be made at the expense of the certification authority.

(3) The Director must publish in the certification authority disclosure record for the certification authority the date of any of the report and statutory declaration and the material information in any of the report and statutory declaration.

(4) Where -

(a) the certification authority has furnished to the Director a report for the purpose of complying with the requirements referred to in section 27(5A)(b) or 43(1)(a); and

(b) the Director considers that had the report been furnished for the purpose of complying with the requirements referred to in subsection (1)(c), it would have satisfied those requirements,

the Director may accept the report, and the report shall, for all purposes, be regarded as a report that is furnished under subsection (1)(c) and that satisfies the requirements referred to in that subsection.

(5) Where -

(a) the certification authority has furnished to the Director a statutory declaration for the purpose of complying with the requirements referred to in section 27(5A)(c) or 43(1)(b); and

(b) the Director considers that had the statutory declaration been furnished for the purpose of complying with the requirements referred to in subsection (1)(d), it would have satisfied those requirements,

the Director may accept the statutory declaration, and the statutory declaration shall, for all purposes, be regarded as a statutory declaration that is furnished under subsection (1)(d) and that satisfies the requirements referred to in that subsection.

(6) A notice under subsection (1) is taken to have been given by the Director to a recognized certification authority if it is -

- (a) sent to the certification authority as an electronic record; or
- (b) sent by post or registered post to the last known address of the certification authority.

(7) If in a particular case it is not reasonably practicable to give a notice under subsection (1) by either of the means specified in subsection (6), the notice is taken to have been given if the Director publishes it in the relevant certification authority disclosure record."

21. Obligation of secrecy

Section 46 is amended -

- (a) in subsection (1), by adding "any information relating to another person as contained in" before "such record";

(b) in subsection (2)(a), by adding "or any other" before "Ordinance".

22. Secretary may amend Schedules

Section 50 is amended by repealing "and 2" and substituting ", 2 and 3".

23. Schedule 3 added

The following is added -

"SCHEDULE 3 [ss. 5A & 50]

SERVICE OF DOCUMENTS

Item	Enactment	Provision
1.	Landlord and Tenant (Consolidation) Ordinance (Cap. 7)	Section 119Y(1)(a) and (b)
2.	Rating Ordinance (Cap. 116)	Section 50(1)
3.	Government Rent (Assessment and Collection) Ordinance (Cap. 515)	Section 45(1)".

Consequential Amendments

Inland Revenue Ordinance

24. Interpretation

Section 2 of the Inland Revenue Ordinance (Cap. 112) is amended -

(a) in subsection (5)(a), by repealing everything after "signature" and substituting "to; or";

(b) by adding -

"(6) For the purposes of subsection (5)(a), a digital signature shall be -

- (a) supported by a recognized certificate;
- (b) generated within the validity of that certificate; and
- (c) used in accordance with the terms of that certificate.

(7) For the purposes of subsection (6)(a), a digital signature is taken to be supported by a recognized certificate if it is taken to be supported by that certificate under section 2(2) of the Electronic Transactions Ordinance (Cap. 553).

(8) In subsection (6)(b), "within the validity of that certificate" (在該證書的有效期內) has the meaning assigned to it by section 6(2) of the Electronic Transactions Ordinance (Cap. 553).".

Securities and Futures (Financial Resources) Rules

25. Licensed corporations to submit returns to Commission

Section 56 of the Securities and Futures (Financial Resources) Rules (L.N. 209 of 2002) is amended -

- (a) in subsection (6)(d)(i), by repealing everything

after "corporation," and substituting -

"and the digital signature shall be -

- (A) supported by a recognized certificate;
- (B) generated within the validity of that certificate; and
- (C) used in accordance with the terms of that certificate; or";

(b) by adding -

"(6A) For the purposes of subsection (6)(d)(i)(A), a digital signature is taken to be supported by a recognized certificate if it is taken to be supported by that certificate under section 2(2) of the Electronic Transactions Ordinance (Cap. 553).";

(c) in subsection (7) -

- (i) in the definition of "digital signature", by adding "section 2(1) of" after "by";
- (ii) by repealing the definition of "recognized certificate" and substituting -

" "recognized certificate" (認可證書)

has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);";

- (iii) by repealing the definition of "recognized certification authority".

Securities and Futures (Miscellaneous) Rules

26. Service of documents on Commission

Section 2 of the Securities and Futures (Miscellaneous) Rules (L.N. 216 of 2002) is amended -

(a) in subsection (3), by repealing everything after "digital signature" and substituting -

", and the digital signature shall be -

- (a) supported by a recognized certificate;
- (b) generated within the validity of that certificate; and
- (c) used in accordance with the terms of that certificate."

(b) by adding -

"(5) For the purposes of subsection (3)(a), a digital signature is taken to be supported by a recognized certificate if it is taken to be supported by that certificate under section 2(2) of the Electronic Transactions Ordinance (Cap. 553).

(6) In subsection (3) -

"digital signature" (數碼簽署) has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"recognized certificate" (認可證書) has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

"within the validity of that certificate" (在該證書的有效期內) has the meaning assigned to it by section 6(2) of the Electronic Transactions Ordinance (Cap. 553).".

Explanatory Memorandum

This Bill contains miscellaneous amendments to the Electronic Transactions Ordinance (Cap. 553) ("the Ordinance").

2. Clause 2 amends section 2 of the Ordinance. In particular -
 - (a) clause 2(a) repeals and replaces the definition of "accept a certificate" as a result of the proposed amendments to the definition of "issue";
 - (b) clause 2(b) amends the definition of "certificate" to clarify that a certificate is signed by a certification authority;
 - (c) clause 2(c) repeals and replaces the definition of "issue" to set out the process of issuing a certificate in different cases;
 - (d) clause 2(d) introduces a number of definitions in section 2(1) of the Ordinance as a result of the proposed amendments to sections 6, 11, 12 and 15 of the Ordinance.

3. Clause 3 introduces the proposed section 5A of the Ordinance to provide for the service through electronic systems of a document in the form of an electronic record for the purposes of the provisions set out in the proposed Schedule 3 to the Ordinance.

4. Clause 4 amends section 6 of the Ordinance to provide for the use of electronic signatures in transactions not involving a government entity, and the use of digital signatures in transactions involving a government entity.

5. Clause 5 amends the heading to Part IV of the Ordinance as a result of the introduction of the proposed section 5A of the Ordinance.

6. Clauses 6 and 7 amend sections 11 and 12 of the Ordinance respectively to transfer certain powers of the Secretary for Commerce, Industry and Technology under the Ordinance to the Permanent Secretary for Commerce, Industry and Technology (Communications and Technology).

7. Clause 8 amends section 15 of the Ordinance to provide that for transactions not involving a government entity, the proposed section 5A of the Ordinance applies only if the person on whom a document is to be served consents to it being served in the form of an electronic record.

8. Clause 9 amends section 17 of the Ordinance to provide clarifications as to the use of electronic signatures in the formation of electronic contracts.

9. Clause 10 amends section 20 of the Ordinance to -

- (a) require a certification authority to furnish a report made by an approved person and a statutory

declaration made by a responsible officer of the certification authority in an application for recognition of the certification authority;

- (b) require that the report and statutory declaration must be made at the expense of the certification authority.

10. Clause 11 amends section 21 of the Ordinance as a result of the proposed amendments to section 20 of the Ordinance.

11. Clause 12 amends section 22 of the Ordinance to provide clarifications as to the application of certain provisions of the Ordinance to an application for renewal of the recognition of a certificate.

12. Clause 13 amends section 25 of the Ordinance as a result of the proposed amendments to section 43 of the Ordinance and the introduction of the proposed section 43A of the Ordinance.

13. Clause 14 amends section 27 of the Ordinance to -

- (a) require a recognized certification authority to furnish a report made by an approved person and a statutory declaration made by a responsible officer of the certification authority in an application for renewal of the recognition of the certification authority;
- (b) require that the report and statutory declaration must be made at the expense of the certification authority;
- (c) require that the Director of Information Technology Services ("the Director") must consider, among

others, the report and statutory declaration in determining the application;

- (d) provide that the Director may accept a report or statutory declaration furnished under the amended section 43 of the Ordinance or the proposed section 43A of the Ordinance and the report or statutory declaration shall be regarded as a report or statutory declaration that is furnished under the amended section 27 of the Ordinance and that satisfies the requirements referred to in that section.

14. Clause 15 amends section 30 of the Ordinance as a result of the proposed amendments to section 27 of the Ordinance.

15. Clause 16 repeals and replaces section 33 of the Ordinance to provide for the Director's power to issue a code of practice.

16. Clause 17 repeals and replaces section 36 of the Ordinance to clarify the meaning of the original references to "subscriber" in that section.

17. Clause 18 amends section 37 of the Ordinance to require a recognized certification authority to use a trustworthy system in relation to the revocation or suspension of recognized certificates.

18. Clause 19 amends section 43 of the Ordinance to -

- (a) require a recognized certification authority to furnish a report made by an approved person and a statutory declaration made by a responsible officer of the certification authority at least once in every 12 months;

- (b) require that the report and statutory declaration must be made at the expense of the certification authority;
- (c) provide that the Director may accept a report or statutory declaration furnished under the amended section 27 of the Ordinance or the proposed section 43A of the Ordinance and the report or statutory declaration shall be regarded as a report or statutory declaration that is furnished under the amended section 43 of the Ordinance and that satisfies the requirements referred to in that section.

19. Clause 20 introduces the proposed section 43A of the Ordinance to -

- (a) empower the Director to require a recognized certification authority to furnish a report made by an approved person and a statutory declaration made by a responsible officer of the certification authority under specified circumstances;
- (b) require that the report and statutory declaration must be made at the expense of the certification authority;
- (c) provide that the Director may accept a report or statutory declaration furnished under the amended section 27 or 43 of the Ordinance and the report or statutory declaration shall be regarded as a report or statutory declaration that is furnished under the proposed section 43A of the Ordinance and that

satisfies the requirements referred to in that section.

20. Clause 21 amends section 46 of the Ordinance to provide clarifications as to the information that must not be disclosed under that section.

21. Clause 22 amends section 50 of the Ordinance to empower the Secretary for Commerce, Industry and Technology to amend the proposed Schedule 3 to the Ordinance.

22. Clause 23 introduces the proposed Schedule 3 to the Ordinance to set out provisions for the purposes of the proposed section 5A of the Ordinance.

23. Clauses 24 to 26 introduce consequential amendments to the Inland Revenue Ordinance (Cap. 112), the Securities and Futures (Financial Resources) Rules (L.N. 209 of 2002) and the Securities and Futures (Miscellaneous) Rules (L.N. 216 of 2002).

**Existing Legal Provisions being Amended by
the Electronic Transactions (Amendment) Bill 2003**

Electronic Transactions Ordinance (Cap. 553)

Section:	2	Interpretation
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- (1) In this Ordinance, unless the context otherwise requires-
- "accept a certificate" (接受證書), in relation to a person to whom a certificate is issued, means that the person while having notice of the contents of the certificate-
- (a) authorizes the publication of the certificate to one or more persons or in a repository;
 - (b) uses the certificate; or
 - (c) otherwise demonstrates the approval of the certificate;
- "addressee" (收訊者), in relation to an electronic record sent by an originator, means the person who is specified by the originator to receive the electronic record but does not include an intermediary;
- "asymmetric cryptosystem" (非對稱密碼系統) means a system capable of generating a secure key pair, consisting of a private key for generating a digital signature and a public key to verify the digital signature;
- "certificate" (證書) means a record which-
- (a) is issued by a certification authority for the purpose of supporting a digital signature which purports to confirm the identity or other significant characteristics of the person who holds a particular key pair;
 - (b) identifies the certification authority issuing it;
 - (c) names or identifies the person to whom it is issued;
 - (d) contains the public key of the person to whom it is issued; and
 - (e) is signed by a responsible officer of the certification authority issuing it;
- "certification authority" (核證機關) means a person who issues a certificate to a person (who may be another certification authority);
- "certification authority disclosure record" (核證機關披露紀錄), in relation to a recognized certification authority, means the record maintained under section 31 for that certification authority;
- "certification practice statement" (核證作業準則) means a statement issued by a certification authority to specify the practices and standards that the certification authority employs in issuing certificates;
- "code of practice" (業務守則) means the code of practice issued under section 33;
- "correspond" (對應), in relation to private or public keys, means to belong to the same key pair;
- "digital signature" (數碼簽署), in relation to an electronic record, means an electronic signature of the signer generated by the transformation of the electronic record using an asymmetric cryptosystem and a hash function such that a person having the initial untransformed electronic record and the signer's public key can determine-
- (a) whether the transformation was generated using the private key that corresponds to the signer's public key; and

- (b) whether the initial electronic record has been altered since the transformation was generated;
- "Director" (署長) means the Director of Information Technology Services;
- "electronic record" (電子紀錄) means a record generated in digital form by an information system, which can be-
- (a) transmitted within an information system or from one information system to another; and
 - (b) stored in an information system or other medium;
- "electronic signature" (電子簽署) means any letters, characters, numbers or other symbols in digital form attached to or logically associated with an electronic record, and executed or adopted for the purpose of authenticating or approving the electronic record;
- "hash function" (雜湊函數) means an algorithm mapping or transforming one sequence of bits into another, generally smaller, set as the hash result, such that-
- (a) a record yields the same hash result every time the algorithm is executed using the same record as input;
 - (b) it is computationally not feasible for a record to be derived or reconstituted from the hash result produced by the algorithm; and
 - (c) it is computationally not feasible that 2 records can be found to produce the same hash result using the algorithm;
- "information" (資訊) includes data, text, images, sound codes, computer programmes, software and databases;
- "information system" (資訊系統) means a system which-
- (a) processes information;
 - (b) records information;
 - (c) can be used to cause information to be recorded, stored or otherwise processed in other information systems (wherever situated); and
 - (d) can be used to retrieve information, whether the information is recorded or stored in the system itself or in other information systems (wherever situated);
- "intermediary" (中介人), in relation to a particular electronic record, means a person who on behalf of a person, sends, receives or stores that electronic record or provides other incidental services with respect to that electronic record;
- "issue" (發出), in relation to a certificate, means the act of a certification authority of creating a certificate and notifying its contents to the person named or identified in that certificate as the person to whom it is issued;
- "key pair" (配對密碼匙), in an asymmetric cryptosystem, means a private key and its mathematically related public key, where the public key can verify a digital signature that the private key generates;
- "originator" (發訊者), in relation to an electronic record, means a person, by whom, or on whose behalf, the electronic record is sent or generated but does not include an intermediary;
- "Postmaster General" (郵政署署長) means the Postmaster General within the meaning of the Post Office Ordinance (Cap 98);
- "private key" (私人密碼匙) means the key of a key pair used to generate a digital signature;
- "public key" (公開密碼匙) means the key of a key pair used to verify a digital signature;
- "recognized certificate" (認可證書) means-
- (a) a certificate recognized under section 22;
 - (b) a certificate of a type, class or description of certificate recognized under section 22; or
 - (c) a certificate designated as a recognized certificate issued by the certification authority referred to in section 34;
- "recognized certification authority" (認可核證機關) means a certification authority recognized under section 21 or the certification authority referred to in section 34;

- "record" (紀錄) means information that is inscribed on, stored in or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form;
- "reliance limit" (倚據限額) means the monetary limit specified for reliance on a recognized certificate;
- "repository" (儲存庫) means an information system for storing and retrieving certificates and other information relevant to certificates;
- "responsible officer" (負責人員), in relation to a certification authority, means a person occupying a position of responsibility in relation to the activities of the certification authority relevant to this Ordinance;
- "rule of law" (法律規則) means-
- (a) an Ordinance;
 - (b) a rule of common law or a rule of equity; or
 - (c) customary law;
- "Secretary" (局長) means the Secretary for Commerce, Industry and Technology; (Amended L.N. 106 of 2002)
- "sign" and "signature" (簽、簽署) include any symbol executed or adopted, or any methodology or procedure employed or adopted, by a person with the intention of authenticating or approving a record;
- "subscriber" (登記人) means a person (who may be a certification authority) who-
- (a) is named or identified in a certificate as the person to whom the certificate is issued;
 - (b) has accepted that certificate; and
 - (c) holds a private key which corresponds to a public key listed in that certificate;
- "trustworthy system" (穩當系統) means computer hardware, software and procedures that-
- (a) are reasonably secure from intrusion and misuse;
 - (b) are at a reasonable level in respect of availability, reliability and ensuring a correct mode of operations for a reasonable period of time;
 - (c) are reasonably suitable for performing their intended function; and
 - (d) adhere to generally accepted security principles;
- "verify a digital signature" (核實數碼簽署), in relation to a given digital signature, electronic record and public key, means to determine that-
- (a) the digital signature was generated using the private key corresponding to the public key listed in a certificate; and
 - (b) the electronic record has not been altered since its digital signature was generated, and any reference to a digital signature being verifiable is to be construed accordingly.
- (2) For the purposes of this Ordinance, a digital signature is taken to be supported by a certificate if the digital signature is verifiable with reference to the public key listed in a certificate the subscriber of which is the signer.

Section:	6	Digital signatures
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(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.

Section:	11	Secretary may make orders excluding application of section 5, 6, 7 or 8
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PART IV

LIMITATIONS ON OPERATION OF SECTIONS 5, 6, 7 AND 8

(1) The Secretary may by order published in the Gazette exclude an Ordinance or a particular requirement or permission in an Ordinance or a class or description of requirements or permissions in an Ordinance, to which this Ordinance would otherwise apply, from the application of section 5, 6, 7 or 8.

(2) The Secretary may, in relation to an Ordinance to which this Ordinance applies, specify by notice published in the Gazette-

- (a) the manner and format in which information in the form of an electronic record is to be given, presented or retained for the purposes of that Ordinance or a particular requirement or permission in that Ordinance or a class or description of requirements or permissions in that Ordinance; and
- (b) the procedure and criteria for verification of the receipt of that information and for ensuring the integrity and confidentiality of the information.

(3) The Secretary may specify different requirements under subsection (2)(a) or (b) in relation to persons or cases of different classes or descriptions.

(4) An order under subsection (1) is subsidiary legislation.

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

(6) In this section, "manner and format" (方式及規格) includes requirements as to software, communication, data storage, how the electronic record is to be generated, sent, stored or received and where a signature is required, the type of signature and how the signature is to be affixed to the electronic record.

Section:	12	Electronic record to comply with specified requirements to satisfy sections 5, 6, 7 and 8
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If the Secretary has specified any requirement under section 11(2) in relation to an Ordinance, the information given, presented or retained or the signature made, as the case may require, for the purpose of that Ordinance does not satisfy that Ordinance unless it complies with the specified requirements.

Section:	15	When sections 5, 6 and 7 apply to transactions between persons who are not government entities
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(1) If an Ordinance requires information to be given by a person to another and neither person is or is acting on behalf of a government entity, section 5(1) applies only if the person to whom the information is to be given consents to it being given in the form of an electronic record.

(2) If an Ordinance permits information to be given by a person to another and neither person is or is acting on behalf of a government entity, section 5(2) applies only if the person to whom the information is to be given consents to it being given in the form of an electronic record.

(3) If an Ordinance requires the signature of a person ("the signer") and neither the signer nor the person to whom the signature is to be given ("the second mentioned person") is or is acting on behalf of a government entity, section 6 applies only if the second mentioned person consents to the signer's digital signature being given.

(4) If an Ordinance requires information to be presented in its original form and neither the person presenting it nor the person to whom it is to be presented ("the second mentioned person") is or is acting on behalf of a government entity, section 7(1) applies only if the second mentioned person consents to it being presented in the form of an electronic record.

(5) In this section-
"consent" (同意) includes consent that can be reasonably inferred from the conduct of the person concerned;

"government entity" (政府單位) means a public officer or a public body.

Section:	17	Formation and validity of electronic contracts
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Remarks:

1. This section has come into operation on 7 January 2000 other than in relation to the matters referred to in Schedule 1 of this Ordinance.
2. This section has come into operation on 7 April 2000 in relation to the matters referred to in Schedule 1 of this Ordinance.

PART V

ELECTRONIC CONTRACTS

(1) For the avoidance of doubt, it is declared that in the context of the formation of contracts, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be in whole or in part expressed by means of electronic records.

(2) Where an electronic record is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that an electronic record was used for that purpose.

(3) For the avoidance of doubt, it is stated that this section does not affect any rule of common law to the effect that the offeror may prescribe the method of communicating acceptance.

Section:	20	Certification authority may apply to Director for recognition
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PART VII

**RECOGNITION OF CERTIFICATION AUTHORITIES AND
CERTIFICATES BY DIRECTOR**

(1) A certification authority may apply to the Director to become a recognized certification authority for the purposes of this Ordinance.

(2) Subject to subsection (4) and section 21(3), an application under subsection (1) must be made in the prescribed manner and in a form specified by the Director and the applicant must pay the prescribed fee in respect of the application.

(3) An applicant must furnish to the Director-

- (a) the relevant particulars and documents specified under section 30; and
- (b) a report which-

- (i) contains an assessment as to whether the applicant is capable of complying with the provisions of this Ordinance applicable to a recognized certification authority and the code of practice; and
- (ii) is prepared by a person acceptable to the Director as being qualified to give such a report.

(4) The Director may waive-

- (a) the requirements as to manner and form of making the application in subsection (2); or
- (b) the requirement of a report under subsection (3),

in relation to a certification authority, in the circumstances specified in subsection (5).

(5) The Director may waive the requirements referred to in subsection (4) only if-

- (a) the applicant is a certification authority with a status in a place outside Hong Kong comparable to that of a recognized certification authority ("comparable status"); and
- (b) the competent authority of that place accords to a recognized certification authority a comparable status on the basis of it being a recognized certification authority.

Section:	21	Director may on application recognize certification authorities
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- (1) The Director may-
 - (a) recognize an applicant under section 20 as a recognized certification authority if the Director is satisfied that the applicant is suitable for such recognition; or
 - (b) refuse the application for recognition.
- (2) The Director must give reasons in writing to the applicant for refusing an application under subsection (1)(b).
- (3) The Director may, in recognizing a certification authority referred to in section 20(4), waive the whole or part of the prescribed fee as the Director may decide in relation to a particular case.
- (4) In determining whether an applicant is suitable for recognition under subsection (1), the Director shall, in addition to any other matter the Director considers relevant, take into account the following-
 - (a) whether the applicant has the appropriate financial status for operating as a recognized certification authority in accordance with this Ordinance and the code of practice;
 - (b) the arrangements put in place or proposed to be put in place by the applicant to cover any liability that may arise from its activities relevant for the purposes of this Ordinance;
 - (c) the system, procedure, security arrangements and standards used or proposed to be used by the applicant to issue certificates to subscribers;
 - (d) the report referred to in section 20(3)(b) (if applicable);
 - (e) whether the applicant and the responsible officers are fit and proper persons; and
 - (f) the reliance limits set or proposed to be set by the applicant for its certificates.
- (5) In determining whether a person referred to in subsection (4)(e) is a fit and proper person, the Director shall, in addition to any other matter the Director considers relevant, have regard to the following-
 - (a) the fact that the person has a conviction in Hong Kong or elsewhere for an offence for which it was necessary to find that the person had acted fraudulently, corruptly or dishonestly;
 - (b) the fact that the person has been convicted of an offence against this Ordinance;
 - (c) if the person is an individual, the fact that the person is an undischarged bankrupt or has entered into a composition or a scheme of arrangement or a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap 6) within the 5 years preceding the date of the application; and
 - (d) if the person is a body corporate, the fact that the person is in liquidation, is the subject of a winding-up order or there is a receiver appointed in relation to it or it has entered into a composition or a scheme of arrangement or a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap 6) within the 5 years preceding the date of the application.
- (6) In recognizing a certification authority under subsection (1), the Director may-
 - (a) attach conditions to the recognition; or
 - (b) specify a period of validity for the recognition.

Section:	22	Director may recognize certificates
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- (1) The Director may recognize certificates issued by a recognized certification authority as recognized certificates, upon application by that authority.
- (2) An applicant under subsection (1) must make the application in the prescribed manner and in a form specified by the Director and furnish to the Director the relevant particulars and documents specified under section 30.
- (3) A recognition under subsection (1) may relate to-
- (a) all certificates issued by the recognized certification authority;
 - (b) certificates of a type, class or description; or
 - (c) particular certificates.
- (4) An applicant must pay the prescribed fee (if any) in respect of an application under subsection (1) unless the Director waives it in whole or in part.
- (5) In recognizing certificates under this section, the Director shall in addition to any other matter the Director considers relevant take into account the following-
- (a) whether the certificates are issued in accordance with the certification practice statement;
 - (b) whether the certificates are issued in accordance with the code of practice;
 - (c) the reliance limit set or proposed to be set for that type, class or description or the particular certificate, as the case may require; and
 - (d) the arrangements put in place or proposed to be put in place by the certification authority to cover any liability that may arise from the issue of that type, class or description or the particular certificate, as the case may be.
- (6) The Director may refuse an application under subsection (1).
- (7) The Director must give reasons in writing to the applicant for refusing an application under subsection (6).
- (8) The Director may specify a period of validity for a recognition under this section.
- (9) The Director may upon application renew a recognition under this section.
- (10) Subsections (2), (3), (4), (5), (6), (7) and (8) apply to a renewal under subsection (9), subject to necessary modifications.

Section:	25	Matters Director may take into account in revoking or suspending a recognition
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- The Director may, in revoking or suspending a recognition under section 23 or 24, in addition to any other matter that the Director considers relevant, take into account the following-
- (a) any matter set out in section 21(4);
 - (b) whether the certification authority has failed-
 - (i) to operate in accordance with the certification practice statement;
 - (ii) to comply with the code of practice;
 - (iii) to use a trustworthy system; or
 - (iv) to comply with any provision of this Ordinance; and
 - (c) the relevant report furnished under section 43.

Section:	27	Director may renew recognition of certification authority
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(1) A certification authority recognized under section 21 may apply to the Director for renewal of a recognition.

(2) An application for renewal must be made at least 30 days before but not earlier than 60 days before the expiry of the period of validity of the recognition.

(3) An application for renewal must be sent to the Director as an electronic record or delivered by hand to the Director or left at the office of the Director during the ordinary business hours of that office.

(4) Subject to subsections (2), (3) and (6), an application for renewal is to be made in the prescribed manner and in a form specified by the Director and if the Director so requires, the applicant must furnish to the Director the relevant particulars and documents specified under section 30.

(5) Subject to subsection (6), an applicant must pay the prescribed fee in respect of an application for renewal.

(6) The Director may, in the circumstances specified in section 20(5), waive the requirements in subsection (4) or the whole or part of the prescribed fee as the Director may decide in relation to a particular case.

(7) Section 21(4) and (6) applies to a renewal of a recognition subject to necessary modifications.

Section:	30	Director to specify particulars and documents by notice in the Gazette
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(1) The Director must specify by notice published in the Gazette any particulars and documents to be furnished under sections 20(3)(a), 22(2) and (10) and 27(4).

(2) A notice under subsection (1) is not subsidiary legislation.

Section:	33	Director may issue code of practice
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The Director may issue a code of practice specifying standards and procedures for carrying out the functions of recognized certification authorities.

Section:	36	Publication of issued and accepted certificates
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PART X

GENERAL PROVISIONS AS TO RECOGNIZED
CERTIFICATION AUTHORITIES

- (1) Where a subscriber accepts a recognized certificate issued by a recognized certification authority, the certification authority must publish the certificate in a repository.
- (2) If the subscriber does not accept the recognized certificate, the recognized certification authority must not publish it.

Section:	43	Recognized certification authority to furnish report on compliance with Ordinance and code of practice
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- (1) At least once in every 12 months, a recognized certification authority must furnish to the Director a report containing an assessment as to whether the recognized certification authority has complied with the provisions of this Ordinance applicable to a recognized certification authority and the code of practice during the report period.
- (2) A report under subsection (1) must be prepared, at the expense of the certification authority, by a person approved by the Director as being qualified to make such a report.
- (3) The Director must publish in the certification authority disclosure record for the certification authority the date of the report and the material information in the report.
- (4) In subsection (1) "report period" (所涵蓋的期間), in relation to a report ("current report"), means the period beginning on-
 - (a) the date on which recognition is granted under section 21 or section 34 comes into operation; or
 - (b) the day following the last day of the period for which the last report under that subsection was furnished,
 as the case may require, and ending on the last day of the period for which the current report is furnished.

Section:	46	Obligation of secrecy
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PART XI

PROVISIONS AS TO SECRECY, DISCLOSURE AND OFFENCES

- (1) Subject to subsection (2), a person who has access to any record, book, register, correspondence, information, document or other material in the course of performing a function under or for the purposes of this Ordinance shall not disclose or permit or suffer to be disclosed such record, book, register, correspondence, information, document or other material to any other person.
- (2) Subsection (1) does not apply to disclosure-
 - (a) which is necessary for performing or assisting in the performance of a function

- under or for the purposes of this Ordinance;
- (b) for the purpose of any criminal proceedings in Hong Kong;
 - (c) for the purpose of complying with a requirement made under a rule of law with a view to instituting a criminal proceeding in Hong Kong; or
 - (d) under the direction or order of a magistrate or court.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 6 and in the case of an individual also to imprisonment for 6 months.

Section:	50	Secretary may amend Schedules
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The Secretary may by order published in the Gazette amend Schedules 1 and 2.

Inland Revenue Ordinance (Cap. 112)

Section:	2	Interpretation
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- (1) In this Ordinance, unless the context otherwise requires-
- "active partner" (積極參與的合夥人), in relation to a partnership, means a partner who takes an active part in the control, management, or conduct of the trade or business of such partnership;
- "agent" (代理人), in relation to a non-resident person or to a partnership in which any partner is a non-resident person, includes-
- (a) the agent, attorney, factor, receiver, or manager in Hong Kong of such person or partnership, and
 - (b) any person in Hong Kong through whom such person or partnership is in receipt of any profits or income arising in or derived from Hong Kong;
- "approved charitable donation" (認可慈善捐款) means a donation of money to any charitable institution or trust of a public character which is exempt from tax under section 88 or to the Government, for charitable purposes; (Replaced 13 of 1971 s. 2. Amended 76 of 1975 s. 2; 74 of 1981 s. 4; 30 of 1990 s. 2; 78 of 1999 s. 7)
- "arrangement" (安排) includes-
- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable or intended to be enforceable, by legal proceedings; and
 - (b) any scheme, plan, proposal, action or course of action or course of conduct; (Added 32 of 1998 s. 3)
- "assessable income" (應評稅入息) means the assessable income of a person in any year of assessment as ascertained in accordance with sections 11B, 11C and 11D; and "net assessable income" (應評稅入息實額) means assessable income as adjusted in accordance with section 12; (Replaced 71 of 1983 s. 2)
- "assessable profits" (應評稅利潤) means the profits in respect of which a person is chargeable to tax for the basis period for any year of assessment, calculated in accordance with the provisions of Part IV; (Replaced 28 of 1964 s. 2)
- "assessor" (評稅主任) means an assessor appointed under this Ordinance;
- "assistant commissioner" (助理局長) means an assistant commissioner of Inland Revenue appointed under this Ordinance;
- "authorized representative" (獲授權代表) means a person authorized in writing by any other person to act on his behalf for the purposes of this Ordinance; (Replaced 7 of 1975 s. 2)
- "basis period" (評稅基期) for any year of assessment is the period on the income or the profits of which tax for that year ultimately falls to be computed; (Amended 36 of 1955 s. 3)
- "bill of sale" (賣據) means a bill of sale registrable under the Bills of Sale Ordinance (Cap 20);
- "body of persons" (團體) means any body politic, corporate or collegiate and any company, fraternity, fellowship and society of persons whether corporate or not corporate; (Added 36 of 1955 s. 3)
- "business" (業務) includes agricultural undertaking, poultry and pig rearing and the letting or sub-letting by any corporation to any person of any premises or portion thereof, and the sub-letting by any other person of any premises or portion of any premises held by him under a lease or tenancy other than from the Government; (Replaced 35 of 1965 s. 2. Amended 19 of 1996 s. 15)

- "certificate of deposit" (存款證) means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognizes an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable, and, in the case of any such document which is a prescribed instrument by virtue of paragraph (a) of the definition of "prescribed instrument" (訂明的票據) in section 137B of the Banking Ordinance (Cap 155), includes any right or interest referred to in paragraph (b) of that definition in respect of such document; (Added 30 of 1981 s. 2. Amended 94 of 1993 s. 36)
- "Commissioner" (局長) means the Commissioner of Inland Revenue appointed under this Ordinance; (Replaced 26 of 1969 s. 3)
- "conditional sale agreement" (有條件售賣協議) means an agreement for the sale of goods under which the purchase price or part of the purchase price is payable by instalments, and the property in the goods remains in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled; (Added 32 of 1998 s. 3)
- "corporation" (法團) means any company which is either incorporated or registered under any enactment or charter in force in Hong Kong or elsewhere but does not include a co-operative society or a trade union; (Amended 2 of 1971 s. 2)
- "debenture" (債權證) means a debenture as defined in section 2(1) of the Companies Ordinance (Cap 32);
- "deposit" (存款) means a deposit as defined in section 2(1) of the Banking Ordinance (Cap 155); (Added 29 of 1982 s. 2. Amended 27 of 1986 s. 137)
- "deputy commissioner" (副局長) means a deputy commissioner of Inland Revenue appointed under this Ordinance; (Amended 48 of 1995 s. 2)
- "digital signature" (數碼簽署) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap 553); (Added 5 of 2003 s. 2)
- "electronic record" (電子紀錄) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap 553); (Added 5 of 2003 s. 2)
- "executor" (遺囑執行人) means any executor, administrator, or other person administering the estate of a deceased person, and includes a trustee acting under a trust created by the last will of the author of the trust;
- "financial institution" (財務機構), means-
- (a) an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap 155);
 - (b) any associated corporation of such an authorized institution which, being exempt by virtue of section 3(2)(a) or (b) or (c) of the Banking Ordinance (Cap 155), would have been liable to be authorized as a deposit-taking company or restricted licence bank under that Ordinance had it not been so exempt; (Replaced 27 of 1986 s. 137. Amended 3 of 1990 s. 55; 49 of 1995 s. 53)
- "grandparent or grandparent of his or her spouse" (該人的或其配偶的祖父母或外祖父母), in relation to any person, means-
- (a) a natural grandfather or grandmother of the person or his or her spouse;
 - (b) an adoptive grandparent of the person or his or her spouse (whether an adoptive parent of a natural parent, adoptive parent or step parent of the person or his or her spouse, or a natural parent of an adoptive parent of the person or his or her spouse);
 - (c) a step grandparent of the person or his or her spouse (whether a step parent of a natural parent, adoptive parent or step parent of the person or his or her spouse, or a natural parent of a step parent of the person or his or her spouse); or
 - (d) in the case of a deceased spouse, a person who would have been the grandparent of the person's spouse by reason of any of the provisions of paragraphs (a) to (c) if the

- spouse had not died; (Added 31 of 1998 s. 3)
- "hire-purchase agreement" (租購協議) means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee; (Added 32 of 1998 s. 3)
- "Hong Kong currency" (港幣) means money which is legal tender in Hong Kong; (Added 29 of 1982 s. 2)
- "husband" (丈夫) means a married man whose marriage is a marriage within the meaning of this section; (Added 43 of 1989 s. 2)
- "incapacitated person" (無行為能力的人) means any minor, lunatic, idiot, or person of unsound mind;
- "inspector" (稅務督察) means an inspector appointed under this Ordinance; (Added 36 of 1955 s. 3)
- "lease" (租約), in relation to any machinery or plant, includes-
- (a) any arrangement under which a right to use the machinery or plant is granted by the owner of the machinery or plant to another person; and
 - (b) any arrangement under which a right to use the machinery or plant, being a right derived directly or indirectly from a right referred to in paragraph (a), is granted by a person to another person,
- but does not include a hire-purchase agreement or a conditional sale agreement unless, in the opinion of the Commissioner, the right under the agreement to purchase or obtain the property in the goods would reasonably be expected not to be exercised; (Added 32 of 1998 s. 3)
- "limited partnership" (有限責任合夥) has the same meaning as in section 3 of the Limited Partnerships Ordinance (Cap 37); (Added 47 of 1992 s. 2)
- "mandatory contributions" (強制性供款), in relation to a mandatory provident fund scheme, means mandatory contributions paid to the scheme in accordance with the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 4 of 1998 s. 6)
- "mandatory provident fund scheme" (強制性公積金計劃) means a provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 4 of 1998 s. 6)
- "marriage" (婚姻) means-
- (a) any marriage recognized by the law of Hong Kong; or
 - (b) any marriage, whether or not so recognized, entered into outside Hong Kong according to the law of the place where it was entered into and between persons having the capacity to do so,
- but shall not, in the case of a marriage which is both potentially and actually polygamous, include marriage between a man and any wife other than the principal wife, and "married" (結婚) shall be construed accordingly; (Added 43 of 1989 s. 2)
- "mortgage" (按揭) means a security by way of mortgage or equitable mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money thereafter to be lent, advanced or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be, and includes-
- (a) conditional surrender by way of mortgage, or further charge, of or affecting any property whatsoever; and
 - (b) any conveyance of any property whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise; and
 - (c) any instrument for defeating or making redeemable, or explaining or qualifying any conveyance, transfer or disposition of any property whatsoever, apparently absolute, but intended only as a security; and
 - (d) any instrument relating to the deposit of any title deeds or instruments constituting

- or being evidence of the title to any property whatsoever or creating a charge on any property whatsoever; and
- (e) any mortgage by an equitable owner of his equitable rights; and
- (f) any warrant of attorney to enter up judgment; (Replaced 79 of 1979 s. 2) [cf. 1891 c. 39 s. 86 U.K.]
- "net chargeable income" (應課稅入息實額) means net chargeable income calculated in accordance with section 12B; (Added 71 of 1983 s. 2)
- "occupational retirement scheme" (職業退休計劃) has the meaning assigned to it by section 2(1) of the Occupational Retirement Schemes Ordinance (Cap 426); (Added 76 of 1993 s. 2)
- "owner" (擁有人) in respect of land or buildings or land and buildings, includes a person holding directly from the Government, a beneficial owner, a tenant for life, a mortgagor, a mortgagee in possession, a person with adverse title to land receiving rent from buildings or other structures erected on that land, a person who is making payments to a co-operative society registered under the Co-operative Societies Ordinance (Cap 33) for the purpose of the purchase thereof, and a person who holds land or buildings or land and buildings subject to a ground rent or other annual charge; and includes an executor of the estate of an owner; (Added 26 of 1969 s. 3. Amended 8 of 1983 s. 2; 52 of 1993 s. 2)
- "parent or parent of his or her spouse" (該人的或其配偶的父或母), in relation to any person, means-
- (a) a parent of whose marriage the person or his or her spouse is the child;
 - (b) the natural father or mother of the person or his or her spouse;
 - (c) a parent by whom the person or his or her spouse was adopted;
 - (d) a step parent of the person or his or her spouse; or
 - (e) in the case of a deceased spouse, a person who would have been the parent of the person's spouse by reason of any of the provisions of paragraphs (a) to (d) if the spouse had not died; (Added 31 of 1998 s. 3)
- "password" (通行密碼) means any combination of letters, characters, numbers or other symbols selected by a person and approved by the Commissioner for use in systems designated by the Commissioner for the purpose of authenticating the person's identification in communicating with the Commissioner in relation to a return required to be furnished under this Ordinance; (Added 5 of 2003 s. 2)
- "person" (人、人士) includes a corporation, partnership, trustee, whether incorporated or unincorporated, or body of persons; (Amended 2 of 1971 s. 2; 30 of 1981 s. 2)
- "precedent partner" (首合夥人) means the partner who, of the active partners resident in Hong Kong-
- (a) is first named in the agreement of partnership; or
 - (b) if there is no agreement, is specified by name or initials singly or with precedence to the other partners in the usual name of the partnership; or
 - (c) is first named in any statutory statement of the names of the partners;
- "profits arising in or derived from Hong Kong" (於香港產生或得自香港的利潤) for the purposes of Part IV shall, without in any way limiting the meaning of the term, include all profits from business transacted in Hong Kong, whether directly or through an agent;
- "receiver" (接管人) includes any receiver or liquidator, and any assignee, trustee, or other person having the possession or control of the property of any person by reason of insolvency or bankruptcy;
- "recognized certificate" (認可證書) has the same meaning as in section 2(1) of the Electronic Transactions Ordinance (Cap 553); (Added 5 of 2003 s. 2)
- "recognized occupational retirement scheme" (認可職業退休計劃) means an occupational retirement scheme-
- (a) which, prior to the commencement* of section 2 of the Inland Revenue (Amendment) (No. 5) Ordinance 1993 (76 of 1993), was a retirement scheme approved by the Commissioner under section 87A where such approval has not

- subsequently been withdrawn;
- (b) registered for the time being under section 18 of the Occupational Retirement Schemes Ordinance (Cap 426);
- (c) in respect of which an exemption certificate has been issued under section 7(1) of the Occupational Retirement Schemes Ordinance (Cap 426) and has not been withdrawn;
- (d) which is operated by an employer who is-
 - (i) the government of a country or territory outside Hong Kong; or
 - (ii) any agency or undertaking of or by such a government which is not operated for the purpose of gain; or (Amended 19 of 1996 s. 3)
- (e) contained in or otherwise established by an Ordinance other than the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 76 of 1993 s. 2. Amended 4 of 1998 s. 6)

"recognized retirement scheme" (認可退休計劃) means-

- (a) a recognized occupational retirement scheme; or
- (b) a mandatory provident fund scheme; (Added 31 of 1998 s. 3)

"return" (報稅表) includes any return furnished under section 51AA, irrespective of the manner in which that return is furnished; (Added 5 of 2003 s. 2)

"river trade limits" (內河航限) has the same meaning as in the Merchant Shipping Ordinance (Cap 281); (Added 47 of 1992 s. 2)

"specified form" (指明的格式) means a form specified under section 86; (Added 43 of 1989 s. 2. Amended 5 of 2003 s. 2)

"spouse" (配偶) means a husband or wife; (Added 43 of 1989 s. 2)

"standard rate" (標準稅率) means the rate specified in Schedule 1; (Added 30 of 1950 Schedule)

"tax" (稅、稅款、稅項) except for the purposes of Parts XII and XIII, means any tax imposed by this Ordinance (including provisional salaries tax charged under Part XA, provisional profits tax charged under Part XB and provisional property tax charged under Part XC) other than additional tax, but for the purposes of Parts XII and XIII "tax" (稅、稅款、稅項) includes additional tax; (Replaced 26 of 1969 s. 3. Amended 8 of 1973 s. 2; 7 of 1975 s. 2; 8 of 1983 s. 2)

"telefiling system" (電話報稅系統) means a system that enables a person to furnish to the Commissioner certain returns or information by using a telephone; (Added 5 of 2003 s. 2)

"trade" (行業、生意) includes every trade and manufacture, and every adventure and concern in the nature of trade;

"trustee" (受託人) includes any trustee, guardian, curator, manager, or other person having the direction, control, or management of any property on behalf of any person, but does not include an executor;

"voluntary contributions" (自願性供款), in relation to a mandatory provident fund scheme, means voluntary contributions paid to the scheme in accordance with section 11 of the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 4 of 1998 s. 6)

"wife" (妻子) means a married woman whose marriage is a marriage within the meaning of this section; (Replaced 43 of 1989 s. 2)

"year of assessment" (課稅年度) means the period of 12 months commencing on 1 April in any year; (Replaced 30 of 1950 Schedule)

"year preceding a year of assessment" (任何課稅年度的上一年) means the period of 12 months ending on 31 March immediately prior to such year of assessment.

(Amended 36 of 1955 s. 3; 9 of 1958 s. 2; 26 of 1969 s. 3; 7 of 1986 s. 12; 76 of 1993 s. 2; 12 of 1999 s. 3)

(2) For the purposes of the definition of "financial institution" (財務機構) in subsection (1)-

"associated corporation" (相聯法團), in relation to an authorized institution, means-

- (a) a corporation over which the institution has control;
 - (b) a corporation which has control over the institution; or
 - (c) a corporation which is under the control of the same person as is the institution;
- (Replaced 49 of 1995 s. 53)

"control" (控制), in relation to a corporation, means the power of a person to secure-

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation; or
- (b) by virtue of any powers conferred by the articles of association or other document regulating that or any other corporation,

that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person.

(Added 73 of 1978 s. 2)

(2A) For the purposes of the definition of "recognized occupational retirement scheme" (認可職業退休計劃) in subsection (1)-

- (a) a scheme which is registered for the time being under section 18 of the Occupational Retirement Schemes Ordinance (Cap 426) shall upon registration be regarded as a recognized occupational retirement scheme as from-
 - (i) the date on which the application for such registration was made; or
 - (ii) the date on which the terms of the scheme came into effect, whichever is the earlier; and
- (b) a scheme in respect of which an exemption certificate has been issued under section 7(1) of the Occupational Retirement Schemes Ordinance (Cap 426) and has not been withdrawn shall upon the issue of the certificate be regarded as a recognized occupational retirement scheme as from-
 - (i) the date on which the application for the certificate was made; or
 - (ii) the date on which the terms of the scheme came into effect, whichever is the earlier;

Provided that if such date is earlier than the first commencement date of the Occupational Retirement Schemes Ordinance (Cap 426), the scheme shall be regarded as a recognized occupational retirement scheme as from such commencement date. (Added 76 of 1993 s. 2)

(3) For the purposes of this Ordinance a husband and wife shall be deemed to be living apart when they are living apart-

- (a) under a decree or order of a competent court in or outside Hong Kong;
- (b) under a duly executed deed of separation or any instrument of similar effect; or
- (c) in such circumstances that the Commissioner is of the opinion the separation is likely to be permanent. (Added 43 of 1989 s. 2)

(4) Whether or not a person who is or was formerly a member of a mandatory provident fund scheme has permanently departed from Hong Kong is, for the purposes of this Ordinance, to be determined by reference to regulations in force under the Mandatory Provident Fund Schemes Ordinance (Cap 485). (Added 4 of 1998 s. 6)

(5) In this Ordinance, a reference to the act of signing a return required to be furnished under this Ordinance includes a reference to-

- (a) the affixing of a digital signature (supported by a recognized certificate and generated within a period during which the certificate is valid) to; or
- (b) the inclusion of a password with,

the return for the purpose of authenticating or approving it. (Added 5 of 2003 s. 2)

* **Commencement date: 19 November 1993.**

Securities and Futures (Financial Resources) Rules (L.N. 209 of 2002)

Section:	56	Licensed corporations to submit returns to Commission
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(1) Subject to subsection (4), a licensed corporation licensed for one or more of the following-

- (a) Type 1 regulated activity;
- (b) Type 2 regulated activity;
- (c) Type 3 regulated activity;
- (d) Type 4 regulated activity, and it is not subject to the specified licensing condition;
- (e) Type 5 regulated activity, and it is not subject to the specified licensing condition;
- (f) Type 6 regulated activity, and it is not subject to the specified licensing condition;
- (g) Type 7 regulated activity;
- (h) Type 8 regulated activity;
- (i) Type 9 regulated activity, and it is not subject to the specified licensing condition,

shall, in respect of each month at the end of which it remains licensed, submit to the Commission in the manner specified in subsections (5) and (6)(d), (e) or (f) (as the case may be), no later than 3 weeks after the end of the month concerned, a return, in the form specified by the Commission under section 402 of the Ordinance, which includes-

- (j) its liquid capital computation, as at the end of the month;
- (k) its required liquid capital computation, as at the end of the month;
- (l) a summary of bank loans, advances, credit facilities and other financial accommodation available to it, as at the end of the month;
- (m) an analysis of its margin clients, as at the end of the month;
- (n) an analysis of collateral received from its margin clients, as at the end of the month;
- (o) an analysis of its rolling balance cash clients, as at the end of the month;
- (p) an analysis of its profit and loss account;
- (q) an analysis of its client assets, as at the end of the month; and
- (r) where it is licensed for Type 3 regulated activity, an analysis of its foreign currency positions, as at the end of the month.

(2) Subject to subsection (4), a licensed corporation to which subsection (1) applies shall, in respect of each period of 3 months at the end of which it remains licensed, being such period in a year ending at the end of the month of March, June, September or December, respectively, submit to the Commission in the manner specified in subsections (5) and (6)(d), (e) or (f) (as the case may be), no later than 3 weeks after the end of the period concerned, a return, in the form specified by the Commission under section 402 of the Ordinance, which includes-

- (a) an analysis of its clientele, as at the end of the 3 month period;
- (b) an analysis of its proprietary derivative positions, as at the end of the 3 month period;
- (c) where it is licensed for Type 3 regulated activity, an analysis of its recognized counterparties, as at the end of the 3 month period; and
- (d) where it is licensed for Type 9 regulated activity, an analysis of the assets under its management, as at the end of the 3 month period.

(3) Subject to subsection (4), a licensed corporation which is licensed solely for one or more of the following-

- (a) Type 4 regulated activity;
- (b) Type 5 regulated activity;
- (c) Type 6 regulated activity;
- (d) Type 9 regulated activity,

and subject to the specified licensing condition, shall, in respect of each period of 6 months at the

end of which it remains licensed, being such period in a year ending at the end of the month of June or December, respectively, submit to the Commission in the manner specified in subsections (5) and (6)(d), (e) or (f) (as the case may be), no later than 3 weeks after the end of the period concerned, a return, in the form specified by the Commission under section 402 of the Ordinance, which includes-

- (e) its liquid capital computation, as at the end of the 6 month period;
 - (f) its required liquid capital computation, as at the end of the 6 month period;
 - (g) an analysis of its profit and loss account;
 - (h) an analysis of its clientele, as at the end of the 6 month period; and
 - (i) where it is licensed for Type 9 regulated activity, an analysis of the assets under its management, as at the end of the 6 month period.
- (4) A licensed corporation may elect to submit the return required under-
- (a) subsection (1), in respect of periods of not less than 28 days but not more than 35 days, each ending not more than 7 days before or after the end of a month;
 - (b) subsection (2), in respect of periods of 3 months each ending not more than 7 days before or after the end of March, June, September or December in a year;
 - (c) subsection (3), in respect of periods of 6 months each ending not more than 7 days before or after the end of June or December in a year,

determined by it on a basis according to which the ending date of each period so determined is predictable, and where it so elects and submits the return concerned, it shall be deemed to have submitted the return concerned in respect of the period required under subsection (1), (2) or (3) (as the case may be).

(5) A return referred to in this section or section 55(2)(c) or (d) shall be signed in the manner prescribed in subsection (6) by a responsible officer or another officer of the licensed corporation approved by the Commission under section 58(5)(e) for the purposes of this section.

(6) A licensed corporation may elect to submit a return referred to in this section or section 55(2)(c) or (d) to the Commission-

- (a) electronically, by means of a secure online communication network approved by the Commission under section 58(7) for the purposes of this paragraph;
- (b) in electronic form on a floppy disk, delivered by hand or by post to the Commission; or
- (c) in paper form, delivered by hand or by post to the Commission,

and-

- (d) where it submits the return in accordance with paragraph (a)-
 - (i) the return shall be signed by way of attachment to the return of the digital signature of the licensed corporation, supported by a recognized certificate and generated within the validity of that certificate; or
 - (ii) if the return is not signed as provided for in subparagraph (i), it shall also submit a signed copy of the return in paper form, delivered by hand or by post to the Commission;
- (e) where it submits the return in accordance with paragraph (b), the floppy disk shall be accompanied by a signed copy of the return in paper form; or
- (f) where it submits the return in accordance with paragraph (c), the signed original of the return shall be submitted.

(7) In this section-

"digital signature" (數碼簽署) has the meaning assigned to it by the Electronic Transactions Ordinance (Cap 553);

"recognized certificate" (認可證書) means a certificate issued by a recognized certification authority, in each case within the meaning of the Electronic Transactions Ordinance (Cap 553), to and in the name of a licensed corporation which is within the validity of that certificate within the meaning of section 6(2) of that Ordinance;

"recognized certification authority" (認可核證機關) has the meaning assigned to it by the Electronic Transactions Ordinance (Cap 553);

"rolling balance cash client" (滾存結餘現金客戶) means a client of a licensed corporation in

respect of whom the amounts receivable from, and amounts payable to, him by the licensed corporation arising from the purchase and sale of securities on a cash-against-delivery basis by the licensed corporation for him may be set-off by the licensed corporation under section 21(3);

"within the validity of that certificate" (在該證書的有效期內) has the meaning assigned to it by section 6(2) of the Electronic Transactions Ordinance (Cap 553).

Securities and Futures (Miscellaneous) Rules (L.N. 216 of 2002)

Section:	2	Service of documents on Commission
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(1) Except as otherwise provided in the Ordinance, where any document is required for the purposes of any provision of the Ordinance to be served (however described) on the Commission, it shall-

- (a) in the case of a document other than in electronic form, be-
 - (i) delivered by hand;
 - (ii) sent by post; or
 - (iii) sent by facsimile transmission to such facsimile number as may be specified by the Commission on the contact details page of the Commission's web site; or
- (b) in the case of a document in electronic form, be-
 - (i) sent by means of such electronic transmission as may be approved by the Commission; or
 - (ii) sent by electronic mail transmission, to such electronic reception facility as may be specified by the Commission on the contact details page of the Commission's web site. (L.N. 45 of 2003)

(2) Except as otherwise provided in the Ordinance, where any document is required for the purposes of any provision of the Ordinance to be served (however described) on the Commission-

- (a) in the case of a document in respect of which a form has been specified under section 402 of the Ordinance, it shall, subject to subsection (3), be signed, executed and authenticated in the manner specified in such directions and instructions as are included in the form; or
- (b) in the case of a document in respect of which no form has been specified under section 402 of the Ordinance, it shall, subject to subsection (3), be signed, executed and authenticated by the person by whom the document is served or by such other person as is authorized by the first-mentioned person to act in that behalf.

(3) For the purposes of subsection (2), if a document is in electronic form, the signature shall, unless otherwise specified by the Commission, be in the form of a digital signature within the meaning of section 2(1) of the Electronic Transactions Ordinance (Cap 553) that fulfils the requirements of section 6(1) of that Ordinance.

(4) On an application by any person to the Commission, the Commission may, where it is satisfied that an applicant has substantial practical difficulties in serving (however described) any document within the time provided under the Ordinance, in its discretion by notice in writing extend the time for such period and upon such terms as it may direct.