

LEGISLATIVE COUNCIL BRIEF

ELECTRONIC TRANSACTIONS (EXCLUSION) (AMENDMENT) ORDER 2013

INTRODUCTION

On 13 September 2013, the Permanent Secretary for Commerce and Economic Development (Communications and Technology) (the Permanent Secretary) made the Electronic Transactions (Exclusion) (Amendment) Order 2013 (the Amendment Order) set out at **Annex A** under section 11(1) of the Electronic Transactions Ordinance (Cap. 553) (ETO) to repeal certain exemptions from the Electronic Transactions (Exclusion) Order (Cap. 553B) (the Exclusion Order). The Amendment Order gives statutory effect to the electronic submission of employment contract-related documents and aircraft operation documents under the purview of Labour Department and Civil Aviation Department respectively set out at **Annex B**.

BACKGROUND

2. Enacted in 2000, the ETO provides a legal framework to give electronic records and electronic / digital signatures the same legal status as that of their paper-based counterparts, subject to specified requirements and exemptions. The key provisions are as follows —

- (a) Section 5 of the ETO provides that if a rule of law requires or permits information to be or given in writing, the use of electronic records containing the information satisfies that rule of law.
- (b) Section 6(1) of the ETO provides that if a rule of law requires a signature of a person on a document and neither the person whose signature is required nor the person to whom the signature is to be given is or is acting on behalf of a government entity, an electronic signature satisfies the requirement.

- (c) Section 6(1A) of the ETO provides that if a rule of law requires a signature of a person on a document and the person whose signature is required and/or the person to whom the signature is to be given is/are acting on behalf of a government entity/entities, a digital signature satisfies the requirement.
- (d) Section 7 of the ETO provides that if a rule of law requires certain information to be presented or retained in its original form, that requirement is satisfied by presenting or retaining the information in the form of electronic records.
- (e) Section 8 of the ETO provides that if a rule of law requires certain information to be retained, that requirement is satisfied by retaining electronic records.

3. Government departments have been accepting electronic submissions for most statutory processes. However, for some statutory provisions, there is a genuine and practical need to exclude electronic submissions/transmissions because of operational, technical or solemnity reasons. The Permanent Secretary has been given the power under section 11(1) of the ETO to exclude by order published in the Gazette specific statutory provisions from the application of sections 5, 6, 7 or 8 of the ETO. The Exclusion Order was published in the Gazette on 3 March 2000 and came into effect on 7 April 2000 after negative approval by the Legislative Council.

4. The Exclusion Order covers provisions which have to be excluded —

- (a) due to the solemnity of the matter or document involved, e.g. provisions concerning the electoral process;
- (b) on operational grounds, e.g. provisions concerning the production of documents to government authorities on the spot;
- (c) due to the involvement of voluminous submissions and complex plans which would be difficult to handle electronically, e.g. provisions concerning submission of documents and plans to the works departments; and

- (d) because of international practices, e.g. provisions concerning documents to be kept by the flight crew for air navigation purposes.

5. When the Exclusion Order was first made in 2000, the Government made a commitment to withdraw the exemptions, while noting the need to make new exemptions with the enactment of new legislation when circumstances so merit. So far, ten amendment orders have been made either to withdraw exemptions that were no longer necessary or to provide for new exemptions for new legislation.

THE AMENDMENT ORDER

6. We propose the following amendments to the Exclusion Order:
- (a) withdrawal of one currently exempted provision from Schedule 1 of the Exclusion Order, relating to submission of employment contract-related documents under the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78);
 - (b) withdrawal of two currently exempted provisions from Schedule 2 of the Exclusion Order, relating to submission of employment contract-related documents under the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78); and submission of aircraft operation documents under the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C); and
 - (c) withdrawal of four currently exempted provisions from Schedule 4 of the Exclusion Order, relating to submission of aircraft operation documents under the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C).
7. The Amendment Order is at **Annex A**. Details of the amendments are explained at **Annex B**.

LEGISLATIVE TIMETABLE

8. The Amendment Order will be gazetted on 18 October 2013 and will be tabled before the Legislative Council on 23 October 2013 for negative approval. The Amendment Order is scheduled to commence on 20 December 2013.

IMPLICATIONS

9. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. They do not affect the current binding effect of the ETO. Repeal of the relevant exemptions that have become unnecessary does not give rise to any financial or staffing implications.

PUBLIC CONSULTATION

10. The amendments will give the Government and the public the option of satisfying the requirements under certain statutory provisions by electronic means, in addition to the existing option of using the paper form.

11. The principles for making exclusions from the electronic process set out in paragraph 4 above were noted by the Legislative Council when the Exclusion Order was first made, and the repeal of some of the existing exemptions outlined in paragraph 6 above follows these established principles.

PUBLICITY

12. The departments concerned will publicise their readiness to accept electronic submissions through their websites and other communication channels to inform the affected parties as the case may be.

ENQUIRIES

13. Any enquiries on this brief should be addressed to Mr. Dominic KWONG, Chief Systems Manager, Industry Facilitation Division, at 2810 3299 or by facsimile at 3153 2666.

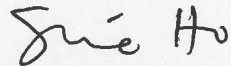
**Office of the Government Chief Information Officer
Commerce and Economic Development Bureau
October 2013**

Electronic Transactions (Exclusion) (Amendment) Order 2013

(Made by the Permanent Secretary for Commerce and Economic
Development (Communications and Technology) under section 11(1) of the
Electronic Transactions Ordinance (Cap. 553))

1. **Commencement**
This Order comes into operation on 20 December 2013.
2. **Electronic Transactions (Exclusion) Order amended**
The Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) is amended as set out in sections 3, 4 and 5.
3. **Schedule 1 amended (provisions excluded from application of section 5 of Ordinance)**
 - (1) Schedule 1, Chinese text, item 5—
Repeal
“地區”
Substitute
“地方”.
 - (2) Schedule 1, item 5—
Repeal
“, 6 and 8(a) and (b)”
Substitute
“and 6”.

4. **Schedule 2 amended (provisions excluded from application of section 6 of Ordinance)**
 - (1) Schedule 2, Chinese text, item 1—
Repeal
“地區”
Substitute
“地方”.
 - (2) Schedule 2, item 1—
Repeal
“Sections 5(1) and 8(a) and (b)”
Substitute
“Section 5(1)”.
 - (3) Schedule 2—
Repeal item 21.
5. **Schedule 4 amended (provisions excluded from application of section 8 of Ordinance)**
Schedule 4, item 2—
Repeal
“Articles 22(1), 25(2)(a)(iii) and 57 and Schedule 12”
Substitute
“Article 57 and Schedule 12 (only insofar as they relate to Document K referred to in Schedule 12)”.



Permanent Secretary for Commerce
and Economic Development
(Communications and Technology)

13 September 2013

Explanatory Note

Section 5 of the Electronic Transactions Ordinance (Cap. 553) (*the principal Ordinance*) provides that if a rule of law requires or permits information to be or given in writing, the use of electronic records containing the information satisfies that rule of law. The statutory provisions excluded from the application of section 5 of the principal Ordinance are specified in Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) (*the principal Order*).

2. Section 3 of this Order mainly removes section 8(a) and (b) of the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78) from Schedule 1 to the principal Order, so that that section 8(a) and (b) is no longer excluded and electronic records may be used for the purposes of section 5 of the principal Ordinance.
3. Section 6 of the principal Ordinance provides that if a rule of law requires the signature of a person on a document, an electronic signature or a digital signature of that person satisfies that requirement. The statutory provisions excluded from the application of section 6 of the principal Ordinance are specified in Schedule 2 to the principal Order.
4. Section 4 of this Order mainly removes the following provisions from Schedule 2 to the principal Order, so that they are no longer excluded and electronic signatures and digital signatures may be used for the purposes of section 6 of the principal Ordinance—
 - (a) section 8(a) and (b) of the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78); and
 - (b) Article 28(4) of the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C).
5. Section 8 of the principal Ordinance provides that if a rule of law requires information to be retained, whether in writing or otherwise,

the requirement is satisfied by retaining electronic records containing the information. The statutory provisions excluded from the application of section 8 of the principal Ordinance are specified in Schedule 4 to the principal Order.

6. Section 5 of this Order removes the following provisions from Schedule 4 to the principal Order, so that they are no longer excluded and electronic records may be retained for the purposes of section 8 of the principal Ordinance—
 - (a) Articles 22(1) and 25(2)(a)(iii) of the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C); and
 - (b) Article 57 of and Schedule 12 to that Order (except where those provisions relate to Document K referred to in that Schedule 12).

Annex B

Exemptions to be Withdrawn from the Exclusion Order

Details of the provisions to be withdrawn from the Exclusion Order are set out below.

Labour Department (LD)

1. Submission of the contract-related documents under section 8 of the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78):

- (a) Under sections 8(a) and 8(b), the Commissioner for Labour may require a person to furnish a bond or sign a guarantee in such form as he may require for the performance of the contract by the employer.

Civil Aviation Department (CAD)

2. Provisions related to the following documents for aircraft operation under the Air Navigation (Hong Kong) Order 1995 (Cap. 448 sub. leg. C):

- (a) Article 22(1) specifies the requirements for keeping of personal flying log book;
- (b) Article 25(2)(a)(iii) specifies the requirements for access to the operations manual by every crew member on each flight;
- (c) Article 28(4) specifies the requirements for signing of the load sheet; and
- (d) Article 57 and Schedule 12 specify the requirements for the documents to be carried on board in an aircraft.

3. CAD requires that the exclusion from electronic submission of Document “K” under Schedule 12 in relation to Article 57 of Cap. 448 sub. leg. C needs to be retained since such document needs to be carried on board in an aircraft in paper form only.