

**立法會**  
**Legislative Council**

LC Paper No. CB(4)323/14-15

Ref : CB4/SS/2/14

**Paper for the House Committee meeting on 9 January 2015**

**Subcommittee on Electronic Transactions Ordinance  
(Amendment of Schedule 1) Order 2014**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Electronic Transactions Ordinance (Amendment of Schedule 1) Order 2014 ("the Subcommittee").

**Background**

2. Enacted in 2000, the Electronic Transactions Ordinance (Cap. 553) ("the ETO") provides the statutory basis for the conduct of electronic transactions in Hong Kong and amongst others, gives electronic records and electronic signatures the same legal status as that of their paper-based counterparts. Section 3 provides that certain provisions of the ETO do not apply to matters set out in Schedule 1, in recognition that certain types of transactions would preferably be conducted through conventional paper-based means due to their solemnity, significance or complexity, as well as the readiness of the parties involved to handle the related documents in electronic form.

3. According to the Administration, cheque is an established payment instrument in Hong Kong. In view of the increasing popularity of Internet banking, the Hong Kong Monetary Authority ("HKMA") and the banking sector plan to introduce e-cheque as an alternative payment method. E-cheque is an electronic counterpart of paper cheque. It will be issued by a paying bank according to a payer's instruction, and presented in the format and manner specified in the Clearing House Rules ("CHR") of Hong Kong Interbank Clearing Limited ("HKICL"). Both the payer and the paying bank

are required to sign on the e-cheque by using digital certificates issued by the recognized certification authorities under the ETO, namely Hongkong Post as public certification authority mandated under the ETO and Digi-Sign Certification Services Limited, a commercial certification authority recognized under section 21 of the ETO. E-cheque can be presented either through the Internet banking platform of the payee bank or the centralized presentment portal operated by the HKICL for free. Due to the limited usage of negotiable cheque<sup>1</sup> in Hong Kong, the system being developed to process e-cheque caters for non-negotiable cheque only. The proposed operating model of e-cheque is summarized at Annex B to the Legislative Council Brief (File Ref: GCIO 107/4/3 XXIV) issued by the Administration in November 2014.

4. As section 13 of Schedule 1 excludes negotiable instruments covering promissory notes and bills of exchange (e.g. cheques) from the application of certain provision under section 3 of the ETO, the Administration considers it necessary to amend Schedule 1 to the ETO in order to allow e-cheque to carry the same statutory effect as paper cheque.

#### **The Electronic Transactions Ordinance (Amendment of Schedule 1) Order 2014**

5. The Electronic Transactions Ordinance (Amendment of Schedule 1) Order 2014 ("the Amendment Order") repeals section 13 of Schedule 1 to the ETO and replaces it with "negotiable instruments (but excluding cheques that bear the words "not negotiable")". The effect is that non-negotiable e-cheques may be transacted and cleared electronically. This would confine e-cheques to non-negotiable cheques (i.e. cheques which are payable to the specific payee only but not any third party).

6. The Amendment Order was gazetted on 28 November 2014 and tabled at the Council meeting on 3 December 2014. Subject to the completion of the negative vetting process, the Amendment Order shall come into operation on 1 April 2015.

---

<sup>1</sup> Negotiable cheque refers to a cheque that can be transferred from one person to another in such a manner as to constitute the transferee the holder of the cheque.

## **The Subcommittee**

7. At the House Committee meeting on 5 December 2014, Members agreed to form a subcommittee to study the Amendment Order. Under the chairmanship of Hon Andrew LEUNG Kwan-yuen, the Subcommittee has held one meeting with the Administration to examine the subsidiary legislation. The membership list of the Subcommittee is in **Appendix**.

8. The scrutiny period of the Amendment Order has been extended to 21 January 2015 by resolution of the Council on 10 December 2014.

## **Deliberations of the Subcommittee**

### Cost-effectiveness

9. The Subcommittee notes that under the proposed e-cheque model to be adopted in Hong Kong, e-cheque will be created, signed, issued, delivered and presented through electronic means. Such an e-cheque model is an "end-to-end" electronic payment instrument without the use of paper or the need of physical delivery or presentment throughout the process. Some members have enquired about the anticipated savings to the banking industry in implementing e-cheque and whether it will lead to redundancy in the banking sector.

10. The Administration has advised that the cost in handling a paper cheque is \$15 and the annual cost involved in handling paper cheques for the banking industry as a whole is \$1.7 billion. Such cost could be saved with the launch of e-cheque. It is anticipated that a portion of the transactions involving paper cheques will be replaced by e-cheques, but total replacement is not intended or envisaged. Findings from consultation with the industry reveal that redundancy is not anticipated as the manpower saved could be deployed to other business areas for service improvement purposes.

### Security measures

11. Noting that Hong Kong will be the first to implement e-cheque in the world, some members have expressed concern whether stringent measures will be put in place to ensure the security of the process in view of the prevalence of Internet hacking activities.

12. The Administration has explained that with the use of encryption, digital signature and public key infrastructure technology, e-cheque will be

much safer than the traditional paper cheque as it is not possible to alter any information on e-cheque, including the payee name, payment amount and time stamp, without being detected. Any attempt to tamper an e-cheque will make it invalid. Moreover, e-cheque contains minimal sensitive information and does not require the payee to disclose the bank account number to the payer. The payee can choose any one of his or her bank accounts to deposit the e-cheque. Unlike paper cheque, e-cheque is issued through the paying bank's internet banking system which maintains electronic records of all e-cheques issued, thus enabling the paying bank to verify the correctness of the information of deposited e-cheque. The launch of e-cheque as a safe and efficient means of transaction will further entrench Hong Kong's status as an international financial centre.

#### Use of technical standard

13. Some members have raised concern whether there is any legal basis requiring the use of the same technical standard to create the image files of e-cheques by local banks. As advised by the Administration, pursuant to section 4(1) of the Clearing and Settlement Systems Ordinance (Cap. 584) ("the CSSO"), the HKMA has designated Hong Kong Dollar, US Dollar, Renminbi and euro Real-Time Gross Settlement ("RTGS") systems to settle cheques in addition to other types of payments. Section 7(1)(b) specifies that every system operator and settlement institution of a designated system shall ensure that there are operating rules that provide for the system to be operated in accordance with the CSSO. In addition, section 14 provides the HKMA as the payment systems regulator with the power to oversee and direct the system operator and settlement institution to amend the operating rules in such manner as the HKMA considers necessary to bring the operating rules into compliance with section 7(1)(b).

14. The Administration has further advised that the HKICL, the system operator of the RTGS systems, has promulgated the CHR to govern the formats, standards and manners of payments settled in the RTGS systems. Such rules have to be approved by the HKMA and the settlement institution of the respective RTGS systems. All participating banks of the RTGS systems are obliged to observe the requirements set out therein. For the purpose of e-cheque, the HKICL will specify the requirements, including the file format and standard of e-cheque, in the CHR.

#### Crediting of e-cheques

15. Some members have enquired about the possibility of real-time crediting of e-cheques. According to the Administration, section 73(1) of

the Bills of Exchange Ordinance (Cap. 19) states that a cheque is a bill of exchange drawn on a banker payable on demand. The presentment of a cheque by the collecting bank to the paying bank follows the overall framework for bills of exchange. The paying bank is obliged to pay after it has ascertained the genuineness of cheque (including the written signature of the drawer) and the adequacy of funds in the payer's bank account before paying to the collecting bank on behalf of the payer. Under the normal practice, the paying bank requires the payer to have sufficient funds in the payer's account by the close of play on the date of cheque presentment. Thus good funds can only be made available to the payee on the next business day. Since e-cheque is an electronic counterpart of paper cheque, the user experience in using e-cheque is similar to the paper cheque. This includes the time required by banks to clear cheques and the day on which good fund is available. Unlike an electronic transfer which is a kind of credit transfer and fund is transferred immediately, the clearing of paper cheque or e-cheque is a kind of debit transfer which will be effected on the next day of cheque presentment. The Administration will continue to explore the possibility of improving the operation of paper cheque and its electronic counterpart, including real-time crediting and the cross-border use of e-cheque, after the launch of e-cheque in end 2015.

#### Promotional and educational activities

16. The Subcommittee notes that prior to the launch of e-cheque, the HKMA and participating banks will conduct a series of promotional and educational activities geared towards a wide audience. The online centralized presentment portal operated by the HKICL allows payees or other persons appointed by them to deposit e-cheques to the payees' bank accounts subject to the condition that payees are willing to accept e-cheques. Alternatively, payees may always visit any bank branches of a collecting bank and seek assistance from customer service officers in depositing the e-cheques to their bank accounts through the online centralized presentment portal. They may also call the banking service hotline of the banks concerned for assistance if required. In all circumstances, participating banks will make resources and channels available, including internet banking, mobile banking, phone banking and bank branches to provide assistance to customers in handling any enquiries and possible operational issues of e-cheques.

17. Some members have expressed concern whether members of the public will be forced to accept e-cheque as a means of payment. According to the Administration, if any members of the public choose not to accept e-cheques, they should not give consent or their email addresses to the

prospective payer, who would need such information to issue e-cheques. As part of the planned education programme, the HKMA and the Hong Kong Association of Banks will formulate guidelines and best practices which specify that payers can only issue e-cheques to payees only if the payers have obtained the consent and valid email addresses from the payees.

### Way forward

18. In response to some members' enquiry about the future development of e-cheque, the Administration has advised that the banking industry fully supports the implementation of e-cheque. As a start, the use of e-cheque will be launched within Hong Kong only. Nevertheless, the Administration will explore in future the development of e-cheque in view of its potential of application in international transaction.

### **Recommendation**

19. The Subcommittee supports in principle the legislative proposal to amend Schedule 1 to the ETO to give e-cheque the same legal status as paper cheque. The Subcommittee has not proposed any amendment to the Amendment Order.

### **Advice sought**

20. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4  
Legislative Council Secretariat  
8 January 2015

**Subcommittee on Electronic Transactions Ordinance  
(Amendment of Schedule 1) Order 2014**

**Membership List**

**Chairman** Hon Andrew LEUNG Kwan-yuen, GBS, JP

**Members** Hon WONG Ting-kwong, SBS, JP

Hon NG Leung-sing, SBS, JP

Hon YIU Si-wing

Hon Charles Peter MOK, JP

Hon SIN Chung-kai, SBS, JP

Dr Hon Elizabeth QUAT, JP

Dr Hon CHIANG Lai-wan, JP

(Total : 8 members)

**Clerk** Ms YUE Tin-po

**Legal Adviser** Mr Kelvin LEE