

立法會
Legislative Council

LC Paper No. CB(4)250/14-15(01)

Ref: CB4/SS/2/14

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

Background brief

Purpose

This paper provides background information on the Electronic Transactions (Amendment of Schedule 1) Order 2014 ("the Amendment Order") to give non-negotiable e-cheque the same legal status as paper cheque. It also summarizes the views and concerns expressed by the Panel on Information and Broadcasting ("the Panel").

Background

2. Enacted in 2000, the Electronic Transactions Ordinance (Cap. 553) ("ETO") provides statutory backup 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. However, section 3 provides that certain matters set out in Schedule 1 are excluded from certain provisions of the ETO. Such exclusion is a recognition that certain types of transactions would preferably be conducted through conventional paper-based means because of their solemnity, significance or complexity of the transactions, as well as the readiness of the parties involved to handle the related documents in electronic form.

3. According to the Administration, in view of the increasing popularity of Internet banking, 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 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. It 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 cheque¹ 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 ("LegCo") Brief (File Ref: GCIO 107/4/3 XXIV) issued by the Office of the Government Chief Information Officer and the Commerce and Economic Development Bureau in November 2014.

4. As item 13 of Schedule 1 excludes negotiable instruments from the application of certain provision of the ETO by virtue of section 3, 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-based cheque.

The Amendment Order

5. The Amendment Order repeals item 13 to Schedule 1 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.

Views and concerns expressed by the Panel on Information Technology and Broadcasting

E-cheque

7. At the Panel meeting on 10 November 2014, the Administration briefed members on its proposal to amend Schedule 1 to the ETO to give

¹ 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.

non-negotiable e-cheque the same legal status as paper cheque. While the Panel supported in principle the Administration's proposed legislative amendment, some members expressed concern whether members of the public who were unfamiliar with the use of e-cheque would be forced to accept e-cheque as a means of payment. These members opined that public education should be stepped up as the e-cheque was likely to pose difficulty to elderly bank customers who might not be familiar with electronic transaction.

8. The Administration emphasized that the introduction of e-cheque was not meant to replace paper cheque. Both means would continue to co-exist after the legislative amendment. In order to complete a payment transaction, the means of transaction should be agreed by both parties involved in the transaction. Similar to the recipient of a paper cheque, a party receiving an e-cheque had the right to refuse it as a means of payment, and request the use of alternative means of payment such as cash or bank transfer. To enhance public awareness on the use of e-cheque, a public education campaign would be launched to tie in with the introduction of e-cheque in end 2015. The HKMA would also discuss with the banking industry the issuing of clear guidelines to banks stating that the payee had the right to choose whether to accept e-cheque as a means of payment.

Other issues

9. Noting that specific provisions in the ETO did not apply to generic items such as wills, trusts, statutory declarations, affidavits and power of attorney, some members enquired whether the Administration had any plans to further amend the ETO to give digital version of such instruments the same legal status as their paper-based counterparts.

10. According to the Administration, non-application of the ETO to the aforementioned instruments reflected the recognition that certain types of transactions would preferably be conducted through conventional means due to solemnity, significance or complexity of the transactions as well as the readiness of the parties involved to handle the related instruments in electronic form. Nevertheless, the Administration would keep in view the comments, if any, from the Judiciary and international developments regarding the acceptance of digital version of other legal instruments as having the same legal status as their paper-based counterparts, and introduce suitable legislative amendments as and when necessary.

11. Some members opined that instead of introducing ad hoc and piecemeal legislative amendments to the ETO, the legislation as a whole had lagged behind international developments and should be subject to an

overall review to keep pace with technological advancement. For example, the adoption of digital time-stamping in electronic transactions, which was becoming an international trend, had yet to be introduced in the ETO in Hong Kong.

12. The Administration advised that the ETO adopted a technology-neutral approach and digital time-stamping was possible under the ETO. However, the industry was not interested in introducing time-stamping service at this point in time. The Administration expected that the proposed new Innovation and Technology Bureau would be best placed to undertake timely review of the ETO if necessary.

Latest development

13. At the meeting of the House Committee held on 5 December 2014, Members agreed that a subcommittee should be formed to examine the Amendment Order in detail.

14. To allow time for the Subcommittee to study the Amendment Order, the Chairman of the House Committee moved a motion at the Council meeting of 10 December 2014 to extend the scrutiny period to 21 January 2015.

Relevant papers

15. A list of relevant papers with the hyperlink is at –

http://www.legco.gov.hk/yr14-15/english/hc/sub_leg/sc102/general/sc102.htm

Council Business Division 4
Legislative Council Secretariat
18 December 2014