
Court Proceedings (Electronic Technology) Bill

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A BILL

To

Provide for the use of electronic technology in relation to proceedings in a court (which includes specified tribunals) and other court-related purposes; to enable the phased implementation of the use of electronic technology in relation to court proceedings; to enable fees to be provided for in respect of the use of electronic technology in court-related matters; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Court Proceedings (Electronic Technology) Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

2. Interpretation

In this Ordinance—

court (法院) means—

- (a) the Court of Final Appeal;
- (b) the Court of Appeal;
- (c) the Court of First Instance;
- (d) the District Court;
- (e) a Magistrates' Court;
- (f) the Coroner's Court; or
- (g) a tribunal specified by rules made under section 6(b);

court office (法院辦事處), in relation to a court, means a registry of the court or an office of the court;

document (文件) means anything in which information of any description is recorded;

e-Court (電子法院) means a court specified by rules made under section 6(a);

electronic form (電子形式) means in the form of an electronic record;

electronic record (電子紀錄) means a record that—

- (a) is generated in a digital form by an information system;
- (b) can be transmitted—
 - (i) within an information system; or
 - (ii) from one information system to another; and
- (c) can be stored in an information system or other medium;

e-proceeding (電子程序)—see section 11(2);

e-system (電子系統) means the information system designated under section 7;

implementation notice (實施公告) means a notice published under section 32(1);

information system (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).

3. **References to judge or judicial officer**

In this Ordinance, a reference to a judge or a judicial officer—

- (a) is a reference to a judicial officer as defined by section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92); and
 - (b) includes a person appointed as a deputy or temporary judicial officer to perform the duties of, or to act otherwise in the office of, a judicial office as defined by that section.
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Part 2

Application and Effect of Ordinance

4. Application to Government

This Ordinance applies to the Government.

5. Section 9 of Electronic Transactions Ordinance not affected

Nothing in this Ordinance affects the application of section 9 of the Electronic Transactions Ordinance (Cap. 553) in relation to a legal proceeding.

Part 3

Specification of e-Courts

6. Chief Justice may by rules specify e-Courts

The Chief Justice may make rules—

- (a) to specify the courts by or in relation to which electronic technology may be used under Part 5;
 - (b) to specify the tribunals for the purposes of paragraph (g) of the definition of *court* in section 2; and
 - (c) to provide for incidental or supplemental matters (including transitional matters) relating to a specification under paragraph (a) or (b).
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Part 4

Information System to Facilitate Use of Electronic Technology

7. Chief Justice may designate e-system

The Chief Justice may designate an information system to facilitate the use of electronic technology—

- (a) in relation to proceedings;
- (b) for other court-related purposes; and
- (c) without limiting paragraph (a) or (b), for the particular purposes set out in section 8.

8. Particular purposes for which e-system may be used

- (1) An e-system may be used by a court—
 - (a) to create, issue, send or receive documents in electronic form in relation to a proceeding;
 - (b) to compile, record, store or otherwise process information or documents in electronic form relating to a proceeding; or
 - (c) to allow access to information or documents relating to a proceeding.
- (2) An e-system may be used by a person—
 - (a) to send documents in electronic form to a court in relation to a proceeding; or
 - (b) to otherwise communicate in electronic form with a court before which a proceeding is being taken.
- (3) An e-system may be used to make electronic payments.

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- (4) An e-system may be used for any other purpose specified by rules made under section 26(2)(c).
- (5) In this section—
- court*** (法院) includes—
- (a) a judge and a judicial officer; and
 - (b) a court office;
- send*** (送交), in relation to a document, means file, lodge, give, notify, serve, deliver, submit, furnish or any other expression that signifies or suggests conveying the document.
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Part 5

Use of Electronic Technology in Courts

Division 1—Interpretation and Application of Part 5

Subdivision 1—Interpretation

9. Interpretation of Part 5

In this Part—

at the relevant time (在有關時間), in relation to an act done in electronic form or electronically for the purposes of this Part, means at the time of doing the act;

direction of a court (法院指示) means a direction given by a court, a judge or a judicial officer;

e-practice direction (電子實務指示) means a direction that—

- (a) is issued by the Chief Justice as to the practice and procedure of a court; and
- (b) relates to the use of electronic technology under this Ordinance;

e-rules (電子規則) means rules made under section 26 or 27;

written law (成文法律) means an Ordinance or subsidiary legislation and includes any practice direction, except an e-practice direction, that provides for the practice and procedure of a court.

10. References to courts or e-Courts in relation to documents

In this Part, a reference to—

- (a) a document created, issued or sent by a court or an e-Court includes a document created, issued or sent by a judge or a judicial officer or a court office;
- (b) a document sent to a court or an e-Court includes a document sent to a judge or a judicial officer or a court office; and
- (c) a document, file or record kept or maintained by a court or an e-Court includes a document, file or record kept or maintained by a court office.

Subdivision 2—Application

11. Application of Part 5

- (1) This Part applies only in relation to an e-proceeding.
- (2) A proceeding is an e-proceeding—
 - (a) if—
 - (i) an implementation notice is published stating that the use of electronic technology has been implemented for all proceedings in an e-Court; and
 - (ii) the proceeding is in that e-Court;
 - (b) if—
 - (i) an implementation notice is published stating that the use of electronic technology has been implemented for a type or description of proceeding in an e-Court; and
 - (ii) the proceeding is in that e-Court and is of that type or description; or

- (c) if—
 - (i) an implementation notice is published stating that the use of electronic technology has been implemented for a type or description of proceeding in an e-Court at a venue; and
 - (ii) the proceeding is in that e-Court at the venue and is of that type or description.

12. Application of provisions and directions for sending or serving documents in writing

- (1) A provision in this Part that applies in relation to a provision of written law or a direction of a court that requires or permits a document sent by a court to be in writing applies whether the provision of written law or direction—
 - (a) uses “send”, “give”, “notify”, “serve”, “deliver” (including grammatical variations and cognate expressions) or any other expression that signifies conveying a document; or
 - (b) otherwise suggests the conveying of a document by a court.
- (2) A provision in this Part that applies in relation to a provision of written law or a direction of a court that requires or permits a document sent to a court to be in writing applies whether the provision of written law or direction—
 - (a) uses “file”, “lodge”, “send”, “give”, “notify”, “serve”, “deliver”, “submit”, “furnish” (including grammatical variations and cognate expressions) or any other expression that signifies conveying a document; or
 - (b) otherwise suggests the conveying of a document to a court.

- (3) A provision in this Part that applies in relation to a provision of written law or a direction of a court that requires or permits a document served by a person on another person to be in writing applies whether the provision of written law or direction—
- (a) uses “serve”, “send”, “give”, “deliver”, “furnish” (including grammatical variations and cognate expressions) or any other expression that signifies service; or
 - (b) otherwise suggests the service of a document by a person on another person.

Division 2—Documents in Electronic Form

Subdivision 1—Documents Created, Issued or Sent by Means of e-system

13. Documents created, issued or sent by courts

- (1) This section applies in relation to a provision of written law or a direction of a court that—
- (a) requires a document created, issued or sent by a court to be in writing; or
 - (b) permits a document created, issued or sent by a court to be in writing.
- (2) In relation to an e-proceeding—
- (a) for subsection (1)(a)—the requirement is met if—
 - (i) the document is created, issued or sent by an e-Court in electronic form by means of an e-system; and

- (ii) at the relevant time it was reasonable to expect that the information in the document in electronic form would be accessible so as to be usable for subsequent reference; and
- (b) for subsection (1)(b)—the document may be created, issued or sent by an e-Court in electronic form if—
 - (i) it is created, issued or sent by means of an e-system; and
 - (ii) at the relevant time it was reasonable to expect that the information in the document in electronic form would be accessible so as to be usable for subsequent reference.

14. Documents sent to courts

- (1) This section applies in relation to a provision of written law or a direction of a court that—
 - (a) requires a document sent to a court to be in writing; or
 - (b) permits a document sent to a court to be in writing.
- (2) In relation to an e-proceeding—
 - (a) for subsection (1)(a)—the requirement is met if—
 - (i) the document is sent to an e-Court in electronic form by means of an e-system in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information in the document in electronic form would be accessible so as to be usable for subsequent reference; and
 - (b) for subsection (1)(b)—the document may be sent to an e-Court in electronic form if—

- (i) it is sent by means of an e-system in accordance with any applicable e-rules and e-practice directions; and
- (ii) at the relevant time it was reasonable to expect that the information in the document in electronic form would be accessible so as to be usable for subsequent reference.

Subdivision 2—Documents with Endorsements etc.

15. Endorsements, attachments, etc. in electronic form

- (1) This section applies in relation to a provision of written law or a direction of a court that—
 - (a) requires information to be endorsed or recorded on, or attached or annexed to, a document; or
 - (b) permits information to be endorsed or recorded on, or attached or annexed to, a document.
- (2) If the document is used in an e-proceeding and is in electronic form—
 - (a) for subsection (1)(a)—the requirement is met if—
 - (i) the information is incorporated in electronic form into the document or associated electronically with it in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information so incorporated or associated would be accessible so as to be usable for subsequent reference; and
 - (b) for subsection (1)(b)—the information may be incorporated in electronic form into the document or associated electronically with it if—

- (i) it is so incorporated or associated in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information so incorporated or associated would be accessible so as to be usable for subsequent reference.
- (3) In this section—
- information** (資料), in relation to a document, includes a note, certificate, statement, acknowledgment, record, matter and another document.

Division 3—Electronic Service of Documents

16. Service between parties

- (1) This section applies in relation to a provision of written law or a direction of a court that—
- (a) requires a document served by a person on another person to be in writing; or
 - (b) permits a document served by a person on another person to be in writing.
- (2) In relation to an e-proceeding—
- (a) for subsection (1)(a)—the requirement is met if—
 - (i) the document is served in electronic form in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information in the document in electronic form would be accessible so as to be usable for subsequent reference; and

- (b) for subsection (1)(b)—the document may be served in electronic form if—
 - (i) it is served in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information in the document in electronic form would be accessible so as to be usable for subsequent reference.
- (3) To avoid doubt, this section does not apply in relation to a provision of written law or a direction of a court that requires or permits a document served by or on a court to be in writing.

Division 4—Electronic Authentication of Documents

Subdivision 1—Authentication of Documents Originating from Courts

- 17. Authentication of documents created, issued or sent by courts**
- (1) This section applies in relation to a document created, issued or sent by a court that a provision of written law or a direction of a court—
 - (a) requires to be signed, sealed or certified; or
 - (b) permits to be signed, sealed or certified.
 - (2) If the document is created, issued or sent by an e-Court in electronic form by means of an e-system in relation to an e-proceeding—
 - (a) for subsection (1)(a)—the requirement is met if the document is authenticated in accordance with any applicable e-rules and e-practice directions; and

- (b) for subsection (1)(b)—the document may be authenticated in accordance with any applicable e-rules and e-practice directions.

Subdivision 2—Authentication of Documents Sent to Courts

18. Authentication of documents sent to courts

- (1) This section applies in relation to a document sent to a court that a provision of written law or a direction of a court—
 - (a) requires to be signed; or
 - (b) permits to be signed.
- (2) If the document is sent to an e-Court in electronic form by means of an e-system in relation to an e-proceeding—
 - (a) for subsection (1)(a)—the requirement is met if the document is authenticated in accordance with any applicable e-rules and e-practice directions; and
 - (b) for subsection (1)(b)—the document may be authenticated in accordance with any applicable e-rules and e-practice directions.

Subdivision 3—Authentication of Documents Served by or on Parties

19. Authentication of documents served by or on parties

- (1) This section applies in relation to a document served by a person on another person that a provision of written law or a direction of a court—
 - (a) requires to be signed; or
 - (b) permits to be signed.

- (2) If the document is served in electronic form in relation to an e-proceeding—
 - (a) for subsection (1)(a)—the requirement is met if the document is authenticated in accordance with any applicable e-rules and e-practice directions; and
 - (b) for subsection (1)(b)—the document may be authenticated in accordance with any applicable e-rules and e-practice directions.

Division 5—Electronic Copies of Original Documents etc. and Electronic Production of Documents

20. Electronic copies of original or certified documents

- (1) This section applies in relation to a provision of written law or a direction of a court that—
 - (a) requires an original or a certified document to be sent to a court; or
 - (b) permits an original or a certified document to be sent to a court.
- (2) In relation to an e-proceeding—
 - (a) for subsection (1)(a)—the requirement is met if—
 - (i) a copy of the document is sent to an e-Court in electronic form by means of an e-system in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information in the copy in electronic form would be accessible so as to be usable for subsequent reference; and
 - (b) for subsection (1)(b)—a copy of the document may be sent to an e-Court in electronic form if—

- (i) it is sent by means of an e-system in accordance with any applicable e-rules and e-practice directions; and
- (ii) at the relevant time it was reasonable to expect that the information in the copy in electronic form would be accessible so as to be usable for subsequent reference.

21. Electronic production of documents

- (1) This section applies in relation to a provision of written law or a direction of a court that—
 - (a) requires a document to be conveyed by producing it as a paper document; or
 - (b) permits a document to be conveyed by producing it as a paper document.
- (2) In relation to an e-proceeding—
 - (a) for subsection (1)(a)—the requirement is met if—
 - (i) a copy of the document is sent to an e-Court in electronic form by means of an e-system in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information in the copy in electronic form would be accessible so as to be usable for subsequent reference; and
 - (b) for subsection (1)(b)—a copy of the document may be sent to an e-Court in electronic form if—
 - (i) it is sent by means of an e-system in accordance with any applicable e-rules and e-practice directions; and

- (ii) at the relevant time it was reasonable to expect that the information in the copy in electronic form would be accessible so as to be usable for subsequent reference.

Division 6—Printouts of Documents

22. Use of printouts of documents issued or sent by courts in electronic form

- (1) This section applies if—
 - (a) a provision of written law or a direction of a court requires or permits a document issued or sent by a court to be in writing; and
 - (b) an e-Court, in reliance on this Part, issues or sends the document in electronic form by means of an e-system (*electronic version*).
- (2) In relation to an e-proceeding, a printout produced from the electronic version in accordance with any applicable e-rules and e-practice directions—
 - (a) may be used for any purpose for which the document or a copy of it is required or permitted to be used under a provision of written law or a direction of a court; and
 - (b) has the same legal effect as the original of the document or a copy of it (as the case requires).
- (3) In this section—
printout (打印本) includes a copy of a printout.

Division 7—Records etc. of Courts in Electronic Form

23. Keeping or maintaining records etc.

- (1) This section applies in relation to a provision of written law or a direction of a court that—
 - (a) requires—
 - (i) a document, file or record kept or maintained by a court to be in writing; or
 - (ii) a record made by a court to be in writing; or
 - (b) permits—
 - (i) a document, file or record kept or maintained by a court to be in writing; or
 - (ii) a record made by a court to be in writing.
 - (2) In relation to an e-Court—
 - (a) for subsection (1)(a)—the requirement is met if the document, file or record is kept or maintained, or the record is made, in electronic form; and
 - (b) for subsection (1)(b)—the document, file or record may be kept or maintained, or the record may be made, in electronic form.
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Part 6

Disallowing Use of e-system

24. Court may disallow use of e-system for sending documents

- (1) In an e-proceeding, the court may—
 - (a) give a direction disallowing the use of an e-system by a person for sending any document to the court (except for documents already sent), in relation to—
 - (i) the whole proceeding; or
 - (ii) a particular procedure; and
 - (b) give any other direction that the court considers necessary because of a direction under paragraph (a).
 - (2) In exercising a power under subsection (1), the court may have regard to—
 - (a) the nature of the proceeding or procedure;
 - (b) the conduct of a party; or
 - (c) any other factor that the court considers relevant.
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Part 7

Effect of Things Done Electronically

25. Effect of things done electronically

- (1) If, in reliance on Part 5, an act is done in electronic form or electronically, when it would otherwise be required or permitted to have been done using or with respect to a paper document, the doing of that act in electronic form or electronically has the same effect as if that act had been done using or with respect to a paper document.
 - (2) If, in reliance on Part 5, something takes an electronic form, when it would otherwise be required or permitted to be in the form of a paper document, that thing has the same effect as if it were a paper document.
 - (3) A document that is authenticated in accordance with section 17 has the same effect as a document duly signed, sealed or certified.
 - (4) A document that is authenticated in accordance with section 18 or 19 has the same effect as a document duly signed.
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Part 8

Rules, Implementation Notices and Administrative Instructions, for Use of Electronic Technology

Division 1—Rules

Subdivision 1—Rules for Practice and Procedure for Use of Electronic Technology

26. Rules for use of electronic technology

- (1) The Chief Justice may make rules—
 - (a) to regulate or prescribe the practice and procedure to be followed in the use of electronic technology under Part 5; and
 - (b) without limiting paragraph (a), for the particular matters set out in this section.
- (2) Rules made under this section may, in relation to an e-system—
 - (a) authorize its use by or in relation to an e-Court;
 - (b) authorize its use for a type or description of proceeding that—
 - (i) is within the jurisdiction of an e-Court; and
 - (ii) is specified in the rules;
 - (c) specify purposes other than those set out in section 8 for which it may be used;
 - (d) specify the class or description of persons who may use it; and

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- (e) provide for registration as a user or any other arrangement to use it for certain purposes relating to a proceeding.
- (3) Rules made under this section may also—
- (a) specify a type or description of proceeding, or matters of a confidential nature, in relation to which electronic technology may not be used for a purpose under Part 5;
 - (b) specify a type or description of document that is required to be in the form of a paper document, whether or not it is used in electronic form in a proceeding;
 - (c) provide for the conversion of documents in electronic form into paper documents or paper documents into electronic form for any purpose relating to a proceeding;
 - (d) provide for anything that by this Ordinance is required to or may be done in accordance with the rules;
 - (e) provide for any matter relating to the carrying out of an act by an e-Court under Part 5;
 - (f) provide for any matter relating to electronic payments;
 - (g) provide for transitional matters relating to an authorization under subsection (2)(a) or (b); and
 - (h) contain incidental or supplemental provisions for the better carrying out of the provisions of this Ordinance.

27. Additional rules for use of electronic technology

- (1) A power to make rules of court under an Ordinance to provide for the practice and procedure of a court includes, in relation to an e-Court, a power to make rules—
 - (a) to provide for the use of electronic technology in proceedings governed by those rules (*Ordinance-specific rules*); and
 - (b) without limiting paragraph (a), to provide for anything that may be done in accordance with rules made under section 26.
- (2) Rules made under subsection (1) may supplement or depart from rules made under section 26 to suit the nature or type of proceedings governed by the Ordinance-specific rules.

Subdivision 2—Rules to Provide for Fees for Use of Electronic Mode

28. Interpretation of Subdivision 2

In this Subdivision—

court-related matter (法院相關事宜) means—

- (a) an act or matter that relates to a proceeding in a court; or
- (b) a service, or other matter, made available or provided by a court or court office;

e-fee (電子費用) means a fee that is payable under the e-fee rules in respect of a court-related matter that is carried out by an electronic mode;

e-fee rules (電子費用規則) means rules made under section 29;

electronic mode (電子模式) means—

- (a) an e-system; or
- (b) another electronic means;

external enactment (外在成文法則) means an enactment other than this Ordinance;

external fee (外在費用) means a fee that is payable under an external enactment in respect of a court-related matter;

external fee item (外在費用項目), in relation to an external fee, means the description of the court-related matter in respect of which the external fee is payable.

29. Power to provide for fees for use of electronic mode in court-related matters

- (1) The Chief Justice may make rules to provide for fees payable in respect of court-related matters that—
 - (a) are carried out by an electronic mode; and
 - (b) are specified in the rules.
- (2) Rules made under subsection (1) may provide for fee concessions in respect of particular court-related matters.
- (3) Rules made under subsection (1) may, in respect of—
 - (a) a court-related matter for which an external fee is payable—provide for an e-fee—
 - (i) by reference to the external fee or the relevant external fee item; or
 - (ii) by reference to the external fee and by adapting the relevant external fee item to suit an electronic mode;

- (b) a court-related matter for which no external fee is payable—specify an e-fee; or
 - (c) a court-related matter—provide that the fee payable is zero.
- (4) Rules made under this section that provide for fee concessions may—
- (a) provide that the fee concessions apply only during a period specified in the rules; and
 - (b) specify different periods for different court-related matters.
- (5) Rules made under this section may provide for transitional matters relating to the application of e-fees to court-related matters.

30. Restrictions on application of e-fees to court-related matters

The e-fee rules may restrict the application of the e-fees (generally or specifically) to a court-related matter by reference to one or more of the following conditions or matters—

- (a) the use of an e-system for carrying out the court-related matter;
- (b) the availability of facilities at, or the capacity of, the relevant court or court office to carry out the court-related matter by an electronic mode;
- (c) any other factor specified in the e-fee rules that may affect the carrying out of the court-related matter by an electronic mode.

31. Effect of payment of e-fees and of power to provide for e-fees

- (1) If an e-fee is provided for in respect of a court-related matter by reference to an external fee or an external fee item (adapted or otherwise), the payment of the e-fee for

the court-related matter has the same effect as the payment of the external fee for that court-related matter.

- (2) To avoid doubt, nothing in this Subdivision affects—
 - (a) any power or authority in or under an external enactment to provide for fees payable in respect of a court-related matter; or
 - (b) the application of an external fee to a court-related matter—
 - (i) that is not specified under section 29 (whether or not carried out by an electronic mode); or
 - (ii) to which the application of an e-fee is restricted under section 30.

Division 2—Implementation Notices

32. Implementation notices

- (1) The Chief Justice may provide for the phased implementation of the use of electronic technology in e-Courts and court offices—
 - (a) by notice published in the Gazette; and
 - (b) in accordance with this section.
- (2) The Chief Justice may, in an implementation notice, specify the date with effect from which electronic technology may be used for a purpose under Part 5 in relation to—
 - (a) a particular e-Court (whether or not at a particular venue); or
 - (b) a type or description of proceeding in an e-Court (whether or not at a particular venue) for which the use of an e-system has been authorized by rules made under section 26(2)(b).

- (3) The Chief Justice may specify different dates under subsection (2)(b) for proceedings of different types or descriptions or for different venues.
- (4) If the Chief Justice has, in an implementation notice, specified a date—
 - (a) for a type or description of proceeding and the venue for it, with effect from that date, the use of electronic technology is implemented for—
 - (i) that type or description of proceeding;
 - (ii) the venue for the proceeding; and
 - (iii) subject to subsection (5), the relevant court office; or
 - (b) for a type or description of proceeding (without a reference to a venue), with effect from that date, the use of electronic technology is implemented for—
 - (i) that type or description of proceeding; and
 - (ii) subject to subsection (5), the relevant court office.
- (5) Without limiting subsection (4)(a) or (b), the Chief Justice may, in an implementation notice, specify a date—
 - (a) with effect from which the use of electronic technology is implemented for a court office; and
 - (b) which is different from the date specified for the e-Court concerned.
- (6) An implementation notice is not subsidiary legislation.

Division 3—Administrative Instructions

33. Administrative instructions by Judiciary Administrator

- (1) The Judiciary Administrator may issue instructions of an administrative nature relating to the use of an e-system.
- (2) Without limiting subsection (1), administrative instructions may specify—
 - (a) for certain purposes relating to a proceeding, matters relating to registration as a user or any other arrangement referred to in section 26(2)(e), including—
 - (i) persons who are eligible to register;
 - (ii) how to register; and
 - (iii) administrative and organizational details relating to the arrangements;
 - (b) technical matters relating to the use of an e-system, including—
 - (i) the computer hardware, software and other technical requirements for using an e-system;
 - (ii) the format and way in which documents are to be sent to the court under section 14; and
 - (iii) other technical requirements to which those documents must conform; and
 - (c) matters relating to electronic payments.
- (3) The Judiciary Administrator—
 - (a) must publish any administrative instructions; and
 - (b) may decide how and where to publish them.

Part 9

Savings and Transitional Arrangements

34. Interpretation of Part 9

In this Part—

commencement date (實施日期) means the date on which Part 5 comes into operation;

existing system (現行系統) means any electronic means other than an e-system;

relevant date (有關日期), in relation to a particular section 8 purpose, means the date specified under section 35(3) for that purpose;

section 8 purpose (第8條用途) means a purpose for which an e-system may be used under section 8;

transitional period (過渡期), in relation to a particular section 8 purpose, means the period beginning on the commencement date and ending on the relevant date.

35. Continued use of existing systems during transitional period

- (1) If, immediately before the commencement date, an existing system was used for a section 8 purpose, despite anything in this Ordinance, during the transitional period, the existing system may continue to be used for that purpose.
- (2) Anything that is done by means of an existing system during the transitional period pursuant to subsection (1) has the same effect as if it were done by means of an e-system.
- (3) In relation to a section 8 purpose, the Chief Justice may, by notice published in the Gazette—

- (a) specify a date after which an existing system is not to be used for that purpose; and
 - (b) under paragraph (a), specify different dates for different purposes.
- (4) A notice under subsection (3)—
- (a) may include details that relate to discontinuing the use of an existing system for the purpose concerned; and
 - (b) is not subsidiary legislation.
- _____

Explanatory Memorandum

The main object of this Bill is to enable the use of electronic technology (*e-technology*) in proceedings in a court (as defined by clause 2) and for court-related purposes as an alternative to traditional paper-based methods.

2. The Bill is divided into 9 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.
4. Clause 2 contains definitions that are necessary for the interpretation of the Bill. Some key definitions are *court* (which includes specified tribunals), *e-Court* (which is a court specified by rules made by the Chief Justice as a court in which e-technology may be used), *electronic form*, *electronic record*, *e-proceeding* and *e-system*.
5. Clause 3 is a construction provision for the references to a judge and a judicial officer.

Part 2—Application and Effect of Ordinance

6. Clause 4 provides that the Bill applies to the Government.
7. Clause 5 provides that the Bill does not affect the general provision in the Electronic Transactions Ordinance (Cap. 553) relating to the admissibility of electronic records in legal proceedings.

Part 3—Specification of e-Courts

8. Clause 6 empowers the Chief Justice to make rules specifying courts and tribunals in which e-technology may be used.

Part 4—Information System to Facilitate Use of Electronic Technology

9. Clause 7 enables the Chief Justice to designate an information system to facilitate the use of e-technology for proceedings in a court and other court-related purposes.
10. Clause 8 sets out the particular purposes for which an e-system may be used.

Part 5—Use of Electronic Technology in Courts

11. Part 5 consists of 7 Divisions and contains the provisions that enable the use of the electronic form in place of a paper document in e-Court proceedings and give acts done in electronic form the same status as acts done using paper documents.

Division 1—Interpretation and Application of Part 5

12. Clause 9 contains definitions for the interpretation of Part 5. Some key definitions are *e-practice direction*, *e-rules* and *written law*.

13. Clause 10 is a construction provision to interpret references to a court or an e-Court to include a judge, a judicial officer or a court office in relation to documents created or issued by, or sent to or by, a court or an e-Court. Similarly, references to a court or an e-Court include a court office in relation to documents, files or records kept or maintained by a court or an e-Court.
14. Clause 11 states that Part 5 (which provides for the use of e-technology in courts) applies to a proceeding that is an e-proceeding. An e-proceeding is a proceeding in an e-Court, a type or description of proceeding in an e-Court, or a type or description of proceeding at a venue in an e-Court, for which the use of e-technology has been implemented under clause 32. (This application clause, read with clause 32, effects the phased implementation of the use of e-technology in e-Courts.)
15. Clause 12 addresses the fact that written laws and court directions use not only “send” or “serve” but various other expressions to signify the conveying of or service of a document. Accordingly, it provides that a Part 5 provision that applies in relation to the sending of a document by or to a court or service of documents applies irrespective of the term used in the written law or direction.

Division 2—Documents in Electronic Form

16. Division 2 of Part 5 deals with the use of documents in electronic form in e-proceedings to satisfy provisions of written law or court directions that require or permit a document to be in writing (*writing requirement or permission*).

17. Clause 13 relates to writing requirements or permissions applicable to documents created, issued or sent by a court. In each case, a document in electronic form can be used if 2 conditions are satisfied. The conditions are that the relevant act is done by means of an e-system and that the information in the document can reasonably be expected to be accessible so as to be usable for subsequent reference (*accessibility requirement*).
18. Clause 14 deals with writing requirements or permissions applicable to documents sent to a court. A document in electronic form can be used if the 2 conditions referred to in paragraph 17 (*specified conditions*) are met and the document is sent in accordance with any applicable e-rules and e-practice directions.
19. Clause 15 sets out how information (that is required or permitted to be in writing) can be incorporated into a document that is in electronic form. The information can be incorporated or associated electronically with the document in accordance with any applicable e-rules and e-practice directions and subject to the accessibility requirement being met.

Division 3—Electronic Service of Documents

20. Clause 16 is about the service of documents between parties where a provision of written law or a court direction requires the served document to be in writing. In an e-proceeding, the document can be served in electronic form in accordance with any applicable e-rules and e-practice directions and subject to the accessibility requirement being met.

Division 4—Electronic Authentication of Documents

21. Division 4 of Part 5 provides for the authentication of documents in electronic form that are used in e-proceedings.
22. Clause 17 deals with documents that are created, issued or sent by a court by means of an e-system and which are required or permitted to be signed, sealed or certified under a provision of written law or a court direction (***authentication requirement or permission***). To meet the authentication requirement or permission, the document can be authenticated in accordance with any applicable e-rules and e-practice directions.
23. Clause 18 provides that if a provision of written law or a court direction requires or permits a document sent to a court to be signed, the document can be authenticated in accordance with any applicable e-rules and e-practice directions.
24. Clause 19 provides that if a provision of written law or a court direction requires or permits a document served by a person on another person to be signed, the document can be authenticated in accordance with any applicable e-rules and e-practice directions.

Division 5—Electronic Copies of Original Documents etc. and Electronic Production of Documents

25. Clause 20 deals with the sending of an original or a certified document to a court under a provision of written law or a court direction in an e-proceeding. For this purpose, a copy of the document in electronic form can be sent in accordance with any applicable e-rules and e-practice directions if the specified conditions are met.

26. Clause 21 provides that a provision of written law or a court direction requiring or permitting a document to be conveyed by producing it as a paper document is satisfied if a copy of the document in electronic form is sent in accordance with any applicable e-rules and e-practice directions and the specified conditions are met.

Division 6—Printouts of Documents

27. Clause 22 provides that if a document issued or sent by the court (***court document***) under Part 5 is in electronic form, a printout of it produced in accordance with any applicable e-rules and e-practice directions may be used for any purpose for which the court document could have been used under a written law or a court direction and has the same legal effect as the original or copy of the court document.

Division 7—Records etc. of Courts in Electronic Form

28. Clause 23 provides that if a provision of written law or a court direction requires or permits a document, file or record kept, maintained or made by a court to be in writing, in relation to an e-Court, the document, file or record can be kept, maintained or made in electronic form.

Part 6—Disallowing Use of e-system

29. Clause 24 empowers a court to disallow a person from using an e-system to send documents to court in an e-proceeding. In exercising the power, the court can take into account the nature of the proceeding or procedure, the conduct of a party or any other factor that the court considers relevant.

Part 7—Effect of Things Done Electronically

30. Clause 25 confirms that if relying on Part 5, an act is done in electronic form or electronically, the act has the same effect as an act done using or with respect to a paper document and that if something takes an electronic form under Part 5, that thing has the same effect as a paper document. This clause also confirms that a document authenticated in accordance with clause 17 has the same effect as a document that is signed, sealed or certified and a document authenticated in accordance with clause 18 or 19 has the same effect as a document that is signed.

Part 8—Rules, Implementation Notices and Administrative Instructions, for Use of Electronic Technology*Division 1—Rules*

31. Clause 26 empowers the Chief Justice to make rules to prescribe the practice and procedure for using e-technology for the purposes set out in Part 5 and for the particular matters specified in that clause.
32. Clause 27 in effect enlarges the power to make rules of court in other legislation (for the practice and procedure of a court), to include, for e-Courts, the power to make rules of court relating to the use of e-technology in proceedings governed by those rules.
33. Clause 28 contains definitions for the interpretation of Subdivision 2 of Division 1 of Part 8, which deals with rules to provide for fees in respect of court-related matters carried out by an electronic mode. The key definitions are *court-related matter*, *electronic mode*, *external enactment* and *external fee*.

34. Clause 29 empowers the Chief Justice to make rules (*e-fee rules*) to provide for fees (*e-fees*) in respect of court-related matters carried out by an electronic mode and to provide for fee concessions for particular court-related matters.
35. Clause 30 provides that the e-fee rules may restrict the application of the e-fees by reference to the conditions or matters set out in that clause.
36. Clause 31 states that the payment of an e-fee has the same effect as the payment of an external fee. It also states that the power to provide for e-fees does not affect any power or authority in or under an enactment other than this Bill to provide for fees payable for a court-related matter or the application of an external fee (fee provided for in such an enactment) while the application of an e-fee is restricted under clause 30.

Division 2—Implementation Notices

37. Clause 32 contains the mechanism for introducing the use of e-technology in courts and court offices in phases. After the e-rules authorize the use of an e-system in relation to an e-Court or a type or description of proceeding, the Chief Justice may, by a notice published in the Gazette, specify the date with effect from which e-technology can be used for a purpose under Part 5. The mechanism is flexible to allow phased implementation by reference to different types or descriptions of proceedings and different venues.

Division 3—Administrative Instructions

38. Clause 33 empowers the Judiciary Administrator to issue administrative instructions relating to registration and other arrangements for using an e-system and for technical matters relating to the use of an e-system.

Part 9—Savings and Transitional Arrangements

39. Clause 34 contains definitions for the interpretation of clause 35.
40. Clause 35 allows the continued use of electronic means (other than an e-system) that had been in use for a purpose referred to in clause 8 before the commencement date of Part 5, until the Chief Justice specifies a date after which the electronic means can no longer be used for that purpose.