

L.N. 222 of 2021

Building (Administration) (Amendment) Regulation 2021

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Building (Administration) (Amendment) Regulation 2021

(Made by the Secretary for Development under section 38 of the Buildings Ordinance (Cap. 123))

Part 1

Preliminary

1. Commencement

- (1) Subject to subsection (2), this Regulation comes into operation on 31 March 2022.
- (2) Parts 3 and 4 come into operation on a day to be appointed by the Secretary for Development by notice published in the Gazette.

2. Building (Administration) Regulations amended

The Building (Administration) Regulations (Cap. 123 sub. leg. A) are amended as set out in Parts 2, 3 and 4.

Part 2

Stage 1 of Application of Sections 5, 5A and 6 of Electronic Transactions Ordinance to Building (Administration) Regulations

3. Regulation 2 amended (interpretation)

Regulation 2—

Add in alphabetical order

“*hard copy form* (印本形式) means a paper form or similar form capable of being read without the aid of any equipment;”.

4. Regulation 6A added

After regulation 6—

Add

“6A. Documents excluded from application of sections 5, 5A and 6 of Electronic Transactions Ordinance

- (1) A document prescribed in paragraph (2) is specified for the purposes of—
 - (a) item 14 of Schedule 3 to the Electronic Transactions Ordinance (Cap. 553);
 - (b) items 9 and 10 of Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B); and
 - (c) item 5 of Schedule 2 to that Order.
- (2) The following documents are prescribed for the purposes of paragraph (1)—

- (a) a document prescribed by regulation 8(1)(a), (b), (ba), (bb), (bc), (c), (d), (e), (f), (g), (h), (j), (k), (l) or (m), (3) or (4) or 9;
- (b) a document prescribed by regulation 8(1)(i) (only if the document is related to structural works below ground level, or is submitted to the Building Authority for approval of any building works consisting of repairs, alterations or additions to a building);
- (c) a document by which an application under regulation 33(1) is made (only if the application relates to a document mentioned in subparagraph (a) or (b)).

Notes without legislative effect—

1. This regulation specifies certain documents in relation to which the application of sections 5, 5A and 6 of the Electronic Transactions Ordinance (Cap. 553) (*ETO*) are excluded (*excluded documents*).
2. Section 5 of ETO allows the use of an electronic record to satisfy a rule of law that requires or permits any information to be or given in writing. Because of items 9 and 10 of Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) (*Exclusion Order*), section 5 of ETO does not apply in relation to regulation 6(1) and Column B in the table to section 17(1) of the Ordinance (*the provisions*) in so far as an excluded document is concerned. Accordingly, an excluded document may not be or given in the form of an electronic record for the purposes of the provisions.
3. Section 5A of ETO allows a rule of law that requires or permits a document to be served by personal service or by post to be satisfied by service of the document in the form of an electronic record. Because of item 14 of Schedule 3 to ETO, section 5A of ETO applies in relation to regulation 6(1) only in so far as a document that is not an excluded document is concerned. Accordingly, an excluded document may not be sent in the form of an electronic record for the purposes of regulation 6(1).

4. Section 6 of ETO allows the use of an electronic signature or digital signature to satisfy a requirement for signature under a rule of law. Because of item 5 of Schedule 2 to the Exclusion Order, section 6 of ETO does not apply in relation to regulation 12(1), (2), (3) and (5) in so far as an excluded document is concerned. Accordingly, an electronic signature or digital signature may not be used in relation to an excluded document for the purposes of regulation 12(1), (2), (3) and (5).”.

5. **Regulation 11 substituted**

Regulation 11—

Repeal the regulation

Substitute

“11. Submission of plans and related documents

- (1) A plan or a related document that is submitted in hard copy form to the Building Authority for approval must be submitted in duplicate.
- (2) If a plan or a related document is submitted (whether or not in hard copy form) to the Building Authority for approval, the Building Authority may require the submission of any additional copies of it in hard copy form that the Building Authority considers necessary.
- (3) In this regulation—
related document (相關文件) means—
 - (a) all details of ground treatment work proposed in connection with a plan; or
 - (b) a site investigation report in connection with a plan.”.

6. Regulation 14 amended (plans to be clear and material thereof)

(1) Regulation 14, heading—

Repeal

“to be clear and material thereof”

Substitute

“must be clear and drawn or reproduced on suitable material”.

(2) Regulation 14—

Repeal paragraph (1)

Substitute

“(1) A plan submitted to the Building Authority for approval must be drawn or reproduced—

(a) in a clear and intelligible manner; and

(b) if submitted in hard copy form—on a suitable and durable material.”.

7. Regulation 30 amended (approval of plans)

Regulation 30—

Repeal paragraph (1)

Substitute

“(1) The approval by the Building Authority of a plan submitted to the Building Authority is to be signified by—

(a) a notice in writing served on the person applying for the approval; and

(b) the stamping, signing and dating of the plan (other than structural calculations or geotechnical calculations).

- (1A) A plan the approval of which is signified in accordance with paragraph (1)(b) must be returned or made available to the authorized person, registered structural engineer or registered geotechnical engineer concerned.”.
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Part 3

Stage 2 of Application of Sections 5, 5A and 6 of Electronic Transactions Ordinance to Building (Administration) Regulations

8. **Regulation 6A amended (documents excluded from application of sections 5, 5A and 6 of Electronic Transactions Ordinance)**

(1) Regulation 6A(2)(a)—

Repeal

everything after “(ba),”

Substitute

“(c), (f), (g), (h), (j), (k) or (m) or 9;”.

(2) Regulation 6A(2)(b)—

Repeal

“8(1)(i) (only if the document is related to structural works below ground level, or”

Substitute

“8(1)(bb), (bc), (d), (e), (i) or (l), (3) or (4) (only if the document”.

Part 4

Stage 3 of Application of Sections 5, 5A and 6 of Electronic Transactions Ordinance to Building (Administration) Regulations

- 9. Regulation 6A repealed (documents excluded from application of sections 5, 5A and 6 of Electronic Transactions Ordinance)**

Regulation 6A—

Repeal the regulation.

Michael WONG Wai-lun
Secretary for Development

7 September 2021

Explanatory Note

The main purpose of this Regulation is to amend the Building (Administration) Regulations (Cap. 123 sub. leg. A) (*principal Regulations*) so that sections 5, 5A and 6 of the Electronic Transactions Ordinance (Cap. 553) (*ETO*) are to apply, in 3 stages, in relation to the documents prescribed by regulation 8, 9 or 33(1) of the principal Regulations (*building documents*).

2. The Regulation is divided into 4 Parts. Part 1 provides for the preliminary matters, including commencement. Parts 2, 3 and 4 provide respectively for the implementation of stages 1, 2 and 3 of the application of sections 5, 5A and 6 of ETO in relation to the building documents. Parts 2, 3 and 4 will come into operation on different dates.
3. Part 2 will come into operation at the beginning of stage 1 and contains the following provisions—
 - (a) section 4 adds a new regulation 6A to the principal Regulations to specify the building documents that are excluded from the application of sections 5, 5A and 6 of ETO during stage 1;
 - (b) section 5 substitutes a new provision for regulation 11 of the principal Regulations so that a plan or a related document needs to be submitted in duplicate only if it is submitted in hard copy form;
 - (c) section 6 amends regulation 14 of the principal Regulations so that a plan needs to be drawn or reproduced on a suitable and durable material only if it is submitted in hard copy form; and

- (d) section 7 amends regulation 30 of the principal Regulations to cater for the stamping, signing and dating of a plan submitted in the form of an electronic record.
- 4. Part 3 will come into operation at the beginning of stage 2 and the new regulation 6A that comes into operation in stage 1 will be amended so that some building documents will no longer be excluded from the application of sections 5, 5A and 6 of ETO.
- 5. Part 4 will come into operation at the beginning of stage 3 and the new regulation 6A will be repealed so that sections 5, 5A and 6 of ETO will apply in relation to all building documents.