

律政司法律政策科的信頭

Letterhead of DEPARTMENT OF JUSTICE Legal Policy Division

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2 September, 1999

The Chairman,
The Hong Kong Bar Association,
LG2 High Court,
38 Queensway,
Hong Kong.

Fax : 2869 0189

Via Mr. Michael Scott, SASG/GAU

Dear Sir,

Electronic Transactions Bill

Thank you for your letter of 21 August 1999 commenting on the Legal Policy Division's proposed exemption under the Electronic Transactions Bill in respect of the Legal Practitioners Ordinance (Cap. 159). The Secretary for Information Technology and Broadcasting (SITB) has now offered his initial response to this Division's proposal. A copy of the initial response is enclosed herewith.

2. When forwarding his initial response, the SITB has remarked that one of the main purposes of the Bill is to remove legal impediments on the use of electronic records. If a particular legislative provision requires the submission of certain documents but has not specified that the documents have to be in written form or imposed restriction against the submission of documents in electronic form, then electronic form should not be rejected under present circumstances. In such case, exemption under the Bill is not relevant as there is no legal impediment to be removed by the Bill in the first instance.

3. The SITB has also remarked that a more open attitude should be adopted in dealing with the receipt of electronic information. In the information world of today, there is little difference between receiving a document in written form through mail or fax and receiving the document in electronic form through e-mail, CD-ROM or diskette. Moreover, the document in electronic form can always be printed out in hard copy form for further processing in the existing way.

4. Before I reply to SITB, I should be grateful if you could let me have your views on the SITB's initial response by 14 September 1999. In the meantime, I will also seek the comments of the Law Society.

5. Thank you for your assistance in the matter.

Yours faithfully,

(Doris Lo)(Miss)
Government Counsel
Legal Policy Division

Section	Remarks	ITBB's Initial Response
Section 7	Certificate or document authorising any legal officer to exercise and discharge any rights and duties which the S for J is entitled to exercise or required to discharge.	There is no stipulation under existing law that the certificate or document has to be in writing. It is up to S for J to decide in what form it should take. Existing practices of issuing the certificate or document in writing can continue. No exemption is necessary.

Legal Practitioners Ordinance (Cap 159)

Section	Remarks	ITBB's Initial Response
Section 4(1A)	Certification of Satisfaction issued by the Law Society relating to qualification for admission.	Court proceedings are exempt under Schedule 2 of the ETB. No separate exemption is necessary.
Section 5	Certification of admission signed by a judge	Court proceedings are exempt under Schedule 2 of the ETB. No separate exemption is necessary.

Section	Remarks	ITBB's Initial Response
Section 16(1)	Application to strike the name of a solicitor off the roll of solicitors.	There is no requirement in section 16(1) that the application has to be made in writing. There is also no restriction against the submission of the application in the electronic form. Exemption under the ETB is not relevant. No exemption is necessary.
Section 28	Formalities for admission of a banister - documentary evidence of overseas qualification and experience.	There is no requirement in section 28 that the documents have to be submitted in writing. There is also no restriction against the submission of the documents in the electronic form. Exemption under ETB is not relevant. No exemption is necessary.
Section 56	Certificate of a taxing officer.	Under section 56(3), the agreement involved shall be in writing and signed by the person to be bound or by his agent. Exemption is initially considered justified as this is related to judicial proceedings.

Admission and Registration Rules (Cap 159B)

Section	Remarks	ITBB's Initial Response
Rule 4	Application for admission as solicitor.	Judicial proceedings are exempt under Schedule 2 of the ETB. No separate exemption is necessary.
Rule 5(3)	Certification of admission.	Judicial proceedings are exempt under Schedule 2 of the ETB. No separate exemption is necessary. Moreover, it is up to the Registrar to decide how the certificate of admission is to be delivered.
Rule 8	Application for admission as a barrister.	Judicial proceedings are exempt under Schedule 2 of the ETB. No separate exemption is necessary.

Trainee Solicitors Rules (Cap 159J)

Section	Remarks	ITBB's Initial Response
Section 14	Certification or notification as evidence of results.	There is no requirement under Section 14 that the information has to be in writing. There is also no restriction against the submission of information in electronic form. Exemption under the ETB is not relevant. No exemption is necessary.

Overseas Lawyers (Qualification for Admission) Rules (Cap 159Q)

Section	Remarks	ITBB's Initial Response
Rule 9	Appeal to the Court of First Instance.	Judicial proceedings are exempt under Schedule 2 of the ETB. No separate exemption is necessary.