

LEGISLATIVE COUNCIL BRIEF

ELECTRONIC TRANSACTIONS ORDINANCE (AMENDMENT OF SCHEDULE 3) ORDER 2007

ELECTRONIC TRANSACTIONS (EXCLUSION) (AMENDMENT OF SCHEDULES) ORDER 2007

INTRODUCTION

On 31 October 2007, the Secretary for Commerce and Economic Development (the Secretary) made the Electronic Transactions Ordinance (Amendment of Schedule 3) Order 2007 set out in Annex A under section 50 of the Electronic Transactions Ordinance (ETO) (Cap. 553) to add certain provisions to Schedule 3 to the ETO.

2. On 26 October 2007, the Permanent Secretary for Commerce and Economic Development (Communications and Technology) (the Permanent Secretary) made the Electronic Transactions (Exclusion) (Amendment of Schedules) Order 2007 set out in Annex B under section 11(1) of the ETO to repeal certain exemptions from the Electronic Transactions (Exclusion) Order (the Exclusion Order).

JUSTIFICATIONS

Background

3. The ETO was enacted in January 2000 and came into full operation in April 2000. Subject to certain requirements set out in sections 5 to 8 of the ETO, the ETO gives electronic records and electronic/digital signatures used in electronic transactions the same legal status as that of their paper-based counterparts as follows –

- (a) section 5 of the ETO provides that if a rule of law requires or permits information to be or given in writing, the use of electronic records satisfies the rule of law;
- (b) section 5A of the ETO provides that if a rule of law under a legal provision specified in Schedule 3 to the ETO requires or permits a document to be served on a person by personal service or by post, the service of the document in the form of an electronic record satisfies the rule of law;
- (c) section 6(1) of the ETO provides that if a rule of law requires a signature of a person on a document and neither the person whose signature is required nor the person to whom the signature is to be given is or is acting on behalf of a government entity, an electronic signature satisfies the requirement;
- (d) section 6(1A) of the ETO provides that if a rule of law requires a signature of a person on a document and the person whose signature is required and/or the person to whom the signature is to be given is/are acting on behalf of a government entity/entities, a digital signature satisfies the requirement;
- (e) section 7 of the ETO provides that if a rule of law requires certain information to be presented or retained in its original form, that requirement is satisfied by presenting or retaining the information in the form of electronic records; and
- (f) section 8 of the ETO provides that if a rule of law requires certain information to be retained, that requirement is satisfied by retaining electronic records.

The Exclusion Order

4. Government departments took the lead in setting a good example in adopting electronic transactions by accepting electronic submission under the bulk of the statutory provisions in the laws of Hong Kong. However, for some specific statutory provisions concerning the operation of individual Government departments, there is a genuine and practical

need to exclude electronic submissions/transmissions because of operational, technological or other reasons. To ensure that the Government departments concerned would continue to operate smoothly, the Permanent Secretary¹ has been given the power under section 11(1) of the ETO to exclude by order published in the Gazette specific legislative provisions from the application of sections 5, 6, 7 or 8 of the ETO. The Exclusion Order was published in the Gazette on 3 March 2000 and came into effect on 7 April 2000 after negative vetting by the Legislative Council.

5. The statutory provisions covered by the Exclusion Order can be classified into the following four categories –

- (a) provisions which have to be excluded due to the solemnity of the matter or document involved, e.g. provisions concerning the electoral process;
- (b) provisions which have to be excluded on operational grounds, e.g. provisions concerning the production of documents to Government authorities on the spot;
- (c) provisions which have to be excluded due to the involvement of voluminous submissions and complex plans which would be difficult to handle electronically at present, e.g. provisions concerning submission of documents and plans to the works departments; and
- (d) provisions which have to be excluded because of international practices, e.g. provisions concerning documents to be kept by the flight crew for air navigation purposes.

6. When making the Exclusion Order, the Government made a commitment to withdraw the exemptions where appropriate, while noting

¹ The power to amend the Exclusion Order under section 11(1) of the ETO has been transferred from the then Secretary for Commerce, Industry and Technology to the then Permanent Secretary for Commerce, Industry and Technology (Communications and Technology) through the Electronic Transactions (Amendment) Ordinance 2004 which has become effective from 30 June 2004. Since the re-organisation of policy bureaux with effect from 1 July 2007, the power has been transferred to the Permanent Secretary for Commerce and Economic Development (Communications and Technology).

the need to make new exemptions with the enactment of new legislation where circumstances so merit. So far, six amendment orders have been made to amend the Exclusion Order to withdraw exemptions that were no longer necessary and to provide for new exemptions with the enactment of new legislation.

Schedule 3 to the ETO

7. Some legislation contain requirements of serving documents on the parties concerned by post or in person. These legal provisions were enacted at the time when electronic transactions were not prevalent. In some cases, there are now no justifications to exclude the electronic means for serving the documents and such legal provisions, if remain unaltered, will become an impediment to electronic transactions and the implementation of e-Government.

8. To remove such unnecessary impediments, Section 5A of the ETO and Schedule 3 to the ETO were introduced by the Electronic Transactions (Amendment) Ordinance 2004 enacted in June 2004. Section 5A provides that for documents that are required or permitted to be served by post or in person under the provisions set out in Schedule 3, the service of the documents in the form of electronic record satisfies the requirement. Schedule 3 currently contains provisions of six Ordinances. When Schedule 3 to the ETO was introduced, it was noted that the schedule would be expanded over time through an ongoing review process. Section 50 of the ETO provides that the Secretary may by an order published in the Gazette amend Schedule 3 to the ETO.

Proposals

9. We propose the following amendments to Schedule 3 to the ETO and the Exclusion Order:

- (a) inclusion of two additional provisions in Schedule 3, covering the serving of notices and other documents relating to electricity and inland revenue matters; and
- (b) withdrawal of seven currently exempted provisions from the

Exclusion Order, covering submissions of applications, documents, manuals and undertakings relating to works and transport matters.

10. Details of the amendments proposed in paragraph 9(a) and (b) above are set out at Annex C and Annex D respectively.

THE ORDERS

11. The Electronic Transactions Ordinance (Amendment of Schedule 3) Order 2007 at Annex A sets out the specific statutory provisions to be added to Schedule 3 to the ETO, as proposed in paragraph 9(a) above.

12. The Electronic Transactions (Exclusion) (Amendment of Schedules) Order 2007 at Annex B sets out the specific statutory provisions to be repealed from the Exclusion Order, as proposed in paragraph 9(b) above.

LEGISLATIVE TIMETABLE

13. The Electronic Transactions Ordinance (Amendment of Schedule 3) Order 2007 and the Electronic Transactions (Exclusion) (Amendment of Schedules) Order 2007 will be gazetted on 16 November 2007 and will be tabled before the Legislative Council on 21 November 2007. The target commencement date of the two orders falls on 11 January 2008.

IMPLICATIONS OF THE PROPOSAL

14. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. Allowing the service of certain documents in the form of electronic records and repealing exemptions that have become unnecessary (due to operational, technological or social changes) do not give rise to any financial or staffing implications.

PUBLIC CONSULTATION

15. The proposed amendments will give the public the option of using or accepting electronic records as a means for satisfying the requirements of serving documents, giving information or giving signature in certain statutory provisions, in addition to the existing option of using the paper form. Moreover, the principles for making exclusions from the electronic process set out in paragraph 5 above were noted by the Legislative Council when the Exclusion Order was first made, and the proposed repeal of existing exemptions follows these established principles. No special public consultation is therefore considered necessary.

PUBLICITY

16. We will publicize the new provisions added to Schedule 3 to the ETO and the provisions repealed from the Exclusion Order through the relevant Government websites and other publicity materials relating to the concerned provisions.

ENQUIRIES

17. Any enquiries on this brief should be addressed to Mrs. W. Y. Do, Assistant Government Chief Information Officer, at 2189 2287 or by facsimile at 2511 1458.

**Office of the Government Chief Information Officer
Commerce and Economic Development Bureau
October 2007**

**ELECTRONIC TRANSACTIONS ORDINANCE
(AMENDMENT OF SCHEDULE 3) ORDER 2007**

(Made by the Secretary for Commerce and Economic Development under section 50 of the Electronic Transactions Ordinance (Cap. 553))

1. Commencement

This Order shall come into operation on 11 January 2008.

2. Service of documents

Schedule 3 to the Electronic Transactions Ordinance (Cap. 553) is amended by adding –

- “7. Electricity Ordinance (Cap. 406) Section 52
- 8. Inland Revenue Ordinance (Cap. 112) Section 58(2)”.

Secretary for Commerce and
Economic Development

2007

Explanatory Note

This Order adds two provisions to Schedule 3 to the Electronic Transactions Ordinance (Cap. 553). The effect is that a document required or permitted to be served on a person by personal service or post under these two provisions may be served in the form of an electronic record. The electronic

record must be sent to an information system designated by the person, and the information in it must be accessible for subsequent reference.

**ELECTRONIC TRANSACTIONS (EXCLUSION)
(AMENDMENT OF SCHEDULES) ORDER 2007**

(Made by the Permanent Secretary for Commerce and Economic Development
(Communications and Technology) under section 11(1) of the
Electronic Transactions Ordinance (Cap. 553))

1. Commencement

This Order shall come into operation on 11 January 2008.

**2. Provisions excluded from application of
section 5 of Ordinance**

Schedule 1 to the Electronic Transactions (Exclusion) Order (Cap. 553
sub. leg. B) is amended by repealing items 40, 47, 48 and 71.

**3. Provisions excluded from application of
section 6 of Ordinance**

Schedule 2 is amended –

- (a) in item 21, by repealing “Articles 10(2) and 28(4) and
Schedule 15, Regulation 1(1)” and substituting “Article
28(4)”;
- (b) by repealing item 27.

Permanent Secretary for Commerce
and Economic Development
(Communications and Technology)

Explanatory Note

The statutory provisions excluded from the application of sections 5 and 6 of the Electronic Transactions Ordinance (Cap. 553)(“the Ordinance”) are listed in Schedules 1 and 2 to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) respectively. Section 5 of the Ordinance provides that if a rule of law requires or permits information to be or given in writing, the use of electronic records satisfies the requirement. Section 6 of the Ordinance provides that if a rule of law requires a signature of a person on a document, the use of electronic signature by that person or (if that person is acting on behalf of a government entity) the use of digital signature satisfies the requirement. This Order deletes a number of statutory provisions from the Schedules so that these provisions will no longer be so excluded and electronic records and electronic or digital signatures can be used for the purposes of sections 5 and 6 of the Ordinance respectively.

Provisions Proposed to be Included in Schedule 3 to the ETO

Details of the provisions containing the requirement of serving documents by post or in person which are proposed to be included in Schedule 3 to the ETO are set out below.

(a) Notices or other documents in respect of electricity matters

2. Under section 52 of the Electricity Ordinance (Cap. 406), a notice or other document referred to in the Ordinance may be served in person or sent by post to the recipient's premises or deposited in his post box or receptacle. As the Electrical and Mechanical Services Department has established an information system to receive notices or documents such as applications for registration as an electrical contractor or an electrical worker in electronic form, it is proposed that section 52 of the Electricity Ordinance (Cap. 406) be added to Schedule 3 to the ETO so that such notices or other documents can be served upon the Director of Electrical and Mechanical Services (DEMS) in the form of electronic record.

(b) Notices in respect of tax return and assessment

3. Under section 58(2) of the Inland Revenue Ordinance (Cap. 112), a notice given by virtue of the Ordinance may be served on a person either personally or by being delivered at, or sent by post to, any of his addresses such as his last known postal address, place of abode, business or employment. As the Inland Revenue Department is going to provide an option for taxpayers to choose whether the notices of filing tax return and notices of assessment be served in paper form or in electronic form, it is proposed that section 58(2) of the Inland Revenue Ordinance (Cap. 112) be added to Schedule 3 to the ETO so that the notices can be served upon taxpayers in the form of electronic record.

Exemptions Proposed to be Withdrawn from the Exclusion Order

Details of the provisions proposed to be withdrawn from the Exclusion Order are set out below.

(a) Works-related applications and submissions

(i) Applications for inclusion in the register of lift engineers or the register of escalator engineers

2. Under the Lifts and Escalators (Safety) Ordinance (Cap. 327), DEMS shall keep a register of lift engineers and a register of escalator engineers of persons who are, in his opinion, qualified to carry out the duties and exercise the functions so required to be carried out and exercised by registered persons. Section 6(1) of the Lifts and Escalators (Safety) Ordinance (Cap. 327) provides that every application for inclusion in the register of lift engineers or the register of escalator engineers shall be made to the DEMS. Due to technical difficulties, this provision has been exempted from the application of section 5 of the ETO. Since the technical difficulties relating to the receipt of such applications in electronic form have now been resolved, the exemption of section 6(1) of the Lifts and Escalators (Safety) Ordinance (Cap. 327) from section 5 of the ETO should be withdrawn.

(ii) Documents in respect of amusement rides

3. Section 5 of the Amusement Rides (Safety) Ordinance (Cap. 449) provides that a person wishing to install an amusement ride shall submit to the DEMS the relevant documents such as the designs and specifications of the machinery connected with the ride and the proposed method and programme of installation of the ride. Section 39 of the Amusement Rides (Safety) Ordinance (Cap. 449) provides that for the purpose of enabling the DEMS to ascertain any arrangements which are made or are about to be made by the owner of an amusement ride for the fulfilment of the owner's obligations under the Ordinance, the owner shall furnish the DEMS with such information as to the operation or

maintenance of the ride as may be required by the DEMS. Moreover, section 6(1) of the Amusement Rides (Safety) (Operation and Maintenance) Regulation (Cap. 449 sub. leg. B) requires the owner of an amusement ride to, within a specified period, supply to the DEMS an emergency manual, an operation manual and a maintenance manual in relation to the amusement ride. Due to technical difficulties, these provisions have been exempted from the application of section 5 of the ETO. Since the technical difficulties relating to the receipt of such documents in electronic form have now been resolved, the exemption of sections 5 and 39 of the Amusement Rides (Safety) Ordinance (Cap. 449) and section 6(1) of the Amusement Rides (Safety) (Operation and Maintenance) Regulation (Cap. 449 sub. leg. B) from section 5 of the ETO should be withdrawn.

(b) Transportation-related undertakings and submissions

(i) Undertaking of notifications in respect of traffic accidents

4. Under the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229), road traffic accident victims (or their dependants in cases of death) may apply for financial assistance. Section 9(1) of the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229) requires a person eligible to receive money from the assistance fund to sign an undertaking to notify the Director of Social Welfare Incorporated of the making of the claim or the bringing of any legal proceedings in respect of the traffic accident, and to notify any person against whom he makes a claim in respect of that traffic accident of the amount of money he has received from the fund. Due to technical difficulties, this provision has been exempted from the application of sections 5 and 6 of the ETO. Since the technical difficulties relating to the receipt of such signed undertakings in electronic form have now been resolved, the exemption of section 9(1) of the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229) from sections 5 and 6 of the ETO should be withdrawn.

(ii) Documents in respect of air navigation

5. Under article 10(2) of the Air Navigation (Hong Kong) Order

1995 (Cap. 448 sub. leg. C) (the Order), at the end of every flight by an aircraft registered in Hong Kong, the commander of the aircraft shall enter in a technical log the flight details such as the times when the aircraft took off and landed, and any defect which affects the airworthiness or safe operation of the aircraft, and he shall sign and date such entries. Moreover, schedule 15, regulation 1(1) of the Order specifies the particulars which should be contained in the load sheets required under the Order and requires that a signed certificate should be included in a load sheet. Due to technical difficulties, these provisions have been exempted from the application of section 6 of the ETO. Since the technical difficulties relating to the signing of such technical log and certificates in electronic form have now been resolved, the exemption of article 10(2) and schedule 15, regulation 1(1) of the Order from section 6 of the ETO should be withdrawn.