

LEGISLATIVE COUNCIL BRIEF

ELECTRONIC TRANSACTIONS (EXCLUSION) (AMENDMENT) ORDER 2003

INTRODUCTION

On 10 February 2003, the Secretary for Commerce, Industry and Technology (the Secretary) made the Electronic Transactions (Exclusion) (Amendment) Order 2003 (the Amendment Order) set out in Annex under section 11(1) of the Electronic Transactions Ordinance (ETO) (Cap.553) to repeal certain exemptions from the Electronic Transactions (Exclusion) Order (the Exclusion Order) and add new exemptions to it.

BACKGROUND AND ARGUMENT

Background

2. The ETO was enacted in January 2000 and all its provisions came into operation in phases by April 2000. Subject to certain requirements set out in sections 5 to 8 of the ETO, the ETO provides legal recognition to electronic records and digital signatures as that of their paper-based counterparts as follows –

- (a) section 5(1) of the ETO provides that if a rule of law requires information to be or given in writing, an electronic record satisfies the requirement;
- (b) section 5(2) of the ETO provides that if a rule of law permits information to be or given in writing, an electronic record satisfies the rule of law;
- (c) section 6 of the ETO provides that if a rule of law requires the signature of a person, a digital signature of the person satisfies the requirement;

- (d) section 7 of the ETO provides that if a rule of law requires that certain information to be presented or retained in its original form, the requirement is satisfied by presenting or retaining the information in the form of electronic records; and
- (e) section 8 of the ETO provides that if a rule of law requires certain information to be retained, whether in writing or otherwise, the requirement is satisfied by retaining electronic records.

3. 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 make exclusion for them from the electronic process because of operational, technological or other reasons. To ensure that the Government departments concerned would continue to operate smoothly, the Secretary 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.

4. The statutory provisions covered by the Exclusion Order can be classified into the following five 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, e.g. provisions concerning

submission of documents and plans to the works departments;

- (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; and
- (e) provisions which have to be excluded to ensure that Government would be able to meet its contractual obligations, e.g. provisions on the submission of trade-related documents which concern the franchise of Tradelink Electronic Commerce Limited (Tradelink).

5. When making the Exclusion Order, the Government made a commitment to withdraw the exemptions where appropriate and noted the need to make new exemptions in respect of new legislation enacted. Accordingly, the former Secretary for Information Technology and Broadcasting subsequently made four amendment orders to amend the Exclusion Order to provide for new exemptions with the enactment of new legislation and to withdraw exemptions made that were no longer necessary.

The Proposals

(a) Trade-related documents

6. To promote the widespread use of electronic data interchange (EDI) by the trading community, the Government granted Tradelink a franchise (which will expire by the end of 2003) in 1992 to provide EDI services for the submission of a number of Government trade-related documents. Since the EDI services for some of these documents had not been launched when the ETO was enacted, the statutory provisions relating to the submission of these documents have been excluded from the application of the ETO. The Government has subsequently launched or will soon launch the EDI services for these documents through Tradelink. Specific amendments have been or will be made to the relevant legislation including the Dutiable Commodities Ordinance (Cap. 109), the Import and Export Ordinance (Cap. 60) and their subsidiary legislation (details set out in paragraphs 7 to 9 below) to provide for the submission of these documents using electronic services provided by

Tradelink. All these provisions will be in place by 11 April 2003. The exemptions from the ETO relating to the submission of the relevant trade-related documents under these provisions will no longer be necessary by then. We therefore propose to withdraw these exemptions. We also propose to withdraw the exemptions in respect of some other trade-related documents and the details are set out in paragraphs 10 to 12 below.

(i) Cargo manifests

7. When the Import and Export (Electronic Transactions) Ordinance 2002 comes into operation on 11 April 2003, the Government will allow carriers to submit cargo manifests required under section 15 of the Import and Export Ordinance in paper or electronic form. As such, the exemption of section 15(1) from the application of section 5 of the ETO will become unnecessary and should be repealed.

8. The Import and Export (Registration) (Amendment) Regulation 2003 to be submitted to the Legislative Council for negative vetting on 19 February 2003 will provide for, among other things, using electronic services for submission of cargo manifests under regulations 11(1) and 12(1) of the Import and Export (Registration) Regulations (Cap. 60 sub. leg.). When the Import and Export (Registration) (Amendment) Regulation 2003 comes into force on 11 April 2003, the current exemptions from the application of section 5 of the ETO in relation to these regulations will become unnecessary and should be repealed.

(ii) Dutiable commodities permits and licences

9. The Dutiable Commodities (Amendment) Regulation 2001, which came into effect on 10 January 2002, provides for, among other things, the implementation of EDI services for application of permits for dutiable commodities. The Dutiable Commodities (Amendment) Regulation 2001 changed the then regulation 22(4) of the Dutiable Commodities Regulations, which was exempted from the application of section 5 of the ETO, to become the current regulation 22(5). Following the implementation of the EDI services, the declaration required under the then regulation 22(4) is allowed to be submitted through electronic

means. Exemption is no longer necessary and there is no need to include the new regulation 22(5) in the Exclusion Order. The exemption for regulation 22(4) should thus be withdrawn.

10. The then regulation 22(6) of the Dutiable Commodities Regulations was exempted from the application of section 6 of the ETO. The Dutiable Commodities (Amendment) Regulation 2001 repealed this provision and substituted it with a new regulation 22(6), which is not intended to be exempted. The current exemption should therefore be withdrawn.

11. The Dutiable Commodities (Amendment) Regulation 2001 expressly provides that application for a licence for dutiable commodities and information in connection with such application submitted under regulation 22(1) of the Dutiable Commodities Regulations must be in paper form. The exemptions of regulation 22(1) from the application of sections 5 and 6 of the ETO have therefore become unnecessary and should be withdrawn.

(iii) Lists of ports of call

12. Section 19(1) of the Import and Export Ordinance provides that the owner of any vessel shall, if required to do so by the Commissioner of Customs and Excise, furnish to him a written list showing every port at which the vessel has called during the three months immediately preceding its arrival in Hong Kong. The Government is now prepared to allow the list to be provided in paper or electronic form. As such, the exemption of section 19(1) from the application of section 5 of the ETO should be withdrawn.

(b) Employees' information

13. The Commissioner for Labour often has to inspect or seize documents in the course of discharging enforcement duties in respect of a number of provisions under the Employment Ordinance (Cap. 57), the Immigration Ordinance (Cap. 115) and the Employees' Compensation Ordinance (Cap. 282). Owing to anticipated enforcement difficulties, these provisions have been exempted from the application of either

section 5 or section 8 of the ETO. Taking into account technological and social changes, the Commissioner for Labour considers that the operational difficulties relating to the handling of electronic records during inspection visits can now be resolved. As such, these exemptions should be withdrawn.

(c) Applications for traffic accident victims assistance

14. Section 9(1) of the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229) provides that a person eligible to receive any payment from the assistance fund shall sign an undertaking to notify the Director of Social Welfare (DSW) of the making of any 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.

15. DSW proposes that the requirement to sign this undertaking should be excluded from the application of sections 5 and 6 of the ETO because it is necessary to request the applicant to sign it at the time of an interview (an indispensable procedure for all applications under the Traffic Accident Victims Assistance Scheme) that an officer of the Social Welfare Department conducts for the purposes of collecting the required case information and requesting the applicant to sign the application form.

(d) Medical prescriptions

16. Section 4(1)(c) of the Antibiotics Ordinance (AO) (Cap.137) stipulates that no person can sell any substance to which the AO applies unless he is, inter alia, a registered pharmacist or an authorized seller of poisons, and the substance is sold under the authority of a prescription.

17. Regulation 9(3)(a) of the Pharmacy and Poisons Regulations (PPR) (Cap. 138 sub. leg.) provides that a prescription under the PPR shall be in writing and signed and dated by the person giving it.

18. Section 4(4)(c) of the AO and regulation 9(4)(d) of the PPR stipulate that, except in the case of a prescription which may be dispensed

again, the prescription should be retained and made readily available for inspection for two years.

19. The Director of Health has advised that, owing to operational and enforcement difficulties, she needs to mandate the use of manuscript prescription in respect of prescriptions made under the above provisions and the keeping of record of prescriptions by persons dispensing such prescriptions in paper form. In addition, the original hard copy of the prescription will be a very important piece of evidence in related prosecutions. Thus, the Director of Health proposes that section 4(1)(c) of the AO and regulation 9(3)(a) of the PPR should be exempted from the application of sections 5 and 6 of the ETO and that section 4(4)(c) of the AO and regulation 9(4)(d) of the PPR should be exempted from the application of section 8 of the ETO.

THE ORDER

20. The Amendment Order sets out the specific statutory provisions to be exempted from the application of sections 5, 6 and 8 of the ETO and the existing exemptions to be repealed, as proposed in paragraphs 6-19 above.

LEGISLATIVE TIMETABLE

21. The Amendment Order will be gazetted on 14 February 2003 and will be tabled before the Legislative Council on 19 February 2003. We propose that the Amendment Order should come into effect on 11 April 2003 so that the withdrawal of the exclusions in respect of submission of cargo manifests will be synchronized with the commencement of the Import and Export (Electronic Transactions) Ordinance 2002 and the Import and Export (Registration) (Amendment) Regulation 2003.

IMPLICATIONS OF THE PROPOSALS

22. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. Repealing exemptions that have become or will become unnecessary (due to technological or social changes or amendments to the relevant Ordinances providing for

electronic submission of documents, etc.) and adding exemptions to exclude Government services not amenable to the electronic process do not give rise to any financial or staffing implications.

PUBLIC CONSULTATION

23. The principles for making exclusions from the electronic process set out in paragraph 4 above were noted by the Legislative Council when the Exclusion Order was first made. The proposed new exemptions and the proposed withdrawal of existing exemptions follow these established principles. No special public consultation is thus necessary.

PUBLICITY

24. We will publicize the repealed and new exemptions through the relevant Government websites and other publicity materials relating to the concerned statutory provisions.

ENQUIRIES

25. Any enquiries on this brief should be addressed to Miss Adeline Wong, Principal Assistant Secretary, Information Technology and Broadcasting Branch, Commerce, Industry and Technology Bureau at 2189 2207 or by facsimile at 2511 1458.

**Information Technology and Broadcasting Branch
Commerce, Industry and Technology Bureau
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