

**For discussion
on 13 June 2022**

**Legislative Council
Panel on Information Technology and Broadcasting**

Amendments to the Electronic Transactions Ordinance

Purpose

This paper briefs Members on the legislative proposal for amending the Electronic Transactions Ordinance (Cap. 553) (ETO) to facilitate the implementation of further e-Government services by government bureaux and departments (B/Ds). This legislative exercise will also enable the replacement of Postmaster General (PMG)'s role as a recognized certification authority (RCA) by the Government Chief Information Officer (GCIO) to take effect after the transitional arrangements.

Background

The Electronic Transactions Ordinance (Cap. 553)

2. To provide the essential infrastructure in facilitating electronic transactions, the Government first enacted the ETO on 5 January 2000 to provide a clear legal framework for the conduct of secure electronic transactions by giving electronic record and electronic signature the same legal recognition as that of their paper-based counterparts. It also establishes a voluntary recognition scheme for certification authorities (CAs), which enhances public confidence in the adoption of electronic transactions. The key provisions of the ETO are set out at **Annex 1**.

Provision of Government e-services under the ETO

3. Amendments to the ETO as well as other relevant ordinances have been made over the years to provide necessary legal backing to the implementation of e-Government services to enhance public sector efficiency and service delivery. The latest amendment exercise¹ was conducted in September 2021 to facilitate Trade and Industry Department

¹ The Electronic Transactions Ordinance (Amendment of Schedule 3) (No. 2) Order 2021 and the Electronic Transactions (Exclusion) (Amendment) (No. 2) Order 2021 were tabled at the Legislative Council for negative vetting on 15 September 2021.

(TID), Transport Department (TD) and the Buildings Department (BD) to conduct electronic transactions and services under their respective legislations. To meet the rising expectations and changing needs of businesses and the public under the “new normal”, the Government is committed to better serving the community through widening the adoption of innovation and technology and streamlining of business processes in the delivery of public services. As announced in the 2020 Policy Address and Policy Address Supplement, e-licensing would be implemented for all licensing applications by mid-2022 under the Efficiency Office’s “Be the Smart Regulator” (BTSR) Programme regarding business licences. At the same time, B/Ds will reform some 900 government services under the “Streamlining of Government Services” (SGS) Programme for services involving applications and approvals.

Limitations of other governing principal legislation

4. During the course of implementing BTSR and SGS Programmes, we noted that some of the existing provisions of the relevant principal ordinances of B/Ds have hindered the smooth introduction of digitisation of government services. While some B/Ds would tackle this legal constraint by introducing legislative amendments to the respective/governing principal ordinances together with other necessary amendments, the Innovation and Technology Bureau (ITB) would take the lead in introducing generic amendments to the provisions of the ETO which will facilitate the smooth introduction of digital government services. The following paragraphs set out the proposed scope of amendments to be included in this round of exercise.

Proposed Scope of Amendments

Service of Documents by Registered Post

5. By virtue of Section 5A and Schedule 3 of the ETO, provisions which require a document to be served on a person by personal service or by post (whether or not there is any further specification as to the address or place at which such service is to be effected), could be satisfied by the service of an electronic record under relevant conditions as set out at **Annex 2**. We propose to include a provision in the ETO which allows a document to be served by registered post to be satisfied by the service of an electronic record. To achieve this, arrangements will be introduced to perform the unique features of registered post, viz. sender proof of mailing as well as acknowledgement receipt, under an information system.

Service of Documents in Multiple Copies

6. Under section 11(1) of the ETO, the Permanent Secretary for Innovation and Technology may by Gazette specify the ordinances that are excluded from the application of sections 5, 6, 7 and 8 of the ETO because of operational, technological, solemnity or other reasons. Among these ordinances excluded under the Electronic Transactions (Exclusion) Order (Cap. 553B) (ET(E)O), there are 14 provisions in those ordinances that are exempted under the ET(E)O due to the legal requirement of service of more than one physical copies of documents. To facilitate the use of electronic means in the submission of these documents, it is necessary to address the “multiple copies” requirement by adding a provision to the ETO such that a single electronic copy may suffice for submission by electronic means before relevant exclusions under the ET(E)O could be removed.

7. The legal provisions that contain references to or requirements of serving documents on the parties concerned by registered post, and/or required documents to be submitted in more than one physical copy were enacted at the time when electronic transactions were not prevalent, and have become an impediment to electronic transactions and services provided by the Government nowadays. We propose to provide new schedules to the ETO to remove these unnecessary impediments.

8. If effected, the amendments would allow B/Ds to -

- (i) satisfy the requirement of service of documents by registered post through electronic means; and
- (ii) satisfy the requirement of submission of more than one physical copies of documents by a single electronic copy.

The PMG's role as a RCA

9. A digital certificate is a form of electronic record which supports a digital signature purporting to confirm the identity of a party who claims to be conducting an electronic transaction. Digital certificates are issued by certification authorities. Section 34 of the ETO designates the PMG as a RCA. The PMG has been undertaking this role since the enactment of the ETO in 2000 and providing CA services under the name generally known as the Hongkong Post Certification Authority (HKPCA). Meanwhile, eligible players in the private sector may also apply to the GCIO to become a RCA. There are now two CAs recognized under the ETO. Apart from the PMG, Digi-Sign Certification Services Limited has become a recognized CA under the ETO since July 2001.

10. Over the years, HKPCA has been playing a pivotal role in providing reliable, secure and trustworthy certification services in Hong Kong, thereby boosting users' confidence in electronic transactions and increasing the effectiveness of public and private online services and e-commerce. In particular, HKPCA has been a partner of the ITB and the Office of the Government Chief Information Officer (OGCIO) in facilitating B/Ds' effective use of digital certificates in many e-Government initiatives. HKPCA's digital certificates are generally used in government confidential mail systems, B/Ds' servers, e-cheque initiative, mutual recognition of electronic signature certificates with Guangdong, the iAM Smart initiative, etc. With the continued increase in online transactions and digital government services, the provision of secure and trustworthy RCA services with long-term continuity is crucial for both the Government and the community.

11. In view of the increasing variety of and demand for services provided by the Hongkong Post, in order to maximize limited resources, HKPCA has outsourced the CA service since 2007 to third party operators under a self-financing model with technical support of the OGCIO. In 2021, the Government has reviewed the outsourcing model as well as the genuine need for PMG to continue to be a RCA. It was concluded that the preferred arrangement for PMG to assume the role of a RCA may be relinquished if another government bureau/department can take over the PMG whilst counter services can still be provided at the branch offices of Hongkong Post to facilitate applicants' application for the CA services.

12. In the light of the above, we propose to relinquish HKPCA's role as a RCA and appoint the GCIO, who has the technical knowhow and the mandate to promote wider adoption of digital government services, to take up the duties stipulated under Sections 34 and 35 of the ETO. To ensure that B/Ds and the public can continue to enjoy reliable, secure and trustworthy certification services, the PMG will continue to serve as a RCA for some time before the GCIO assumes the duties. Consequential amendment to the Post Office Trading Fund Resolution of the Legislative Council (Cap. 430E) is also required.

Other amendments

13. The ETO was primarily modelled on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce (MLEC) provisions under the principle of non-discrimination, technological neutrality and functional equivalence. We also

propose to align the definitions of “electronic record” and “electronic signature” under the ETO with the prevailing industry and international practice. The proposed amendments should not change the nature of the use of digital signatures. In addition to the major amendments to ETO above, given the number of legislation currently exempted from the ETO might vary, relevant amendments to the ET(E)O is anticipated in near future.

Way Forward

14. We plan to introduce the amendment Bill into the Legislative Council (LegCo) for first reading in the fourth quarter of 2022. Except the relevant sections on the relinquishment of PMG’s role as a RCA, the rest of the proposed amendments shall commence upon passage by the LegCo. The final relinquishment date of PMG will be announced by the Secretary for Innovation and Technology by a Commencement Notice to be published in the Gazette upon the completion of the transition to GCIO.

15. It is noted that some licenses and services are subject to specific legal restrictions, rendering the provision of e-services still not feasible following this round of legislative exercise. To remove the concerned legal constraints, we will continue appealing to relevant B/Ds to critically review the prescribed requirements under their respective legislation so as to identify subject ordinances that might require amendments to provide legal backing for provision of e-services. When B/Ds are ready to introduce legislative amendments to their subject legislation, ITB is prepared to assist B/Ds by making consequential amendments to the ETO, as and when necessary.

Advice Sought

16. Members are invited to comment on the above legislative proposal.

Innovation and Technology Bureau
Office of the Government Chief Information Officer
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Key Provisions of the Electronic Transactions Ordinance

- (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 statutory 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.

Electronic Transactions Ordinance (Cap. 553)

Section 5A. Service of documents

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- (1) Without limiting the generality of section 5, if a rule of law under a provision set out in Schedule 3 requires a document to be served on a person by personal service or by post (whether or not there is any further specification as to the address or place at which such service is to be effected), the provision shall be construed as also providing that service of the document in the form of an electronic record to an information system designated by the person satisfies the requirement under the provision if the information contained in the electronic record is accessible so as to be usable for subsequent reference.

- (2) Without limiting the generality of section 5, if a rule of law under a provision set out in Schedule 3 permits a document to be served on a person by personal service or by post (whether or not there is any further specification as to the address or place at which such service is to be effected), the provision shall be construed as also providing that service of the document in the form of an electronic record to an information system designated by the person is permitted under the provision if the information contained in the electronic record is accessible so as to be usable for subsequent reference.