《電子交易條例》

ELECTRONIC TRANSACTIONS ORDINANCE
ELECTRONIC TRANSACTIONS ORDINANCE

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Schedule 1 Matters excluded from application of sections 5, 6, 7, 8 and 17 of this Ordinance under section 3 of this Ordinance ................................................. A67
Schedule 2 Proceedings in relation to which sections 5, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance ...................................... A67
本條例旨在促進在商業及其他用途上使用電子交易，就如此使用而產生的事宜以及與
如此使用有關的事宜作出規定，使郵政署署長可提供核證機構的服務及有關關連
的目的作出規定。

1. 簡稱及生效日期

(1) 本條例可稱為《電子交易條例》。
(2) 第 1 部、第 4 及 9 條、第 V 部（關於附表 1 所提述的事項者除外）及第 VI
部、第 31 及 33 條、第 IX 部、第 X 部、第 XI 及第 XII 部自本條例於憲報刊登當
日開始時起實施。
(3) 第 3 、5 、6 、7 、8 及 10 條、第 IV 部、第 V 部（關於附表 1 所提述的事
項者）及第 VII 部、第 32 條及附表 1 及 2 自資訊科技及廣播局局長以憲報公告指定
的日期起實施。

2. 釋義

(1) 在本條例中，除文意另有所指外——
“中介人”(intermediary) 就某特定電子紀錄而言，指代他人發出、接收或儲存該紀
錄，或就該紀錄提供其他附帶服務的人；
“公開密碼”(public key) 指配對密碼匙中用作核實數碼簽署的密碼匙；

An Ordinance to facilitate the use of electronic transactions for commercial
and other purposes, to provide for matters arising from and related to
such use, to enable the Postmaster General to provide the services of a
certification authority and to provide for connected purposes.

1. Short title and commencement

(1) This Ordinance may be cited as the Electronic Transactions
Ordinance.
(2) Part I, sections 4 and 9, Part V (other than in relation to the matters
referred to in Schedule 1) and Part VI, sections 31 and 33 and Parts IX, X, XI
and XII shall come into operation at the beginning of the day on which this
Ordinance is published in the Gazette.
(3) Sections 3, 5, 6, 7, 8 and 10, Part IV, Part V (in relation to the matters
referred to in Schedule 1) and Part VII, section 32 and Schedules 1 and 2 shall
come into operation on a day to be appointed by the Secretary for Information
Technology and Broadcasting by notice in the Gazette.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—
“accept a certificate” (接受證書), in relation to a person to whom a certificate is
issued, means that the person while having notice of the contents of the
certificate—

(a) authorizes the publication of the certificate to one or more
persons or in a repository;
“收訊者”（addressee）就發訊者所發出的任何電子紀錄而言，指發訊者指明接收該紀錄的人，但不包括中介人；
“私人密碼匙”（private key）指配對密碼匙中用作產生數碼簽署的密碼匙；
“局長”（Secretary）指資訊科技及溝通局局長；
“法律規則”（rule of law）指——
(a) 條例；
(b) 普通法規則或衡平法規則；或
(c) 習慣法；
“非對稱密碼系統”（asymmetric cryptosystem）指能產生安全配對密碼匙的系統，而安全配對密碼匙是由用作產生數碼簽署的私人密碼匙及用作核實數碼簽署的公開密碼匙組成的；
“負責人員”（responsible officer）就某核證機關而言，指在該機關獲本條例有關的活動方面負責要職的人；
“紀錄”（record）指在有形媒介上記載、儲存或以其他方式固定的資訊，亦指儲存在電子或其他媒介的可載可理解形式還原的資訊；
“配對密碼匙”（key pair）在非對稱密碼系統中，指私人密碼匙及其在數學上相關的公開密碼匙，而該公開密碼匙由某核證該私人密碼匙所產生的數碼簽署的；
“核實數碼簽署”（verify a digital signature）就某數碼簽署、電子紀錄及公開密碼匙而言，指確定——
(a) 該數碼簽署是否用與列於某證書內的公開密碼匙對應的私人密碼匙而產生的；及
(b) 該電子紀錄在其數碼簽署產生後是否未經變更；
而提供數碼簽署屬可核實者，須據此解釋；
核證作業準則”（certification practice statement）指核證機關所發出的以指明其在發出證書時使用的作業實務及標準的準則；
“核證機關”（certification authority）指向他人（可以是另一核證機關）發出證書的人；
“核證機關披露紀錄”（certification authority disclosure record）就任何認可核證機關而言，指根據第 31 條為該機關備存的紀錄；
“倚頗限額”（reliance limit）指某認可證書的倚頗而指明的金額限額；
(b) uses the certificate; or
(c) otherwise demonstrates the approval of the certificate;
“收訊者”（addressee），在 relation to an electronic record sent by an originator，means the person who is specified by the originator to receive the electronic record but does not include an intermediary;
“非對稱密碼系統”（非對稱密碼系統）指系統 capable of generating a secure key pair, consisting of a private key for generating a digital signature and a public key to verify the digital signature;
“證書”（證書）means a record which——
(a) is issued by a certification authority for the purpose of supporting a digital signature which purports to confirm the identity or other significant characteristics of the person who holds a particular key pair;
(b) identifies the certification authority issuing it;
(c) names or identifies the person to whom it is issued;
(d) contains the public key of the person to whom it is issued; and
(e) is signed by a responsible officer of the certification authority issuing it;
“核證機關”（核證機關）means a person who issues a certificate to a person (who may be another certification authority);
“核證機關披露紀錄”（核證機關披露紀錄），in relation to a recognized certification authority，means the record maintained under section 31 for that certification authority;
“核證作業準則”（核證作業準則）means a statement issued by a certification authority to specify the practices and standards that the certification authority employs in issuing certificates;
“業務守則”（業務守則）means the code of practice issued under section 33;
“對應”（對應），in relation to private or public keys，means to belong to the same key pair;
“數碼簽署”（數碼簽署），in relation to an electronic record，means an electronic signature of the signer generated by the transformation of the electronic record using an asymmetric cryptosystem and a hash function such that a person having the initial untransformed electronic record and the signer’s public key can determine——
(a) whether the transformation was generated using the private key that corresponds to the signer’s public key; and
(b) whether the initial electronic record has been altered since the transformation was generated;
“負責人”（負責人）means the Director of Information Technology Services;
“電子紀錄”（電子紀錄）means a record generated in digital form by an information system，which can be——
"accept a certificate" (accept a certificate) 指通过发送某证书的人而言，指他知悉该证书的内容时——
(a) 他批准将该证书向他人公布或在某储存库内公布；
(b) 使用该证书；或
(c) 他以其他方式表示承认该证书；

"issue" (issue) 指证书而言，指核发证书的电子及物理文件并将该证书的内容通知该证书内指名
或识别为收到该证书的人的作为；

"originator" (originator) 指发出或产生该记录的人，或由他人代为发出或产生该记录的人，但不包括中介人；

"subscriber" (subscriber) 指符合以下所有说明的人（该人可以是另一核发机构）——
(a) 在某证书内指名或识别为收到该证书；
(b) 已接受该证书；及
(c) 持有与列于该证书内的公开密钥对应的私有密钥；

"electronic record" (electronic record) 指电子系统内产生的数位形式的记录，而该记录——
(a) 能在该系统内传送或由一个系统传送至另一个系统；
(b) 能储存在该系统或其他媒介内；

"electronic signature" (electronic signature) 指与电子记录相连的或在逻辑上相关的数字形式的
任何字母、数字、符号或其他符号，而该等字母、数字、符号或其他符号是
为确认或认证该记录的目的而签立或采用的；

"Director" (Director) 指电子系统署长；

"information" (information) 包括文字、影像、声音编码、电脑程式、软件及资料库；

“information system” (information system) 指符合以下所有说明的系统——
(a) 处理资讯的；
(b) 记录资讯的；
(c) 能用作使资讯记录或储存在不属位于何处的其他资讯系统内，或能用作
将资讯在该等系统内以其他方式处理的；及
(d) 能用作检索资讯（不属位于何处的其他资讯系统内）；

(a) transmitted within an information system or from one
information system to another; and

(b) stored in an information system or other medium;

“electronic signature” (電子簽署) 指任何文字、数字、或其他符号在数字形式，而该符号
由该纪录有关的或该纪录的发出人，或他人代为发出的，或由该纪录的人，但不包括中介人；

“hash function” (雜湊數) 指算法依据一组输入产生一个
固定长度的数字串，而该串的生成性取决于该算法的
特性如下——
(a) 一个纪录的产生与该纪录的输入有关；
(b) 而该纪录的产生是无法从算法的输出中
重演的；

“information” (資訊) 包括数据，文本，图像，声码，计算机
程序，软件及数据库；

“information system” (資訊系統) 指一个系统，包括
(a) 处理信息的；
(b) 记录信息的；
(c) 能用作使信息记录或储存在不属位于何处的其他资讯系统内，或能用作
将信息在该等系统内以其他方式处理的；及
(d) 能用作检索信息（不属位于何处的其他資訊系統内）；

“intermediary” (中介人)，在关系到具体电子纪录，意味着
一个人在该纪录有关的或该纪录的发出人，或他人代为发出的，或由该纪录的人，但不包括中介人；

“issue” (Issuer)，在关系到一个电子纪录，意味着一个
人，或在该纪录有关的或该纪录的发出人，或他人代为发出的，或由该纪录的人，但不包括中介人；
“業務守則”（code of practice）指根據第33條發出的業務守則；
“認可核證機關”（recognized certification authority）指根據第21條認可的核證機關，
或第34條提述的核證機關；
“認可證書”（recognized certificate）指——
(a) 根據第22條認可的證書；
(b) 屬根據第22條認可的證書的類型、類別或種類的證書；或
(c) 第34條提述的核證機關所發出的指明為認可證書的證書；
“數碼簽署”（digital signature）就電子紀錄而言，指簽署人的數碼簽署，而該簽署是用
非對稱密鑰系統及雜湧函數將該電子紀錄作數據變換而產生的，使持有原本未經
數據變換的電子紀錄及簽署人的公開密鑰的人能確知——
(a) 該數據變換是否由與署名人的公開密鑰對應的私人密鑰產生的；及
(b) 在產生數據變換之後，該原本的電子紀錄是否未經變更。
“對應”（correspond）就私人或公開密鑰而言，指屬於同一配對密鑰；
“儲存庫”（repository）指用作儲存及檢索證書及其他與證書有關的資訊的資訊系統；
“雜湧函數”（hash function）指將一串數字配對或轉換成為另一串定為雜湧結果的數元
的算法，而該另一串數元通常是較細小的，以使——
(a) 每次輸入相同紀錄進行該算法時，都由該紀錄得出相同的雜湧結果；
(b) 在計算上，從該算法產生的雜湧結果中將雜湧推算出來或還原是不可行的；及
(c) 在計算上，用該算法作2項紀錄能產生相同的雜湧結果是不可能的。
“簽名”及“簽署”（sign, signature）包括由署名者認證或承認署名的人簽立或採用的任何
符號，或該人使用或採用的任何方法或程序；
“證書”（certificate）指符合以下所有說明的紀錄——
(a) 由核證機關為證明數碼簽署的目的而發出，並且該數碼署名的用意是確
認持有某特定配對密鑰的人的身分或其他主要特徵的；
(b) 讀者可發出紀錄的核證機關；
(c) 指名或識別獲發給紀錄的人；
(d) 包含獲發給紀錄的人的公開密鑰；並且
(e) 由發出紀錄的核證機關的負責人簽名；
“private key”（私人密碼匙）意味着一個密钥對的其中一密钥；
“public key”（公開密碼匙）意味着一個密钥對的其中另一密钥；
“recognized certificate”（認可證書）指——
(a) 一張獲認可的證書；
(b) 一張附有類型、類別或種類的證書；
(c) 一張被認可的證書；
(d) 一張由認可的核證機關所發出的指明為認可證書的證書；
(e) 一張由認可的核證機關所發出的指明為認可證書的證書；
(f) 一張由認可的核證機關所發出的指明為認可證書的證書；
(g) 一張由認可的核證機關所發出的指明為認可證書的證書；
(h) 一張由認可的核證機關所發出的指明為認可證書的證書；
(i) 一張由認可的核證機關所發出的指明為認可證書的證書；
(j) 一張由認可的核證機關所發出的指明為認可證書的證書；
(k) 一張由認可的核證機關所發出的指明為認可證書的證書；
(l) 一張由認可的核證機關所發出的指明為認可證書的證書；
(m) 一張由認可的核證機關所發出的指明為認可證書的證書；
(n) 一張由認可的核證機關所發出的指明為認可證書的證書；
(o) 一張由認可的核證機關所發出的指明為認可證書的證書；
(p) 一張由認可的核證機關所發出的指明為認可證書的證書；
(q) 一張由認可的核證機關所發出的指明為認可證書的證書；
(r) 一張由認可的核證機關所發出的指明為認可證書的證書；
(s) 一張由認可的核證機關所發出的指明為認可證書的證書；
(t) 一張由認可的核證機關所發出的指明為認可證書的證書；
(u) 一張由認可的核證機關所發出的指明為認可證書的證書；
(v) 一張由認可的核證機關所發出的指明為認可證書的證書；
(w) 一張由認可的核證機關所發出的指明為認可證書的證書；
(x) 一張由認可的核證機關所發出的指明為認可證書的證書；
(y) 一張由認可的核證機關所發出的指明為認可證書的證書；
(z) 一張由認可的核證機關所發出的指明為認可證書的證書；
“trusted system”（可信系統）指認可的核證機關；
“trusted system”（可信系統）指認可的核證機關。
are at a reasonable level in respect of availability, reliability and ensuring a correct mode of operations for a reasonable period of time; 

(c) are reasonably suitable for performing their intended function; and 

(d) adhere to generally accepted security principles; 

“verify a digital signature” (核實數碼簽署), in relation to a given digital signature, electronic record and public key, means to determine that—

(a) the digital signature was generated using the private key corresponding to the public key listed in a certificate; and 

(b) the electronic record has not been altered since its digital signature was generated, 

and any reference to a digital signature being verifiable is to be construed accordingly.

(2) For the purposes of this Ordinance, a digital signature is taken to be supported by a certificate if the digital signature is verifiable with reference to the public key listed in a certificate the subscriber of which is the signer.

PART II
APPLICATION

3. Matters to which sections 5, 6, 7, 8 and 17 are not applicable

Sections 5, 6, 7, 8 and 17 do not apply to any—

(a) requirement or permission for information to be or given in writing; 

(b) requirement for the signature of a person; 

(c) requirement for information to be presented or retained in its original form; 

(d) requirement for information to be retained, under a rule of law in a matter or for an act set out in Schedule 1, unless that rule of law expressly provides otherwise.

4. Ordinance to bind Government

This Ordinance binds the Government.
PART III

ELECTRONIC RECORDS AND DIGITAL SIGNATURES

5. Requirement for writing

(1) If a rule of law requires information to be or given in writing or provides for certain consequences if it is not, an electronic record satisfies the requirement if the information contained in the electronic record is accessible so as to be usable for subsequent reference.

(2) If a rule of law permits information to be or given in writing, an electronic record satisfies that rule of law if the information contained in the electronic record is accessible so as to be usable for subsequent reference.

6. Digital signatures

(1) If a rule of law requires the signature of a person or provides for certain consequences if a document is not signed by a person, a digital signature of the person satisfies the requirement if the digital signature is supported by a recognized certificate and is generated within the validity of that certificate.

(2) In subsection (1), “within the validity of that certificate” means that at the time the digital signature is generated—

(a) the recognition of the recognized certificate is not revoked or suspended;

(b) if the Director has specified a period of validity for the recognition of the recognized certificate, the certificate is within that period; and

(c) if the recognized certification authority has specified a period of validity for the recognized certificate, the certificate is within that period.

7. Presentation or retention of information in its original form

(1) Where a rule of law requires that certain information be presented or retained in its original form, the requirement is satisfied by presenting or retaining the information in the form of electronic records if—

(a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form; and
8. 以電子紀錄形式保留資訊

(1) 凡任何法律規則規定某些資訊須予保留（不論是以書面或其他形式保留），如——
   (a) 包含於電子紀錄內的該等資訊仍然可查閱的以致可供日後參閱之用；
   (b) 該電子紀錄是以其原來產生、發出或接收時的規格保留的，或是以能顯示為可準確表達原來產生、發出或接收的資訊的規格保留的；並且
   (c) 得以找出電子紀錄的來源、接收終點、發出或接收日期及發出或接收時間的資訊獲保留，

則保留該電子紀錄即屬符合該規定。

(2) 不論第 (1) 款所述的規定是否一項法律責任，亦不論有關法律規則是否只規定若沒有保留有關的資訊則會有某些後果，本條均適用。

9.  電子紀錄的可接納性

在不損害任何證據規則的原則下，不得僅因某電子紀錄是電子紀錄而否定該電子紀錄在任何法律程序中作為證據的可接納性。

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(1) Where a rule of law requires certain information to be retained, whether in writing or otherwise, the requirement is satisfied by retaining electronic records, if—
   (a) the information contained in the electronic record remains accessible so as to be usable for subsequent reference;
   (b) the relevant electronic record is retained in the format in which it was originally generated, sent or received, or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and
   (c) the information which enables the identification of the origin and destination of the electronic record and the date and time when it was sent or received, is retained.

(2) This section applies whether the requirement in subsection (1) is in the form of an obligation or whether the rule of law merely provides consequences for the information not being retained.

9.  Admissibility of electronic records

Without prejudice to any rules of evidence, an electronic record shall not be denied admissibility in evidence in any legal proceeding on the sole ground that it is an electronic record.
10. Construction of this Part subject to Part IV

This Part is to be construed subject to Part IV.

PART IV

LIMITATIONS ON OPERATION OF SECTIONS 5, 6, 7 AND 8

11. Secretary may make orders excluding
application of section 5, 6, 7 or 8

(1) The Secretary may by order published in the Gazette exclude an Ordinance or a particular requirement or permission in an Ordinance or a class or description of requirements or permissions in an Ordinance, to which this Ordinance would otherwise apply, from the application of section 5, 6, 7 or 8.

(2) The Secretary may, in relation to an Ordinance to which this Ordinance applies, specify by notice published in the Gazette—

(a) the manner and format in which information in the form of an electronic record is to be given, presented or retained for the purposes of that Ordinance or a particular requirement or permission in that Ordinance or a class or description of requirements or permissions in that Ordinance; and

(b) the procedure and criteria for verification of the receipt of that information and for ensuring the integrity and confidentiality of the information.

(3) The Secretary may specify different requirements under subsection (2)(a) or (b) in relation to persons or cases of different classes or descriptions.

(4) An order under subsection (1) is subsidiary legislation.

(5) A notice under subsection (2) is not subsidiary legislation.

(6) In this section, “manner and format” includes requirements as to software, communication, data storage, how the electronic record is to be generated, sent, stored or received and where a signature is required, the type of signature and how the signature is to be affixed to the electronic record.

12. Electronic record to comply with
specified requirements to satisfy
sections 5, 6, 7 and 8

If the Secretary has specified any requirement under section 11(2) in relation to an Ordinance, the information given, presented or retained or the signature made, as the case may require, for the purpose of that Ordinance does not satisfy that Ordinance unless it complies with the specified requirements.
13. **Rules of court or procedure only to apply where relevant authority provides for application**

(1) Section 5, 6, 7 or 8 does not apply in relation to information given, presented or retained or signatures required for the purposes of any proceedings set out in Schedule 2, unless any rule of law relating to those proceedings provide for its application.

(2) Subsection (1) is not to be construed as affecting any provision in a rule of law referred to in that subsection, requiring or permitting, other than by reference to this Ordinance, the use of electronic records or electronic signatures for the purposes of the proceedings to which the rule of law relates.

(3) Any authority given by a rule of law to make rules (however described) for the purpose of any proceedings set out in Schedule 2 is to be construed as including a power to provide for—

   - (a) the application of section 5, 6, 7 or 8; and
   - (b) the specification of the matters referred to in section 11(2)(a) and (b) by subsidiary legislation or otherwise, consequent to such application.

14. **Sections 5, 6, 7 and 8 not to affect specific provisions as to electronic records in other Ordinances**

If an Ordinance requires or permits giving, presenting or retaining information in the form of an electronic record or the authentication of information by an electronic signature for the purposes of that Ordinance, but contains an express provision which—

   - (a) specifies requirements, procedures or other specifications for that purpose;
   - (b) requires the use of a specified service; or
   - (c) confers a discretion on a person whether or when to accept electronic records or electronic signatures for that purpose, section 5, 6, 7 or 8 is not to be construed as affecting that express provision.

15. **When sections 5, 6 and 7 apply to transactions between persons who are not government entities**

(1) If an Ordinance requires information to be given by a person to another and neither person is or is acting on behalf of a government entity, section 5(1) applies only if the person to whom the information is to be given consents to it being given in the form of an electronic record.
(2) If an Ordinance permits information to be given by a person to another and neither person is or is acting on behalf of a government entity, section 5(2) applies only if the person to whom the information is to be given consents to it being given in the form of an electronic record.

(3) If an Ordinance requires the signature of a person (“the signer”) and neither the signer nor the person to whom the signature is to be given (“the second mentioned person”) is or is acting on behalf of a government entity, section 6 applies only if the second mentioned person consents to the signer’s digital signature being given.

(4) If an Ordinance requires information to be presented in its original form and neither the person presenting it nor the person to whom it is to be presented (“the second mentioned person”) is or is acting on behalf of a government entity, section 7(1) applies only if the second mentioned person consents to it being presented in the form of an electronic record.

(5) In this section—
“consent” (同意) includes consent that can be reasonably inferred from the conduct of the person concerned;
“government entity” (政府單位) means a public officer or a public body.

16. Sections 5, 6, 7 and 8 not to have effect if their operation affects other statutory requirements

(1) If the effect of section 5 on a requirement or permission in an Ordinance for information to be or given in writing (“requirement for writing”) is such that any other requirement in that Ordinance or a related Ordinance (that is a requirement other than the requirement for writing) cannot be complied with due to the operation of that section, section 5 does not apply to the requirement for writing.

(2) If the effect of section 6 on a requirement in an Ordinance for the signature of a person is such that any other requirement in that Ordinance or a related Ordinance (that is a requirement other than the requirement for signature of a person) cannot be complied with due to the operation of that section, section 6 does not apply to the requirement for the signature of a person.

(3) If the effect of section 7 on a requirement in an Ordinance for information to be presented or retained in its original form (“requirement for original form”) is such that any other requirement in that Ordinance or a related Ordinance (that is a requirement other than the requirement for original form) cannot be complied with due to the operation of that section, section 7 does not apply to the requirement for original form.
4. If the effect of section 8 on a requirement in an Ordinance for information to be retained (“requirement for retention”) is such that any other requirement in that Ordinance or a related Ordinance (that is a requirement other than the requirement for retention) cannot be complied with due to the operation of that section, section 8 does not apply to the requirement for retention.

17. **Formation and validity of electronic contracts**

1. For the avoidance of doubt, it is declared that in the context of the formation of contracts, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be in whole or in part expressed by means of electronic records.

2. Where an electronic record is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that an electronic record was used for that purpose.

3. For the avoidance of doubt, it is stated that this section does not affect any rule of common law to the effect that the offeror may prescribe the method of communicating acceptance.

18. **Attribution of electronic record**

1. Unless otherwise agreed between the originator and the addressee of an electronic record, an electronic record is that of the originator if it was—
   (a) sent by the originator;
   (b) sent with the authority of the originator; or
   (c) sent by an information system programmed by or on behalf of the originator to operate and to send the electronic record automatically.

2. Nothing in subsection (1) is to affect the law of agency or the law on the formation of contracts.
19. Sending and receiving electronic records

(1) Unless otherwise agreed between the originator and the addressee of an electronic record, an electronic record is sent when it is accepted by an information system outside the control of the originator or of the person who sent the electronic record on behalf of the originator.

(2) Unless otherwise agreed between the originator and the addressee of an electronic record, the time of receipt of an electronic record is determined as follows—

(a) if the addressee has designated an information system for the purpose of receiving electronic records, receipt occurs—

(i) at the time when the electronic record is accepted by the designated information system; or

(ii) if the electronic record is sent to an information system of the addressee that is not the designated information system, at the time when the electronic record comes to the knowledge of the addressee;

(b) if the addressee has not designated an information system, receipt occurs when the electronic record comes to the knowledge of the addressee.

(3) Subsections (1) and (2) apply notwithstanding that the place where the information system is located is different from the place where the electronic record is taken to have been sent or received under subsection (4).

(4) Unless otherwise agreed between the originator and the addressee, an electronic record is taken to have been—

(a) sent at the place of business of the originator; and

(b) received at the place of business of the addressee.

(5) For the purposes of subsection (4)—

(a) if the originator or the addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction, or where there is no underlying transaction, the principal place of business of the originator or the addressee, as the case may be;

(b) if the originator or the addressee does not have a place of business, the place of business is the place where the originator or the addressee ordinarily resides.

(6) Where the originator and the addressee are in different time zones, time refers to Universal Standard Time.
PART VII

RECOGNITION OF CERTIFICATION AUTHORITIES AND CERTIFICATES BY DIRECTOR

20. Certification authority may apply to Director for recognition

(1) A certification authority may apply to the Director to become a recognized certification authority for the purposes of this Ordinance.

(2) Subject to subsection (4) and section 21(3), an application under subsection (1) must be made in the prescribed manner and in a form specified by the Director and the applicant must pay the prescribed fee in respect of the application.

(3) An applicant must furnish to the Director—

(a) the relevant particulars and documents specified under section 30; and

(b) a report which—

(i) contains an assessment as to whether the applicant is capable of complying with the provisions of this Ordinance applicable to a recognized certification authority and the code of practice; and

(ii) is prepared by a person acceptable to the Director as being qualified to give such a report.

(4) The Director may waive—

(a) the requirements as to manner and form of making the application in subsection (2); or

(b) the requirement of a report under subsection (3), in relation to a certification authority, in the circumstances specified in subsection (5).

(5) The Director may waive the requirements referred to in subsection (4) only if—

(a) the applicant is a certification authority with a status in a place outside Hong Kong comparable to that of a recognized certification authority (“comparable status”); and

(b) the competent authority of that place accords to a recognized certification authority a comparable status on the basis of it being a recognized certification authority.
21. Director may on application recognize certification authorities

1. The Director may—

(a) recognize an applicant under section 20 as a recognized certification authority if the Director is satisfied that the applicant is suitable for such recognition; or

(b) refuse the application for recognition.

2. The Director must give reasons in writing to the applicant for refusing an application under subsection (1)(b).

3. The Director may, in recognizing a certification authority referred to in section 20(4), waive the whole or part of the prescribed fee as the Director may decide in relation to a particular case.

4. In determining whether an applicant is suitable for recognition under subsection (1), the Director shall, in addition to any other matter the Director considers relevant, take into account the following—

(a) whether the applicant has the appropriate financial status for operating as a recognized certification authority in accordance with this Ordinance and the code of practice;

(b) the arrangements put in place or proposed to be put in place by the applicant to cover any liability that may arise from its activities relevant for the purposes of this Ordinance;

(c) the system, procedure, security arrangements and standards used or proposed to be used by the applicant to issue certificates to subscribers;

(d) the report referred to in section 20(3)(b) (if applicable);

(e) whether the applicant and the responsible officers are fit and proper persons; and

(f) the reliance limits set or proposed to be set by the applicant for its certificates.

5. In determining whether a person referred to in subsection (4)(e) is a fit and proper person, the Director shall, in addition to any other matter the Director considers relevant, have regard to the following—

(a) the fact that the person has a conviction in Hong Kong or elsewhere for an offence for which it was necessary to find that the person had acted fraudulently, corruptly or dishonestly;

(b) the fact that the person has been convicted of an offence against this Ordinance;

(c) if the person is an individual, the fact that the person is an undischarged bankrupt or has entered into a composition or a scheme of arrangement or a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) within the 5 years preceding the date of the application; and
(d) if the person is a body corporate, the fact that the person is in liquidation, is the subject of a winding-up order or there is a receiver appointed in relation to it or it has entered into a composition or a scheme of arrangement or a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) within the 5 years preceding the date of the application.

(6) In recognizing a certification authority under subsection (1), the Director may—
(a) attach conditions to the recognition; or
(b) specify a period of validity for the recognition.

22. Director may recognize certificates

(1) The Director may recognize certificates issued by a recognized certification authority as recognized certificates, upon application by that authority.

(2) An applicant under subsection (1) must make the application in the prescribed manner and in a form specified by the Director and furnish to the Director the relevant particulars and documents specified under section 30.

(3) A recognition under subsection (1) may relate to—
(a) all certificates issued by the recognized certification authority;
(b) certificates of a type, class or description; or
(c) particular certificates.

(4) An applicant must pay the prescribed fee (if any) in respect of an application under subsection (1) unless the Director waives it in whole or in part.

(5) In recognizing certificates under this section, the Director shall in addition to any other matter the Director considers relevant take into account the following—
(a) whether the certificates are issued in accordance with the certification practice statement;
(b) whether the certificates are issued in accordance with the code of practice;
(c) the reliance limit set or proposed to be set for that type, class or description or the particular certificate, as the case may require; and
(d) the arrangements put in place or proposed to be put in place by the certification authority to cover any liability that may arise from the issue of that type, class or description or the particular certificate, as the case may be.

(6) The Director may refuse an application under subsection (1).

(7) The Director must give reasons in writing to the applicant for refusing an application under subsection (6).
(8) The Director may specify a period of validity for a recognition under this section.
(9) The Director may upon application renew a recognition under this section.
(10) Subsections (2), (3), (4), (5), (6), (7) and (8) apply to a renewal under subsection (9), subject to necessary modifications.

23. Director may revoke recognition

(1) The Director may revoke a recognition granted under section 21 or 22 or renewed under section 22 or 27.
(2) Before revoking a recognition, the Director must give the certification authority a notice of intention to revoke the recognition specifying the reasons for the intended revocation.
(3) In a notice under subsection (2), the Director must invite the certification authority to make representations as to why the recognition should not be revoked and specify a period for making the representations.
(4) If the Director decides to revoke a recognition, the Director must immediately give the certification authority notice in writing of the decision specifying the reasons for the decision and the date on which the decision was made.
(5) A revocation of recognition in relation to certificates may relate to all certificates issued by a recognized certification authority or to a type, class or description of certificates or a particular certificate.
(6) Subject to subsection (7), a revocation takes effect on the expiry of 7 days from the date on which the decision to revoke the recognition is made.
(7) If the certification authority appeals under section 28 against the revocation, the revocation does not take effect until the expiry of 7 days from the date on which the Secretary confirms the revocation on appeal.

24. Director may suspend recognition

(1) The Director may suspend a recognition granted under section 21 or 22 or renewed under section 22 or 27 for a period not exceeding 14 days.
(2) If the Director decides to suspend a recognition, the Director must immediately give the certification authority notice in writing of the decision specifying the reasons for the decision and the date on which the decision was made.
(3) A suspension of recognition in relation to certificates may relate to all certificates issued by a recognized certification authority or to a type, class or description of certificates or a particular certificate.
(4) Subject to subsection (5), a suspension takes effect on the expiry of 7 days from the date on which the decision to suspend the recognition is made.
25. Matten Director may take into account in revoking or suspending a recognition

The Director may, in revoking or suspending a recognition under section 23 or 24, in addition to any other matter that the Director considers relevant, take into account the following—

(a) any matter set out in section 21(4);
(b) whether the certification authority has failed—
   (i) to operate in accordance with the certification practice statement;
   (ii) to comply with the code of practice;
   (iii) to use a trustworthy system; or
   (iv) to comply with any provision of this Ordinance; and
(c) the relevant report furnished under section 43.

26. Effect of revocation, suspension of recognition or expiry of validity of recognized certificate

(1) Where the revocation or suspension of a recognition of a certification authority has taken effect or the period of validity of a recognition specified under section 21(6)(b) has expired, the provisions of this Ordinance relating to—

(a) a recognized certification authority do not apply to that certification authority;
(b) recognized certificates issued by a recognized certification authority do not apply to the certificates issued by that certification authority; and
(c) digital signatures supported by a recognized certificate do not apply to the digital signatures supported by the certificates issued by that certification authority.

(2) Where the revocation or suspension of the recognition of a recognized certificate has taken effect, the provisions of this Ordinance relating to a recognized certificate or digital signatures supported by a recognized certificate do not apply to—

(a) the certificate of which the recognition is revoked or suspended;
(b) 任何屬該證書的類型、類別或種類的證書；
(c) 該證書所證明的數碼簽署，或屬該類型、類別或種類的證書所證明的數碼簽署。

根據第 21(6)(b) 條所指明的核認證機關的認可有效期屆滿，並不影響該機關的認可有效期內，該機關所發出的認可證書的有效使用。

27. Director may renew recognition of certification authority

(1) 根據第 21 條認可的核認證機關，可向署長申請將認可續期。
(2) 維期的申請必須於認可有效期屆滿之日前 30 天至 60 天的期間內作出。
(3) 維期的申請必須以電子紀錄形式向署長發出，或由專人送交署長，或於署長的辦事處的通常辦公時間內留於該辦事處。
(4) 除第 (2)、(3) 及 (6) 款另有規定外，維期的申請須以訂明方式並以署長指明的格式提出，如署長要求，申請人必須向署長提供根據第 30 條所指明的有關詳情及文件。
20(5) Subject to subsection (6), an applicant must pay the prescribed fee in respect of an application for renewal.

(6) The Director may, in the circumstances specified in section 20(5), waive the requirements in subsection (4) or the whole or part of the prescribed fee as the Director may decide in relation to a particular case.

(7) Section 21(4) and (6) applies to a renewal of a recognition subject to necessary modifications.

28. Certification authority may appeal to Secretary against decision of Director

(1) A certification authority aggrieved by a decision of the Director—
   (a) refusing an application for recognition under section 21 or 22;
   (b) refusing an application for renewal of a recognition under section 22 or 27; or
   (c) revoking or suspending a recognition under section 23 or 24,
may appeal to the Secretary against the decision within 7 days from the date on which the relevant decision is made.

(2) An appeal under subsection (1) must be commenced by sending a notice of appeal to the Secretary as an electronic record or delivering the notice by hand to the Secretary or leaving the notice at the office of the Secretary during the ordinary business hours of that office.

(3) A certification authority who appeals to the Secretary under this section must also give notice of the appeal to the Director as soon as practicable.

(4) On appeal under subsection (1), the Secretary may confirm, vary or reverse the decision of the Director.

(5) The Secretary must give the appellant notice of the decision on appeal, together with reasons—
   (a) by sending it to the appellant as an electronic record; or
   (b) by sending it by post or registered post to the last known address of the appellant.

(6) If in a particular case it is not reasonably practicable to give the notice of the decision on appeal by either of the means specified in subsection (5), the notice is taken to have been given if the Secretary publishes it in the certification authority disclosure record maintained under section 31 for the appellant.
29. How Director may give notices
under this Part

(1) A notice or other document the Director is required to give to a
certification authority under this Part is taken to have been given if it is—
(a) sent to the certification authority as an electronic record; or
(b) sent by post or registered post to the last known address of the
certification authority.

(2) If in a particular case it is not reasonably practicable to give a notice
or other document under this Part by either of the means specified in
subsection (1), the notice or document is taken to have been given if the
Director publishes it in the relevant certification authority disclosure record.

30. Director to specify particulars and
documents by notice in the Gazette

(1) The Director must specify by notice published in the Gazette any
particulars and documents to be furnished under sections 20(3)(a), 22(2) and
(10) and 27(4).

(2) A notice under subsection (1) is not subsidiary legislation.

PART VIII

CERTIFICATION AUTHORITY DISCLOSURE
RECORDS AND CODE OF PRACTICE

31. Director to maintain certification
authority disclosure record

(1) The Director must maintain for each recognized certification
authority an on-line and publicly accessible record.

(2) The Director must publish in the certification authority disclosure
record information regarding that certification authority relevant for the
purposes of this Ordinance (in addition to the information required to be given
in it under other provisions of this Ordinance).

32. Director to notify revocations,
suspensions and non-renewals
of recognition, etc.

(1) The Director must give notice in the relevant certification authority
disclosure record, immediately—
when the Director makes a decision to revoke a recognition under section 23(4);
(b) when a revocation has taken effect under section 23(6) or (7);
(c) when the Director makes a decision to suspend a recognition under section 24(2);
(d) when a suspension has taken effect under section 24(4) or (5);
(e) when the recognition of a suspended recognition is reinstated;
(f) when the Director receives a notice of appeal under section 28(3); or
(g) on becoming aware that the Secretary has confirmed, varied or reversed the decision of the Director to revoke or suspend a recognition.

(2) Where the revocation or suspension of a recognition has taken effect, the Director must, as soon as practicable, give notice of the revocation or suspension for at least 3 consecutive days in one English language daily newspaper and one Chinese language daily newspaper in circulation in Hong Kong.

(3) If a recognized certification authority does not apply for renewal before the end of the period during which an application for renewal can be made under section 27(2), the Director must, at least 21 days before the expiry of the period of validity of the recognition, give notice—

(a) for at least 3 consecutive days in one English language daily newspaper and one Chinese language daily newspaper in circulation in Hong Kong; and
(b) in the certification authority disclosure record maintained for the certification authority,

of the date of the expiry of the validity and that the certification authority has not applied for renewal.

33. Director may issue code of practice

The Director may issue a code of practice specifying standards and procedures for carrying out the functions of recognized certification authorities.
34. The Postmaster General as recognized certification authority

(1) The Postmaster General is a recognized certification authority for the purposes of this Ordinance.
(2) Part VII does not apply to the Postmaster General as a certification authority.

35. Postmaster General may perform functions and provide services of certification authority

(1) For the purposes of section 34, the Postmaster General may by himself or by the officers of the Post Office—
   (a) perform the functions and provide the services of a certification authority and services incidental or related to the functions or services of a certification authority; and
   (b) do anything that is necessary or expedient for the purposes of paragraph (a) and for complying with any provision of this Ordinance relating to a recognized certification authority.
(2) The Postmaster General may determine and charge fees for providing the services of a certification authority or services incidental or related to the functions or services of a certification authority.
(3) The fees determined and charged under subsection (2) shall not be limited by reference to the administrative or other costs incurred or likely to be incurred or recovery of expenditure in the provision of the services of a certification authority or services incidental or related to the functions or services of a certification authority.
(4) The Postmaster General may give particulars of any fees determined under subsection (2) in such manner as the Postmaster General thinks fit.
36. Publication of issued and accepted certificates

(1) Where a subscriber accepts a recognized certificate issued by a recognized certification authority, the certification authority must publish the certificate in a repository.

(2) If the subscriber does not accept the recognized certificate, the recognized certification authority must not publish it.

37. Recognized certification authority to use trustworthy system

A recognized certification authority must use a trustworthy system in performing its services—

(a) to issue or withdraw a recognized certificate; or

(b) to publish in a repository or give notice of the issue or withdrawal of a recognized certificate.

38. Presumption as to correctness of information

It shall be presumed, unless there is evidence to the contrary, that the information contained in a recognized certificate issued by a recognized certification authority (except information identified as subscriber’s information which has not been verified by the recognized certification authority) is correct if the certificate was published in a repository.

39. Representations upon issuance of recognized certificate

By issuing a recognized certificate, a recognized certification authority represents to any person who reasonably relies on the information contained in the certificate or a digital signature verifiable by the public key listed in the certificate, that the recognized certification authority has issued the certificate in accordance with any applicable certification practice statement incorporated by reference in the certificate, or of which the relying person has notice.
40. **Representations upon publication of recognized certificate**

By publishing a recognized certificate, a recognized certification authority represents to any person who reasonably relies on the information contained in the certificate, that the recognized certification authority has issued the certificate to the subscriber concerned.

41. **Reliance limit**

(1) A recognized certification authority may, in issuing a recognized certificate, specify a reliance limit in the certificate.

(2) The recognized certification authority may specify different limits in different recognized certificates or in different types, classes or description of certificates.

42. **Liability limits for recognized certification authorities**

(1) Unless a recognized certification authority waives the application of this subsection, the recognized certification authority is not liable for any loss caused by reliance on a false or forged digital signature of a subscriber supported by a recognized certificate issued by that certification authority, if the recognized certification authority has complied with the requirements of this Ordinance and the code of practice with respect to that certificate.

(2) Unless a recognized certification authority waives the application of this subsection, the recognized certification authority is not liable in excess of the amount specified in the certificate as its reliance limit, for a loss caused by reliance on any information—

(a) that the recognized certification authority is required to confirm according to the certification practice statement and the code of practice; and

(b) which is misrepresented on that recognized certificate or in a repository,

if the recognized certification authority has, in relation to that certificate, complied with the requirements of this Ordinance and the code of practice.

(3) The limitation of liability under subsection (2) does not apply if the fact was misrepresented due to the negligence of the recognized certification authority or it was intentionally or recklessly misrepresented by the recognized certification authority.
43. Recognized certification authority
to furnish report on compliance
with Ordinance and code of
practice

(1) At least once in every 12 months, a recognized certification authority
must furnish to the Director a report containing an assessment as to whether
the recognized certification authority has complied with the provisions of this
Ordinance applicable to a recognized certification authority and the code of
practice during the report period.

(2) A report under subsection (1) must be prepared, at the expense of the
certification authority, by a person approved by the Director as being qualified
to make such a report.

(3) The Director must publish in the certification authority disclosure
record for the certification authority the date of the report and the material
information in the report.

(4) In subsection (1) “report period” (所涵盖的期間) means the period beginning on—
   (a) the date on which recognition is granted under section 21 or
   section 34 comes into operation; or
   (b) the day following the last day of the period for which the last
      report under that subsection was furnished,
as the case may require, and ending on the last day of the period for which the
      current report is furnished.

44. Recognized certification authority
to issue a certification practice statement

A recognized certification authority must issue and maintain an up to date
certification practice statement and notify the Director of changes to the
practices of the certification authority as set out in that statement.

45. Recognized certification authority
to maintain repository

(1) A recognized certification authority must maintain or cause to be
    maintained an on-line and publicly accessible repository.

(2) The Director must publish in the Gazette a list of the repositories
    maintained under subsection (1).
PART XI
PROVISIONS AS TO SECRECY, DISCLOSURE AND OFFENCES

46. Obligation of secrecy

(1) Subject to subsection (2), a person who has access to any record, book, register, correspondence, information, document or other material in the course of performing a function under or for the purposes of this Ordinance shall not disclose or permit or suffer to be disclosed such record, book, register, correspondence, information, document or other material to any other person.

(2) Subsection (1) does not apply to disclosure—
(a) which is necessary for performing or assisting in the performance of a function under or for the purposes of this Ordinance;
(b) for the purpose of any criminal proceedings in Hong Kong;
(c) for the purpose of complying with a requirement made under a rule of law with a view to instituting a criminal proceeding in Hong Kong; or
(d) under the direction or order of a magistrate or court.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 6 and in the case of an individual also to imprisonment for 6 months.

47. False information

A person who knowingly or recklessly makes, orally or in writing, signs or furnishes any declaration, return, certificate or other document or information required under this Ordinance which is untrue, inaccurate or misleading commits an offence and is liable in the case of an individual to a fine at level 6 and to imprisonment for 6 months and in any other case, to a fine at level 6.

48. Other offences

A person who makes a false claim that a person is a recognized certification authority commits an offence and is liable in the case of an individual to a fine at level 6 and to imprisonment for 6 months and in any other case, to a fine at level 6.
PART XII
SECRETARY’S POWER TO AMEND SCHEDULES AND MAKE SUBSIDIARY LEGISLATION AND IMMUNITY OF PUBLIC OFFICERS

49. Regulations
The Secretary may make regulations for all or any of the following—
(a) to prescribe the manner of applying to the Director for recognition or renewal of recognition as a recognized certification authority or for recognition or renewal of recognition of certificates and the manner of recognition;
(b) to prescribe the fees payable in respect of applications for the recognition of certification authorities, the recognition of certificates or the renewal of such recognition;
(c) to prescribe the form of certification practice statements;
(d) to provide for the manner of appealing against a decision of the Director and the procedure for determining appeals;
(e) to provide for such other matters as are necessary or expedient to give effect to the provisions of this Ordinance.

50. Secretary may amend Schedules
The Secretary may by order published in the Gazette amend Schedules 1 and 2.

51. Protection of public officers
(1) No liability is incurred by the Government or a public officer by reason only of the fact that a recognition is granted, renewed, revoked, suspended or reinstated under Part VII.
(2) Without prejudice to subsection (1), no civil liability is incurred by a public officer in respect of anything done or omitted to be done by the public officer in good faith in the performance or purported performance of any function under a Part other than Part VII.
(3) The protection conferred under subsection (2) does not in any way affect the liability, if any, of the Government for the act or omission of the public officer in the performance or purported performance of the relevant function.
附表1

根據本條例第3條隨同附表2

1. 違章、違章更改附件或任何其他違章性質的文件的訂立、簽立、更改、撤銷、恢復效力或不更改。
2. 信託（包括信託、信託存信託除外）的訂立、簽立、更改、撤銷。
3. 授權書的訂立、簽立、更改或撤銷。
4. 訂立、簽立或訂立及簽立根據《印花稅條例》第117條所指的契約、轉易契、其他書面形式的文件或書面、判決及傳票。
5. 政府的批地協議及條件及政府租契。
6. 《地產發展條例》第128條所指的會影響香港的任何一幅地、物業單位或處所的契約、轉易契、其他書面形式的文件或書面、判決及傳票。
7. 《物業轉易及財產條例》第219條所指的任何轉易、轉易契、按揭或法定押記，任何其他偏離不動產或不動產權益的處置的合約，或任何其他達成該等處置的合約。
8. 《土地登記條例》第128條第2A條所指的達成虛妄押記的文件。
9. 暨言及誓言。
10. 法定聲明。
11. 法院判決（包括第6條所指的判決）或法院命令。
12. 法院或裁判官發出的手令。
13. 可認轉票。

附表2

根據本條例第13(1)條不在本條例第5、6、7及8條的

適用範圍內的法律程序

在——
(a) 終審法院；
(b) 上訴法庭；
(c) 原訴法庭；
(d) 高級法院；
(e) 根據《精神健康條例》第136條設立的精神健康審核委員會；
(f) 土地審核委員會；
(g) 根據《死因裁判官條例》第504條第3條委任的死因裁判官；
(h) 勞資審核委員會；
(i) 根據《貿易及工會條例》第390條設立的貿易及工會委員會；
(j) 小額錢債審核委員會；或
(k) 裁判官。

應前進行的法律程序。