

《電子交易條例》

**ELECTRONIC TRANSACTIONS
ORDINANCE**

《電子交易條例》

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香港特別行政區

2000 年第 1 號條例

印章位置

行政長官
董建華
2000 年 1 月 6 日

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關的服務及就有關連的目的作出規定。

[2000 年 1 月 7 日]

由立法會制定。

第 I 部
導言

1. 簡稱及生效日期

- (1) 本條例可引稱為《電子交易條例》。
- (2) 第 I 部、第 4 及 9 條、第 V 部（關乎附表 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（關乎附表 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；
- “公開密碼匙”(public key) 指配對密碼匙中用作核實數碼簽署的密碼匙；

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 1 OF 2000

L.S.

TUNG Chee-hwa
Chief Executive
6 January 2000

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.

[7 January 2000]

Enacted by the Legislative Council.

PART I
PRELIMINARY

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) 指資訊科技及廣播局局長；

“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，指在該機關與本條例有關的活動方面身居要職的人；

“紀錄”(record) 指在有形媒介上註記、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藉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，而該公開密碼匙是能核實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，

而提述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；

“倚賴限額”(reliance limit) 指就認可證書的倚賴而指明的金錢限額；

(b) uses the certificate; or

(c) otherwise demonstrates the approval of the certificate;

“addressee”(收訊者), in 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;

“asymmetric cryptosystem”(非對稱密碼系統) means a system 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;

“certificate”(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;

“certification authority”(核證機關) means a person who issues a certificate to a person (who may be another certification authority);

“certification authority disclosure record”(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;

“certification practice statement”(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;

“code of practice”(業務守則) means the code of practice issued under section 33;

“correspond”(對應), in relation to private or public keys, means to belong to the same key pair;

“digital signature”(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;

“Director”(署長) means the Director of Information Technology Services;

“electronic record”(電子紀錄) means a record generated in digital form by an information system, which can be—

“接受證書”(accept a certificate) 就獲發給某證書的人而言，指當他知悉該證書的內容時——

- (a) 他批准將該證書向他人公布或在某儲存庫內公布；
- (b) 使用該證書；或
- (c) 他以其他方式表示承認該證書；

“郵政署署長”(Postmaster General) 指《郵政署條例》(第 98 章) 所指的署長；

“發出”(issue) 就證書而言，指核證機關製造證書並將該證書的內容通知該證書內指名或識別為獲發給該證書的人的作為；

“發訊者”(originator) 就某電子紀錄而言，指發出或產生該紀錄的人，或由他人代為發出或產生該紀錄的人，但不包括中介人；

“登記人”(subscriber) 指符合以下所有說明的人(該人可以是另一核證機關)——

- (a) 在某證書內指名或識別為獲發給證書；
- (b) 已接受該證書；及
- (c) 持有與列於該證書內的公開密碼匙對應的私人密碼匙；

“電子紀錄”(electronic record) 指資訊系統所產生的數碼形式的紀錄，而該紀錄——

- (a) 能在資訊系統內傳送或由一個資訊系統傳送至另一個資訊系統；並且
- (b) 能儲存在資訊系統或其他媒介內；

“電子簽署”(electronic signature) 指與電子紀錄相連的或在邏輯上相聯的數碼形式的任何字母、字樣、數目字或其他符號，而該等字母、字樣、數目字或其他符號是為認證或承認該紀錄的目的而簽立或採用的；

“署長”(Director) 指資訊科技署署長；

“資料”包括數據；

“資訊”(information) 包括資料、文字、影像、聲音編碼、電腦程式、軟件及資料庫；

“資訊系統”(information system) 指符合以下所有說明的系統——

- (a) 處理資訊的；
- (b) 記錄資訊的；
- (c) 能用作使資訊記錄或儲存在不論位於何處的其他資訊系統內，或能用作將資訊在該等系統內以其他方式處理的；及
- (d) 能用作檢索資訊(不論該等資訊是記錄或儲存在該系統內或在不論位於何處的其他資訊系統內)；

(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) means any letters, characters, numbers or other symbols in digital form attached to or logically associated with an electronic record, and executed or adopted for the purpose of authenticating or approving the electronic record;

“hash function”(雜湊函數) means an algorithm mapping or transforming one sequence of bits into another, generally smaller, set as the hash result, such that—

(a) a record yields the same hash result every time the algorithm is executed using the same record as input;

(b) it is computationally not feasible for a record to be derived or reconstituted from the hash result produced by the algorithm; and

(c) it is computationally not feasible that 2 records can be found to produce the same hash result using the algorithm;

“information”(資訊) includes data, text, images, sound codes, computer programmes, software and databases;

“information system”(資訊系統) means a system which—

(a) processes information;

(b) records information;

(c) can be used to cause information to be recorded, stored or otherwise processed in other information systems (wherever situated); and

(d) can be used to retrieve information, whether the information is recorded or stored in the system itself or in other information systems (wherever situated);

“intermediary”(中介人), in relation to a particular electronic record, means a person who on behalf of a person, sends, receives or stores that electronic record or provides other incidental services with respect to that electronic record;

“issue”(發出), in relation to a certificate, means the act of a certification authority of creating a certificate and notifying its contents to the person named or identified in that certificate as the person to whom it is issued;

“key pair”(配對密碼匙), in an asymmetric cryptosystem, means a private key and its mathematically related public key, where the public key can verify a digital signature that the private key generates;

“originator”(發訊者), in relation to an electronic record, means a person, by whom, or on whose behalf, the electronic record is sent or generated but does not include an intermediary;

“Postmaster General”(郵政署署長) means the Postmaster General within the meaning of the Post Office Ordinance (Cap. 98);

“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，指簽署人的電子簽署，而該簽署是用非對稱密碼系統及雜湊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碼匙的人能據之確定——

- (a) 該數據變換是否用與簽署人的公開密碼匙對應的私人密碼匙產生的；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) 就私人或公開密碼匙而言，指屬於同一配對密碼匙；

“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；

“雜湊函數”(hash function) 指將一串數元配對或轉換成為另一串定為雜湊結果的數元的算法，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湊結果；
- (b) 在計算上，從該算法產生的雜湊結果中將紀錄推算出來或還原是可行的；及
- (c) 在計算上，用該算法使 2 項紀錄能產生相同的雜湊結果是不可行的；

“簽”及“簽署”(sign, signature) 包括由意圖是認證或承認紀錄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，並且該數碼簽署的用意是確認持有某特定配對密碼匙的人的身分或其他主要特徵的；
- (b) 識別發出紀錄的核證機關；
- (c) 指名或識別獲發給紀錄的人；
- (d) 包含該獲發給紀錄的人的公開密碼匙；並且
- (e) 由發出紀錄的核證機關的負責人員簽署；

“private key”(私人密碼匙) means the key of a key pair used to generate a digital signature;

“public key”(公開密碼匙) means the key of a key pair used to verify a digital signature;

“recognized certificate”(認可證書) means—

- (a) a certificate recognized under section 22;
- (b) a certificate of a type, class or description of certificate recognized under section 22; or
- (c) a certificate designated as a recognized certificate issued by the certification authority referred to in section 34;

“recognized certification authority”(認可核證機關) means a certification authority recognized under section 21 or the certification authority referred to in section 34;

“record”(紀錄) means information that is inscribed on, stored in or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form;

“reliance limit”(倚據限額) means the monetary limit specified for reliance on a recognized certificate;

“repository”(儲存庫) means an information system for storing and retrieving certificates and other information relevant to certificates;

“responsible officer”(負責人員), in relation to a certification authority, means a person occupying a position of responsibility in relation to the activities of the certification authority relevant to this Ordinance;

“rule of law”(法律規則) means—

- (a) an Ordinance;
- (b) a rule of common law or a rule of equity; or
- (c) customary law;

“Secretary”(局長) means the Secretary for Information Technology and Broadcasting;

“sign” and “signature”(簽、簽署) include any symbol executed or adopted, or any methodology or procedure employed or adopted, by a person with the intention of authenticating or approving a record;

“subscriber”(登記人) means a person (who may be a certification authority) who—

- (a) is named or identified in a certificate as the person to whom the certificate is issued;
- (b) has accepted that certificate; and
- (c) holds a private key which corresponds to a public key listed in that certificate;

“trustworthy system”(穩當系統) means computer hardware, software and procedures that—

- (a) are reasonably secure from intrusion and misuse;

“穩當系統”(trustworthy system) 指符合以下所有條件的電腦硬件、軟件及程序——

- (a) 是合理地安全可免遭受入侵及不當使用的；
- (b) 在可供使用情況、可靠性及操作方式能於合理期間內維持正確等方面達到合理水平；
- (c) 合理地適合執行其原定功能；及
- (d) 依循獲廣泛接受的安全原則。

(2) 為施行本條例，如某數碼簽署可參照列於某證書內的公開密碼匙得以核實，而該證書的登記人是簽署人，則該數碼簽署視作獲該證書證明。

第 II 部

適用範圍

3. 第 5、6、7、8 及 17 條不適用的事宜

第 5、6、7、8 及 17 條不適用於任何法律規則內的以下規定或准許——

- (a) 規定在附表 1 所列事宜中或就附表 1 所列作為，資訊須是書面形式或須以書面形式提供；或准許在該等事宜中或就該等作為，資訊可以是書面形式或以書面形式提供；
- (b) 規定在附表 1 所列事宜中或就附表 1 所列作為須由任何人作簽署；
- (c) 規定在附表 1 所列事宜中或就附表 1 所列作為以原狀出示或保留資訊；
- (d) 規定在附表 1 所列事宜中或就附表 1 所列作為保留資訊，

但如該規則另有明文規定，則屬例外。

4. 條例約束政府

本條例對政府具約束力。

- (b) 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.

第 III 部

電子紀錄及數碼簽署

5. 規定用書面形式

(1) 凡任何法律規則規定資訊須是書面形式，或須以書面形式提供，或規定如資訊並非是書面形式或並非以書面形式提供則會有某些後果，如某電子紀錄包含的資訊是可查閱的以致可供日後參閱之用，則該紀錄即屬符合該規定。

(2) 凡任何法律規則准許資訊可以是書面形式或以書面形式提供，如某電子紀錄包含的資訊是可查閱的以致可供日後參閱之用，則該紀錄即屬符合該規則。

6. 數碼簽署

(1) 如任何法律規則規定須由任何人作簽署，或規定文件未被任何人簽署則會有某些後果，則該人的數碼簽署即屬符合該規定，但只有在有認可證書證明該數碼簽署及該數碼簽署是在該證書的有效期內產生的情況下，該數碼簽署方屬符合該規定。

(2) 在第 (1) 款中，“在該證書的有效期內”(within the validity of that certificate)——

- (a) 指在數碼簽署產生時有關認可證書的認可未被撤銷或暫時吊銷；並且
- (b) 在署長已指明有關認可證書的認可的有效期的情況下，指在數碼簽署產生時該證書是在該有效期內；及
- (c) 在有關認可核證機關已指明認可證書的有效期的情況下，指在數碼簽署產生時該證書是在該有效期內。

7. 資訊以其原狀出示或保留

(1) 凡任何法律規則規定某些資訊須以其原狀出示或保留，如——

- (a) 自該等資訊的最終狀態首次產生之時起，其完整性有可靠保證；及

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 but only 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” (在該證書的有效期內) 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

(b) 在須出示資訊的情況下，能夠將該等資訊向屬該資訊出示對象的人以可閱方式展示，
則以電子紀錄形式出示或保留該等資訊即屬符合該規定。

(2) 為施行第(1)(a)款——

- (a) 評估資訊的完整性的準則為該等資訊是否維持完全及沒有變更，但在正常通訊、儲存或展示過程中加入的任何批註或出現的任何變更則除外；及
- (b) 評估上述保證的可靠性的標準時，須顧及產生該等資訊的目的及所有其他有關情況。

(3) 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有關的資訊並非以其原狀出示或保留則會有某些後果，本條均適用。

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是可查閱的以致可供日後參閱之用；
- (b) 該電子紀錄是以前來產生、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。

(b) where it is required that information be presented, the information is capable of being displayed in a legible form to the person to whom it is to be presented.

(2) For the purposes of subsection (1)(a)—

- (a) the criterion for assessing the integrity of the information is whether the information has remained complete and unaltered, apart from the addition of any endorsement or any change which arises in the normal course of communication, storage or display; and
- (b) the standard for reliability of the assurance is to be assessed having regard to the purpose for which the information was generated and all the other relevant circumstances.

(3) 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 presented or retained in its original form.

8. Retention of information in electronic records

(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. 本部的解釋受第 IV 部規限

本部的解釋受第 IV 部規限。

第 IV 部

對第 5、6、7 及 8 條的施行的限制

11. 局長可訂立命令豁除第 5、6、7 或 8 條的適用

(1) 局長可藉於憲報刊登命令，將本條例原本適用的任何條例，或任何條例內的特定規定或准許，或任何條例內的某類別或種類的規定或准許，豁除於第 5、6、7 或 8 條的適用範圍之外。

(2) 就本條例適用的任何條例而言，局長可藉憲報公告——

- (a) 指明為該條例的目的（或該條例內的特定規定或准許的目的或該條例內的某類別或種類的規定或准許的目的）而提供、出示或保留電子紀錄形式的資訊的方式及規格；及
- (b) 指明核實接收該等資訊的程序及準則，及確保該等資訊的完整性和機密性的程序及準則。

(3) 局長可就不同類別或種類的人或情況，根據第 (2)(a) 或 (b) 款指明不同的規定。

(4) 第 (1) 款所指的命令是附屬法例。

(5) 第 (2) 款所指的公告並非附屬法例。

(6) 在本條中，“方式及規格”(manner and format) 包括關於對軟件、通訊、資料儲存的規定和對電子紀錄如何產生、發出、儲存或接收的規定，並包括如須簽署時簽署的類型及有關的簽署須如何附貼於電子紀錄的規定。

12. 電子紀錄須遵守指明規定以符合第 5、6、7 及 8 條

如局長已根據第 11(2) 條就任何條例指明任何規定，除非就該條例的目的提供、出示或保留的資訊或作出的簽署（視屬何情況而定）遵從該等規定，否則該等資訊或簽署不屬符合該條例。

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, 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” (方式及規格) 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. 法院規則或程序只在有關當局就適用範圍
作出有關規定的情況下才適用**

(1) 除非關乎附表 2 所列的任何法律程序的法律規則規定第 5、6、7 或 8 條適用，否則該等條文不適用於為該等法律程序的目的而提供、出示或保留的資訊，也不適用於為該等法律程序的目的而規定的簽署。

(2) 第 (1) 款所提述的法律規則中，如有任何條文是規定或准許為該法律規則所關乎的法律程序的目的而使用電子紀錄或電子簽署（而該條文並非提述本條例以規定或准許使用電子紀錄或電子簽署），第 (1) 款不得解釋為影響該條文。

(3) 由任何法律規則授予的為附表 2 所列的任何法律程序的目的而訂立規則權限（不論稱謂如何），須解釋為包括就以下事宜作出規定的權力——

(a) 第 5、6、7 或 8 條的適用；及

(b) 因應上述適用，以附屬法例或其他方式指明第 11(2)(a) 及 (b) 條提述的事宜。

**14. 第 5、6、7 及 8 條不影響其他條例中
關於電子紀錄的特定條文**

如某條例規定或准許為該條例的目的而以電子紀錄形式提供、出示或保留資訊，或規定或准許為該條例的目的而以電子簽署認證資訊，但包含下述明訂條文——

(a) 就該目的指明規定、程序或其他指定的條文；

(b) 規定使用指明服務的條文；或

(c) 向某人授予是否就該目的接受或何時就該目的接受電子紀錄或電子簽署的酌情權的條文，

則第 5、6、7 或 8 條不得解釋為影響該條文。

**15. 第 5、6 及 7 條在甚麼情況下適用於屬非政
府單位的人之間的交易**

(1) 如某條例規定某人須向另一人提供資訊，而該兩人均既非政府單位亦非代表任何政府單位行事，則只有在該另一人同意有關資訊以電子紀錄形式提供的情況下，第 5(1) 條方會適用。

**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, otherwise 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) 如某條例准許某人向另一人提供資訊，而該兩人均既非政府單位亦非代表任何政府單位行事，則只有在該另一人同意有關資訊以電子紀錄形式提供的情況下，第 5(2) 條方會適用。

(3) 如某條例規定須由某人（“前者”）簽署，而前者及將獲提供該簽署的人（“後者”）均既非政府單位亦非代表任何政府單位行事，則只有在後者同意前者以數碼簽署形式提供其簽署的情況下，第 6 條方會適用。

(4) 如某條例規定須將資訊以其原狀出示，而出示資訊的人及將獲出示資訊的人（“後者”）均既非政府單位亦非代表任何政府單位行事，則只有在後者同意資訊以電子紀錄形式出示的情況下，第 7(1) 條方會適用。

(5) 在本條中——
“同意” (consent) 包括可合理地從有關的人的行為推斷得出的同意；
“政府單位” (government entity) 指公職人員或公共機構。

16. 如施行影響其他法例規定則 第 5、6、7 及 8 條無效

(1) 凡某條例中有規定資訊須是書面形式或須以書面形式提供的規定，或有准許資訊可以是書面形式或以書面形式提供的規定（“關乎書面形式的規定”），如第 5 條施行的效果，是因施行該條而致該條例或其相關的條例的任何其他規定（即不屬關乎書面形式的規定的規定）不能遵守，則第 5 條不適用於該關乎書面形式的規定。

(2) 凡某條例中有規定須由任何人簽署的規定，如第 6 條施行的效果，是因施行該條而致該條例或其相關的條例的任何其他規定（即不屬規定須由任何人作簽署的規定）不能遵守，則第 6 條不適用於該規定須由任何人簽署的規定。

(3) 凡某條例中有規定資訊須以其原狀出示或保留的規定（“原狀規定”），如第 7 條施行的效果，是因施行該條而致該條例或其相關的條例的任何其他規定（即不屬原狀規定的規定）不能遵守，則第 7 條不適用於該原狀規定。

(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 the 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) 凡某條例中有規定須保留資訊的規定（“保留規定”），如第 8 條施行的效果，是因施行該條而致該條例或其相關的條例的任何其他規定（即不屬保留規定的規定）不能遵守，則第 8 條不適用於該保留規定。

第 V 部

電子合約

17. 電子合約的成立及有效性

(1) 為免生疑問，現聲明：在合約成立方面，除非合約各方另有協議，否則要約及承約可全部或部分以電子紀錄形式表達。

(2) 凡使用電子紀錄成立任何合約，不得僅因以電子紀錄作此用而否定合約的有效性及其可強制執行性。

(3) 為免生疑問，現述明本條並不影響所具效果為要約人可訂明傳達承約的方式的任何普通法規則。

第 VI 部

電子紀錄的歸屬、發出及接收

18. 電子紀錄的歸屬

(1) 如電子紀錄——

- (a) 是發訊者發出的；
- (b) 是發訊者批准發出的；或
- (c) 是資訊系統發出的，而該系統是由發訊者或他人代發訊者編寫程式以使系統自動運作及自動發出電子紀錄的，

則除非該紀錄的發訊者與收訊者另有協議，否則該紀錄是該發訊者的電子紀錄。

(2) 第(1)款不影響代理法及關於合約成立的法律。

(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.

PART V

ELECTRONIC CONTRACTS

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.

PART VI

ATTRIBUTION OF SENDING AND RECEIVING ELECTRONIC RECORDS

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. 電子紀錄的發出及接收

(1) 除非某電子紀錄的發訊者與收訊者另有協議，否則該電子紀錄在發訊者控制以外(或代發訊者發出該紀錄的人控制以外)的資訊系統接受該紀錄時，該紀錄即屬發出。

(2) 除非某電子紀錄的發訊者與收訊者另有協議，否則該電子紀錄的接收時間按以下規定決定——

(a) 如收訊者已為接收電子紀錄指定某資訊系統，電子紀錄的接收——

(i) 在該系統接受有關電子紀錄時發生；或

(ii) (如有關電子紀錄是向屬於收訊者但並非上述指定系統的資訊系統發出的) 在收訊者知悉有該紀錄時發生；

(b) 如收訊者沒有指定資訊系統，電子紀錄的接收在收訊者知悉有該紀錄時發生。

(3) 即使資訊系統的所在地點與根據第(4)款視作發出或接收電子紀錄所在的地點不同，第(1)及(2)款仍然適用。

(4) 除非發訊者與收訊者另有協議，否則電子紀錄視作——

(a) 在發訊者的業務地點發出；及

(b) 在收訊者的業務地點接收。

(5) 為施行第(4)款——

(a) 如發訊者或收訊者有多於一個業務地點，業務地點指與有關電子紀錄所涉及的交易有最密切聯繫的業務地點，如沒有涉及任何交易，則指發訊者或收訊者的主要業務地點(視屬何情況而定)；

(b) 如發訊者或收訊者沒有業務地點，則業務地點指發訊者或收訊者的通常居住地點。

(6) 如發訊者及收訊者在不同時區，時間指國際標準時間。

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.

第 VII 部

署長對核證機關及證書的認可

20. 核證機關可向署長申請認可

- (1) 核證機關可向署長申請成為就本條例而言的認可核證機關。
- (2) 除第(4)款及第21(3)條另有規定外，第(1)款所指的申請必須以訂明方式並以署長指明的格式提出，申請人並須就申請繳付訂明費用。
- (3) 申請人必須向署長提供——
 - (a) 根據第30條所指明的有關詳情及文件；及
 - (b) 一份符合以下說明的報告——
 - (i) 載有對申請人是否有能力遵守本條例適用於認可核證機關的條文的評估，及是否有能力遵守業務守則的評估；及
 - (ii) 由獲署長接納為合資格將報告提供的人擬備的。
- (4) 在第(5)款指明的情況下，署長可就任何核證機關免除——
 - (a) 第(2)款關於提出申請的方式及格式的規定；或
 - (b) 第(3)款關於報告的規定。
- (5) 只在以下情況下署長方可免除第(4)款提述的規定——
 - (a) 申請人是一個核證機關，並且是具有在香港以外某地方的可與認可核證機關相比擬的地位（“可相比擬地位”）的；並且
 - (b) 該地方的主管當局會基於一個認可核證機關是認可核證機關而給予該機關可相比擬地位。

PART VII

RECOGNITION OF CERTIFICATION AUTHORITIES AND
CERTIFICATES BY DIRECTOR20. 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. 署長可應申請對核證機關作出認可

- (1) 署長——
 - (a) 如信納根據第 20 條提出申請的申請人適合認可為認可核證機關，可如此認可；或
 - (b) 可拒絕認可的申請。
- (2) 署長如根據第 (1)(b) 款拒絕申請，必須以書面向申請人提供拒絕的理由。
- (3) 在認可第 20(4) 條提述的核證機關時，署長可按個別情況決定免除全部或部分訂明費用。
- (4) 在決定某申請人是否適合根據第 (1) 款認可時，署長除考慮其認為有關的任何其他事宜以外，還須考慮以下事宜——
 - (a) 申請人是否具備適當財政條件，按本條例及業務守則作為認可核證機關運作；
 - (b) 申請人已作出的或擬作出的應付因其與本條例的目的有關的活動而可引致的法律責任的安排；
 - (c) 申請人使用的或擬使用的用作向登記人發出證書的系統、程序、保安安排及標準；
 - (d) 第 20(3)(b) 條提述的報告(如適用的話)；
 - (e) 申請人及負責人員是否適當人選；及
 - (f) 申請人為其證書設定的或擬為其證書設定的倚據限額。
- (5) 在決定第 (4)(e) 款提述的人是否適當人選時，署長除考慮其認為有關的任何其他事宜以外，還須考慮以下情況——
 - (a) 該人曾在香港或其他地方被裁定犯任何罪行，而該項定罪必然包含該人曾有欺詐性、舞弊或不誠實的作為的裁斷；
 - (b) 該人曾被裁定犯本條例所訂的罪行；
 - (c) 該人是個人，並且是未獲解除破產的破產人，或在申請日期之前 5 年內曾訂立《破產條例》(第 6 章) 所指的債務重整協議、債務償還安排或自願安排；及

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) 該人是一間公司，並正在清盤當中或是任何清盤令的標的，或已有接管人就該公司而獲委任，或該公司在申請日期之前 5 年內曾訂立《破產條例》(第 6 章) 所指的債務重整協議、債務償還安排或自願安排。
- (6) 在根據第(1) 款認可核證機關時，署長可——
- (a) 對認可附加條件；或
 - (b) 指明認可的有效期。

22. 署長可對證書作出認可

- (1) 署長可應認可核證機關的申請，將該機關發出的證書認可為認可證書。
- (2) 第(1) 款所指的申請必須以訂明方式並以署長指明的格式提出，申請人並須向署長提供根據第 30 條所指明的有關詳情及文件。
- (3) 第(1) 款所指的認可可以是關乎——
 - (a) 該認可核證機關發出的所有證書；
 - (b) 某類型、類別或種類的證書；或
 - (c) 個別證書。
- (4) 除非署長免除繳付全部或部分訂明費用(如有的話)，否則申請人必須就根據第(1) 款提出的申請繳付訂明費用。
- (5) 在根據本條認可證書時，署長除考慮其認為有關的任何其他事宜以外，還須考慮以下事宜——
 - (a) 證書是否按照核證作業準則發出；
 - (b) 證書是否按照業務守則發出；
 - (c) 就或擬就該類型、類別或種類的證書；或就或擬就個別證書設定的或擬設定的倚據限額(視情況需要而定)；及
 - (d) 核證機關已作出的或擬作出的應付因其發出該類型、類別或種類的證書或個別證書(視屬何情況而定)而可引致的法律責任的安排。
- (6) 署長可拒絕根據第(1) 款提出的申請。
- (7) 署長如根據第(6) 款拒絕申請，必須以書面向申請人提供拒絕的理由。

- (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) 署長可為本條所指的認可指明有效期。
- (9) 署長可應申請將本條所指的認可續期。
- (10) 第(2)、(3)、(4)、(5)、(6)、(7)及(8)款經必要的變通後，適用於第(9)款所指的續期。

23. 署長可撤銷認可

- (1) 署長可撤銷根據第21或22條批給或根據第22或27條續期的認可。
- (2) 在撤銷認可之前，署長必須向有關核證機關發出意圖撤銷認可的通知，並在該通知中指明意圖撤銷的理由。
- (3) 在第(2)款所指的通知中，署長必須邀請有關核證機關陳述認可不應撤銷的理由，署長也必須在該通知中指明陳述理由的限期。
- (4) 如署長決定撤銷認可，他必須立刻以書面向有關核證機關發出該決定的通知，並在該通知中指明作出該決定的理由及日期。
- (5) 撤銷證書的認可可以是關乎有關核證機關發出的所有證書，或關乎某類型、類別或種類的證書或個別證書。
- (6) 除第(7)款另有規定外，撤銷在撤銷的決定作出之日後7天屆滿時生效。
- (7) 如核證機關根據第28條提出上訴反對撤銷，則該項撤銷在局長在上訴中將其確認之日後7天屆滿時始生效。

24. 署長可暫時吊銷認可

- (1) 署長可暫時吊銷根據第21或22條批給或根據第22或27條續期的認可，為期不超過14天。
- (2) 如署長決定暫時吊銷認可，他必須立刻以書面向有關核證機關發出該決定的通知，並在該通知中指明作出該決定的理由及日期。
- (3) 暫時吊銷證書的認可可以是關乎有關認可核證機關發出的所有證書，或關乎某類型、類別或種類的證書或個別證書。
- (4) 除第(5)款另有規定外，暫時吊銷在暫時吊銷的決定作出之日後7天屆滿時生效。

(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.

(5) 如核證機關根據第 28 條提出上訴反對暫時吊銷，則該項暫時吊銷在局長在上訴中將其確認之日後 7 天屆滿時始生效。

(6) 如暫時吊銷認可期於認可有效期間內屆滿，而有關認可並未撤銷，則該項認可須視作已恢復。

25. 署長撤銷或暫時吊銷認可時 可考慮的事宜

在根據第 23 或 24 條撤銷或暫時吊銷認可時，署長除考慮任何他認為有關的其他事宜外，還可考慮以下事宜——

- (a) 第 21(4) 條所列的任何事宜；
- (b) 有關核證機關有否——
 - (i) 按照核證作業準則運作；
 - (ii) 遵守業務守則；
 - (iii) 使用穩當系統；或
 - (iv) 遵守本條例的條文；及
- (c) 根據第 43 條提交的有關報告。

26. 撤銷、暫時吊銷認可或認可證書 有效期屆滿的效果

(1) 凡針對核證機關的認可的撤銷或暫時吊銷已生效，或根據第 21(6)(b) 條指明的認可的有效期已屆滿——

- (a) 本條例關乎認可核證機關的條文即不適用於該機關；
- (b) 本條例關乎認可核證機關發出的認可證書的條文，即不適用於該機關發出的證書；及
- (c) 本條例關乎認可核證機關發出的認可證書所證明的數碼簽署的條文，即不適用於該機關發出的證書所證明的數碼簽署。

(2) 凡針對某認可證書的認可的撤銷或暫時吊銷已生效，本條例關乎認可證書或認可證書所證明的數碼簽署的條文即不適用於——

- (a) 該證書；

(5) If the certification authority appeals under section 28 against the suspension, the suspension does not take effect until the expiry of 7 days from the date on which the Secretary confirms the suspension on appeal.

(6) If the period of suspension expires during the validity of a recognition and the recognition is not revoked, the recognition is taken to be reinstated.

25. Matters 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 issued by a recognized certification authority 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，

視屬何情況而定。

(3) 凡認可證書的有效期限已屆滿或第 22(8) 條所指明的認可有效期已屆滿，本條例關乎認可核證機關發出的認可證書的條文，及關乎認可核證機關發出的認可證書所證明的數碼簽署的條文，不適用於有關證書及其所證明的數碼簽署。

(4) 撤銷或暫時吊銷核證機關的認可，並不影響在該項撤銷或暫時吊銷生效前，或在被暫時吊銷的認可恢復後，該機關所發出的認可證書的有效使用。

(5) 撤銷或暫時吊銷證書的認可，並不影響在該項撤銷或暫時吊銷生效前，或在被暫時吊銷的認可恢復後，有關的證書的有效使用。

(6) 根據第 22(8) 條所指明的證書的認可有效期屆滿，或認可證書的有效期限屆滿，並不影響在該認可或該證書(視屬何情況而定)的有效期限屆滿前，有關證書的有效使用。

(7) 根據第 21(6)(b) 條所指明的核證機關的認可有效期屆滿，並不影響在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. 署長可將核證機關的認可續期

- (1) 根據第 21 條認可的核證機關，可向署長申請將認可續期。
- (2) 續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) 續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在該辦事處。
- (4) 除第 (2)、(3) 及 (6) 款另有規定外，續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。

- (b) any certificate of the type, class or description of certificate the recognition of which is revoked or suspended;
- (c) digital signatures supported by that certificate or a certificate of that type, class or description,

as the case may be.

(3) Where the validity of a recognized certificate or the period of validity of a recognition specified under section 22(8) has expired, the provisions of this Ordinance relating to recognized certificates issued by a recognized certification authority and digital signatures supported by a recognized certificate issued by a recognized certification authority do not apply to the certificate and the digital signatures supported by the certificate.

(4) The revocation or suspension of the recognition of a certification authority does not affect the valid use of a recognized certificate issued by that certification authority before the revocation or suspension took effect or after the reinstatement of the recognition.

(5) The revocation or suspension of the recognition of a certificate does not affect the valid use of the certificate concerned before the revocation or suspension took effect or after the reinstatement of the recognition.

(6) The expiry of the period of validity of the recognition of a certificate specified under section 22(8) or the expiry of the period of validity of a recognized certificate does not affect the valid use of the certificate concerned before the expiry of the period of validity of the recognition or the certificate, as the case may be.

(7) The expiry of the period of validity of the recognition of a certification authority specified under section 21(6)(b) does not affect the valid use of a recognized certificate issued by that certification authority during the period of validity of its recognition.

27. Director may renew recognition of certification authority

(1) A certification authority recognized under section 21 may apply to the Director for renewal of a recognition.

(2) An application for renewal must be made at least 30 days before but not earlier than 60 days before the expiry of the period of validity of the recognition.

(3) An application for renewal must be sent to the Director as an electronic record or delivered by hand to the Director or left at the office of the Director during the ordinary business hours of that office.

(4) Subject to subsections (2), (3) and (6), an application for renewal is to be made in the prescribed manner and in a form specified by the Director and if the Director so requires, the applicant must furnish to the Director the relevant particulars and documents specified under section 30.

(5) 除第(6)款另有規定外，申請人必須就續期申請繳付訂明費用。

(6) 在第20(5)條指明的情況下，署長可按個別情況決定免除第(4)款的規定，亦可免除全部或部分訂明費用。

(7) 第21(4)及(6)條經必要的變通後，適用於認可的續期。

28. 核證機關可向局長提出 上訴反對署長的決定

(1) 任何核證機關如對署長以下的決定感到受屈——

(a) 拒絕根據第21或22條提出的認可申請；

(b) 拒絕根據第22或27條提出的續期申請；或

(c) 根據第23或24條撤銷認可或暫時吊銷認可，

可在有關決定作出之日起7天內，向局長提出上訴反對該項決定。

(2) 根據第(1)款提出的上訴，必須藉上訴人以電子紀錄形式向局長發出上訴的通知而展開，或藉由專人將該通知送交局長而展開，或藉將該通知於局長的辦事處的通常辦公時間內留在該辦事處而展開。

(3) 根據本條向局長提出上訴的核證機關，亦必須在切實可行範圍內盡快給予署長上訴的通知。

(4) 凡有人根據第(1)款提出上訴，局長可確認、更改或推翻署長的決定。

(5) 局長必須向上訴人發出對上訴的決定的通知，而該通知須指明作出該決定的理由，並須——

(a) 以電子紀錄形式向上訴人發出；或

(b) 以普通郵遞或掛號郵遞寄往上訴人的最後為人所知的地址。

(6) 凡在某個別個案中，以第(5)款所指明的方式發出通知並非合理地切實可行，如局長將該通知在根據第31條為上訴人備存的核證機關披露紀錄內公布，則該通知須當作已發出。

(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. 署長如何發出本部所指的通知

- (1) 凡根據本部署長須向某核證機關發出通知或其他文件，該通知或文件如——
- (a) 是以電子紀錄形式發給該機關的；或
 - (b) 以普通郵遞或掛號郵遞寄往該機關的最後為人所知的地址，
- 即須當作已發出。
- (2) 凡在某個別個案中，以第(1)款所指明的方式發出通知或文件並非合理地切實可行，如署長將該通知或文件在有關的核證機關披露紀錄內公布，則該通知或文件須當作已發出。

30. 署長藉憲報公告指明詳情及文件

- (1) 署長必須藉刊登於憲報的公告而指明根據第20(3)(a)、22(2)及(10)及27(4)條所須提供的任何詳情及文件。
- (2) 根據第(1)款作出的公告並非附屬法例。

第 VIII 部**核證機關披露紀錄及業務守則****31. 署長須備存核證機關披露紀錄**

- (1) 署長必須為每一個認可核證機關備存聯機的及可供公眾查閱的紀錄。
- (2) 署長除須在核證機關披露紀錄內公布根據本條例其他條文須在該紀錄提供的資訊外，並須在核證機關披露紀錄內公布關乎該機關的與本條例的施行有關的資訊。

32. 署長須公告認可的撤銷、暫時吊銷及未續期等

- (1) 凡——

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—

- (a) 署長根據第 23(4) 條作出撤銷認可的決定；
- (b) 某項撤銷已根據第 23(6) 或 (7) 條生效；
- (c) 署長根據第 24(2) 條作出暫時吊銷認可的決定；
- (d) 某項暫時吊銷已根據第 24(4) 或 (5) 條生效；
- (e) 被暫時吊銷的認可已獲恢復；
- (f) 署長根據第 28(3) 條接獲上訴的通知；或
- (g) 署長知悉局長已確認、更改或推翻署長撤銷或暫時吊銷認可的決定，

署長必須立刻在有關的核證機關披露紀錄內作出公告。

(2) 凡某項認可的撤銷或暫時吊銷已生效，署長必須在切實可行範圍內，盡快將該項撤銷或暫時吊銷最少連續 3 天在行銷於香港的英文日報及中文日報各一份內公告。

(3) 如認可核證機關未有在根據第 27(2) 條提出續期申請的限期內申請續期，署長最遲須於認可的有效期屆滿之日前 21 天，將有效期的屆滿日期及該機關未有申請續期的事實——

- (a) 最少連續 3 天在行銷於香港的英文日報及中文日報各一份內公告；及
- (b) 在為該機關備存的核證機關披露紀錄內公告。

33. 署長可發出業務守則

署長可發出業務守則，指明執行認可核證機關的功能的標準及程序。

- (a) 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.

第 IX 部

郵政署署長是認可核證機關

34. 郵政署署長作為認可核證機關

- (1) 郵政署署長就本條例的目的而言是認可核證機關。
- (2) 第 VII 部不適用於作為核證機關的郵政署署長。

35. 郵政署署長可執行核證機關功能及
提供核證機關服務

- (1) 為第 34 條的目的，郵政署署長可親自或由郵政署人員——
 - (a) 執行核證機關功能及提供核證機關服務和提供核證機關的功能或服務所附帶的或與之有關的服務；及
 - (b) 可為遵守本條例中任何關乎認可核證機關的條文及為 (a) 段的目的作出需要或合宜的任何事情。
- (2) 郵政署署長可就提供核證機關服務決定及收取費用，也可就提供核證機關的功能或服務所附帶的或與之有關的服務決定及收取費用。
- (3) 根據第 (2) 款決定及收取的費用，不得就提供核證機關服務、核證機關的功能或服務所附帶的或與之有關的服務所招致或相當可能招致的行政或其他成本而受到局限，也不得就收回提供該等服務的開支而受到局限。
- (4) 郵政署署長可以其認為合適的方式，提供根據第 (2) 款決定的任何費用的詳情。

PART IX

POSTMASTER GENERAL TO BE RECOGNIZED
CERTIFICATION AUTHORITY34. 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.

第 X 部

關於認可核證機關的一般條文

36. 發出及接受證書的公布

(1) 凡任何登記人接受某認可核證機關發出的認可證書，該機關必須將該證書在儲存庫內公布。

(2) 如任何登記人不接受認可證書，有關認可核證機關不得將該證書公布。

37. 認可核證機關必須使用穩當系統

認可核證機關必須使用穩當系統進行其以下服務——

(a) 發出或撤回認可證書；或

(b) 就認可證書的發出或撤回在儲存庫內公布或發出通知。

38. 資訊的正確性的推定

如某認可核證機關發出的認可證書已在儲存庫內公布，除非有相反證據證明，否則須推定該證書包含的資訊正確，但識別為未經該機關核實的登記人資訊除外。

39. 發出認可證書時的表述

凡認可核證機關發出認可證書，即屬向任何合理地倚據該證書所包含的資訊的人，或向任何合理地倚據該證書內列出的公開密碼匙所能核實的數碼簽署的人，表述該機關已按照該證書內以提述方式所收納的適用的核證作業準則發出該證書，或該機關已按照為該人所知悉的適用的核證作業準則發出該證書。

PART X

GENERAL PROVISIONS AS TO RECOGNIZED
CERTIFICATION AUTHORITIES36. 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. 公布認可證書時的表述

凡認可核證機關公布認可證書，即屬向任何合理地倚據該證書所包含的資訊的人，表述該機關已向有關登記人發出該證書。

41. 倚據限額

- (1) 認可核證機關在發出認可證書時，可在證書內指明倚據限額。
- (2) 認可核證機關可在不同的認可證書內指明不同的倚據限額，也可在不同的證書類型、類別或種類指明不同的倚據限額。

42. 認可核證機關的法律責任限額

(1) 除非認可核證機關免除本款對其適用，否則該機關如已就其發出的認可證書遵守本條例的規定及遵守業務守則，即無須就因倚據該證書證明的虛假或偽造的登記人數碼簽署所導致的任何損失負有法律責任。

(2) 如認可核證機關已就某認可證書遵守本條例的規定及遵守業務守則，除非該機關免除本款對其適用，否則該機關無須就倚據符合以下說明資訊所導致的損失——

(a) 按照核證作業準則及業務守則屬該機關須確認的；及

(b) 在該證書或儲存庫內是屬失實陳述的，
負有超逾在該證書內指明為倚據限額的款額的法律責任。

(3) 如有關的事實是因有關認可核證機關的疏忽而屬失實陳述的，或該機關蓄意或罔顧實情地作失實陳述，第(2)款所指的責任限額不適用。

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. 認可核證機關須提交關於遵守
本條例及業務守則的報告**

(1) 認可核證機關必須最少每 12 個月向署長提交報告一次，而該報告須載有對該機關在該報告所涵蓋的期間是否已遵守本條例中就認可核證機關適用的條文的評估，及在該期間是否已遵守業務守則的評估。

(2) 第(1)款所指的報告必須由署長認可為合資格擬備該等報告的人擬備，擬備費用由核證機關負擔。

(3) 署長必須在為有關核證機關備存的核證機關披露紀錄內，公布上述報告的日期及報告內的關鍵性資訊。

(4) 在第(1)款中，“所涵蓋的期間”(report period)就為某段期間(“有關期間”)提交的報告而言，指由——

(a) 根據第 21 條作出的認可或第 34 條開始實施時起；或

(b) 根據該款提交的上一份報告所涵蓋的期間的最後一日的翌日起，至有關期間的最後一日為止的期間，視乎情況所需而定。

44. 認可核證機關發出核證作業準則

認可核證機關必須發出及備存最新的核證作業準則，並必須將對該準則所列的該機關的作業所作的任何變更通知署長。

45. 認可核證機關須設置儲存庫

(1) 認可核證機關必須設置或安排設置聯機的及可供公眾查閱的儲存庫。

(2) 署長必須於憲報刊登根據第(1)款設置的儲存庫的清單。

**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” (所涵蓋的期間), in relation to a report (“current report”), 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).

第 XI 部

關於保密、披露及罪行的條文

46. 保密責任

(1) 除第(2)款另有規定外，任何在執行本條例下的功能的過程中或在為本條例的目的執行功能的過程中可取閱任何紀錄、書刊、紀錄冊、登記冊、通訊、資訊、文件或其他物料的人，不得向他人披露該等紀錄、書刊、紀錄冊、登記冊、通訊、資訊、文件或物料，也不得允許或容受向他人披露該等紀錄、書刊、紀錄冊、登記冊、通訊、資訊、文件或物料。

(2) 第(1)款不適用於在以下情況作出的披露——

- (a) 為執行或協助執行本條例下的功能而所需，或為本條例的目的執行或協助為本條例的目的執行功能而所需；
- (b) 為在香港進行的任何刑事法律程序的目的；
- (c) 為在香港提起刑事法律程序而遵守根據某法律規則作出的規定的目的；或
- (d) 根據裁判官或法院的指示或命令。

(3) 任何人違反第(1)款，即屬犯罪，可處第6級罰款，個人犯此罪則可另處監禁6個月。

47. 虛假資訊

任何人明知或罔顧實情地以口頭或書面作出、簽署或提供本條例所規定的任何聲明、申報表、證書或其他文件或資訊，而該等聲明、申報表、證書、文件或資訊是不真實、不準確或有誤導性的，即屬犯罪，可處第6級罰款，個人犯此罪則可另處監禁6個月。

48. 其他罪行

任何人虛假聲稱某人是認可核證機關，即屬犯罪，可處第6級罰款，個人犯此罪則可另處監禁6個月。

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.

第 XII 部

局長修訂附表及訂立其他附屬法例的權力及公職人員的豁免

49. 規例

局長可為以下所有或任何事宜訂立規例——

- (a) 訂明向署長申請認可成為認可核證機關的方式、申請將證書認可的方式、申請將該等認可續期的方式以及認可的方式；
- (b) 就核證機關的認可的申請、證書的認可的申請或該等認可的續期的申請訂明須繳付的費用；
- (c) 訂明核證作業準則的形式；
- (d) 規定提出上訴反對署長的決定的方式及裁定上訴的程序；
- (e) 為實施本條例的條文所需要或是合宜的其他事宜作出規定。

50. 局長可修訂附表

局長可藉憲報刊登的命令修訂附表¹及²。

51. 對公職人員的保護

(1) 政府及公職人員，均無須只因任何認可根據第 VII 部批給、續期、撤銷、暫時吊銷或恢復而招致任何法律責任。

(2) 在不影響第(1)款的原則下，任何公職人員無須因他在執行或其本意是執行本條例第 VII 部以外的任何其他部分下的職能時真誠作出任何作為或沒有作出任何作為，而招致任何民事法律責任。

(3) 第(2)款所賦予的保護，並不以任何方式影響政府就有關公職人員在執行或其本意是執行有關職能時的作為或不作為而招致的法律責任(如有的話)。

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

[第 3 及 50 條]

根據本條例第 3 條除納入本條例第 5、6、7、8
及 17 條的適用範圍的事宜

1. 遺囑、遺囑更改附件或任何其他遺囑性質的文書的訂立、簽立、更改、撤銷、恢復效力或更正。
2. 信託(歸復信託、默示信託及法律構成信託除外)的訂立、簽立、更改或撤銷。
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 章)須加蓋印花或加以簽註的文書，該條例第 5A 條所指的協議所關乎的成交單據除外。
5. 政府的批地協議及條件及政府租契。
6. 《土地註冊條例》(第 128 章)提述的會影響香港的任何一幅地、物業單位或處所的契據、轉易契、其他書面形式的文件或文書、判決及待決案件。
7. 《物業轉易及財產條例》(第 219 章)所指的任何轉讓、轉讓契、按揭或法定押記，任何其他關乎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. 《土地註冊條例》(第 128 章)第 2A 條提述的達成浮動押記的文件。
9. 誓言及誓章。
10. 法定聲明。
11. 法院判決(包括第 6 條提述的判決)或法院命令。
12. 法院或裁判官發出的手令。
13. 可流轉票據。

附表 2

[第 13(1) 及 (3) 及 50 條]

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) 原訟法庭；
- (d) 區域法院；
- (e) 根據《精神健康條例》(第 136 章)設立的精神健康覆核審裁處；
- (f) 土地審裁處；
- (g) 根據《死因裁判官條例》(第 504 章)第 3 條委任的死因裁判官；
- (h) 勞資審裁處；
- (i) 根據《淫褻及不雅物品管制條例》(第 390 章)設立的淫褻物品審裁處；
- (j) 小額錢債審裁處；或
- (k) 裁判官，

席前進行的法律程序。

SCHEDULE 1

[ss. 3 & 50]

MATTERS EXCLUDED FROM APPLICATION OF SECTIONS 5, 6, 7, 8 AND 17
OF THIS ORDINANCE UNDER SECTION 3 OF THIS ORDINANCE

1. The creation, execution, variation, revocation, revival or rectification of a will, codicil or any other testamentary document.
2. The creation, execution, variation or revocation of a trust (other than resulting, implied or constructive trusts).
3. The creation, execution, variation or revocation of a power of attorney.
4. The making, execution or making and execution of any instrument which is required to be stamped or endorsed under the Stamp Duty Ordinance (Cap. 117) other than a contract note to which an agreement under section 5A of that Ordinance relates.
5. Government conditions of grant and Government leases.
6. Any deed, conveyance or other document or instrument in writing, judgments, and lis pendens referred to in the Land Registration Ordinance (Cap. 128) by which any parcels of ground tenements or premises in Hong Kong may be affected.
7. Any assignment, mortgage or legal charge within the meaning of the Conveyancing and Property Ordinance (Cap. 219) or any other contract relating to or effecting the disposition of immovable property or an interest in immovable property.
8. A document effecting a floating charge referred to in section 2A of the Land Registration Ordinance (Cap. 128).
9. Oaths and affidavits.
10. Statutory declarations.
11. Judgments (in addition to those referred to in section 6) or orders of court.
12. A warrant issued by a court or a magistrate.
13. Negotiable instruments.

SCHEDULE 2

[ss. 13(1) & (3) & 50]

PROCEEDINGS IN RELATION TO WHICH SECTIONS 5, 6, 7 AND 8 OF THIS
ORDINANCE DO NOT APPLY UNDER SECTION 13(1) OF THIS ORDINANCE

Proceedings before any of the following—

- (a) the Court of Final Appeal;
- (b) the Court of Appeal;
- (c) the Court of First Instance;
- (d) the District Court;
- (e) the Mental Health Review Tribunal established under the Mental Health Ordinance (Cap. 136);
- (f) the Lands Tribunal;
- (g) a coroner appointed under section 3 of the Coroners Ordinance (Cap. 504);
- (h) the Labour Tribunal;
- (i) the Obscene Articles Tribunal established under the Control of Obscene and Indecent Articles Ordinance (Cap. 390);
- (j) the Small Claims Tribunal;
- (k) a magistrate.