



InterPARES 2 Project

International Research on Permanent Authentic Records in Electronic Systems

Policy Cross-domain

Archival Legislation in Hong Kong

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Hong Kong

Hong Kong is undergoing a major e-government initiative, including the introduction of Smart ID cards and electronic signatures. According to an informant with the Government Records Service, Hong Kong does not have any archival legislation. They do, however, have Public Records Access Rules (1996). The lack of an articulate archives act can be construed to be a barrier to preservation. What might have been considered the ‘archives legislation’ was the Registrar General Ordinance (Chp. 439), which was repealed in 1997. It appears that each government department is responsible for preserving its own records, including those of long term value.

Refer to “Archival Legislation in Hong Kong: Supplementary Notes”¹ for excerpts from the legislation consulted for this report. Also included are notes on some e-government policies regarding e-government security standards.

Legislation Consulted

- Electronic Transactions Ordinance (Chapter 553)
- Copyright Ordinance (Chapter 528)
- Prevention of Copyright Piracy Ordinance (Chp. 544)
- Land Titles Ordinance (Chapter 585)

These can be found at: http://www.legislation.gov.hk/blis_export.nsf/home.htm

Policy Consulted

- Public Records (Access) Rules, 1996 (PAR)

Definitions

Record (including electronic and other)

Closed Records: any public records which are not available for public inspection. (PAR)

¹ Greg Kozak (compiler) (2004), “InterPARES 2 Project – Policy Cross-domain: Archival Legislation in Hong Kong: Supplementary Notes.” Available at [http://www.interpares.org/display_file.cfm?doc=ip2\(policy\)archival_legislation_HONG_KONG_supplement.pdf](http://www.interpares.org/display_file.cfm?doc=ip2(policy)archival_legislation_HONG_KONG_supplement.pdf)

Document: includes, in addition to a document in writing- a map, plan or drawing; a disc, tape or other device in which data other than visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the disc, tape or other device; and a film, tape or other device in which visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the film, tape or other device. (Chp. 585.2)

Electronic Record: means a record generated in digital form by an information system, which can be- transmitted within an information system or from one information system to another; and, stored in an information system or other medium. (Chp. 553.2)

Image Record: means a record produced using the imaging method and, where context permits, includes a record in legible form. (Chp. 585.2)

Public Records: all record materials of any kind, nature or description which have been made, received or acquired in the course of legislative, judicial or executive transactions, together with all exhibits and other materials evidence which form part of or are annexed to or are otherwise related to any record, which may be transferred to or be acquired by the Public Records Office of the Government Records Service. (PAR)

Public Records: means the records of any nature or description which have been made, received or acquired in the course of proceedings of the Legislative Council, judicial proceedings or executive transaction, together with the exhibits and other material evidence which form part of or are annexed to or are otherwise related to any record, which are or are required to be in the custody of, or which may be transferred to or be acquired by, any department of the Government. (Chp. 528.58.2)

Record: 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 perceivable form. (Chp. 553.2)

Record: includes not only written record but a record conveying information or instructions by any other means. (Chp. 585. 2)

Assigning Responsibility

As it appears, each government agency is responsible for preserving its own records. In copyright, it appears that archives do preserve records from private and public sources. This is difficult to ascertain, given that there is no archival legislation.

Governance

In one ordinance (the Electronic Transactions Ordinance, Chp. 553.11.1-2), it appears that the Permanent Secretary can issue orders on how records are kept. However, this is very difficult to determine.

Scope

It appears that archives acquire both public and private records. Government agencies preserve their own records.

Lifecycle

Without archival legislation, this cannot be answered.

Barriers

- There is no archives enabling legislation.
- It seems that each government department is responsible for keeping their own records, including those of long-term significance.
- It is still very fuzzy as to how records are managed and disposed of and who ensures the standards are enforced.
- The copyright legislation does not permit copying for preservation purposes. It only allows an archives to duplicate a copyrighted work if they believe the record (of national or historical value) will be lost due to export or sold.
- No legislation covers electronic records that were not created in the course of an electronic transaction.

Enabler

- The government is creating a set of policies to guide how electronic records are kept. The driving legislation behind these sets of policies is the Electronic Transactions Ordinance (Chapter 553).
- The Electronic Transactions Ordinance touches on many of the notions that InterPARES is concerned about (e.g., long-term preservation of reliable and authentic records- although not in these exact terms).

Observations

- Overall, this legislation acts as an enabler. Yet, it is limited only to records created as part of an electronic transaction. Furthermore, it does not explicitly assign responsibility for long-term preservation, only for the period that the records are needed for legal purposes. When looking at other legislation, such as the Protection of Non-Government Certificates (Chp. 324), it refers to the definitions provided in this legislation.