



# InterPARES 2 Project

International Research on Permanent Authentic Records in Electronic Systems

## Policy Cross-domain

### Archival Legislation in Hong Kong: Supplementary Notes

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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 What might have been considered the 'archives legislation' was the Registrar General Ordinance (Chp. 439), which was repealed in 1997.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.

Also included are notes on a couple of policy documents dealing with e-government electronic security.

Compiler's comments are noted below in [red].

#### **Electronic Transactions Ordinance (Chapter 553)**

[http://www.legislation.gov.hk/blis\\_ind.nsf/CurAllEngDoc?OpenView&Start=550&Count=30&Expand=550.1#550.1](http://www.legislation.gov.hk/blis_ind.nsf/CurAllEngDoc?OpenView&Start=550&Count=30&Expand=550.1#550.1)

[In all, 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.]

*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. (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. (2)

*Repository*: means an information system for storing and retrieving certificates and other information relevant to certificates. (2)

*Trustworthy System*: means computer hardware, software and procedures that- are reasonably secure from intrusion and misuse; are at a reasonable level in respect of availability, reliability and ensuring correct mode of operations for a reasonable period of time; are reasonably suitable for performing their intended function; and adhere to generally accepted security principles. (2)

Electronic records satisfies the rule of law if information in writing is required. (5)

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- 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 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. (7.1a-b) [This is an enabler]

For the purposes of subsection (7.1a)- 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 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. (7.2a-b) [Enabler]

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- the information contained in the electronic record remains accessible so as to be usable for subsequent reference; 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 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. (8.1a-c) 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. (8.2) [Enabler]

The Permanent Secretary may exclude by ordinance or gazette some of the requirements outlined in sections 7 and 8. He may also specify the manner and format in which information in the form of an electronic record is to be given, presented or retained. (11.1-2) [This has the possibility of acting either as an enabler or barrier, depending on the type of ordinance or gazette passed.]

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-

specifies requirements, procedures or other specifications for that purpose; requires the use of a specified service; or 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. (14) [This has the possibility of acting as a barrier, especially if the terms or requirements are not adequate. It also gives the opportunity to a service provider to decline to accept electronic records for storage and retrieval].

### **Public Records (Access) Rules, 1996**

[This was obtained from a staff member at the Government Records Service].

*Closed Records*: any public records which are not available for public inspection. (1)

*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. (1)

Records are available for public inspection after they have been in existence of 30 years or have been previously published or disclosed to the public. (3a-b)

### **Copyright Ordinance (Chapter 528)**

[The biggest barrier presented by this legislation is that it does not allow for copying for preservation purposes.]

The holder of copyright may copy their work, issue copies of the work, rent the work, make copies available to the public, broadcast, and to make adaptation to the work. (22.1)

A person that does not have permission of the copyright holder to do any of the above infringes copyright. (22.2)

Copying a work means reproducing the work in any material form. This includes storing it in any medium by electronic means. (23.2) [This is a barrier to preservation if copying or storing the record is not done with permission of the copyright holder].

Sections 46 to 52 of the copyright ordinance deal with archives and libraries, but only as it involves the library or archives providing access to copyrighted material.

An archives may make a copy of an article of cultural or historical importance or interest and deposit the copy at the specified library or archives without infringing any copyright in respect of the article if the article is likely to be lost to Hong Kong through sale or export. (53) [This is rather peculiar, since it allows for reproductions to be made, but only if the archives think the item will be sold or exported. Perhaps this could be considered an enabler?]

Material which is comprised in public records which are open to public inspection may be copied, and a copy may be supplied to any person without infringement of copyright. (58.1) [Enabler- government records can be copied without fear of infringement]

*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. (58.2)

A copy of a work in electronic form (other than such a copy which was made available to the public) that has been purchased on terms which allow the purchaser to copy the work, or to adapt it or make copies of an adaptation, in connection with his use of it, is not an infringement of copyright. (64.1-4) [The applicability of this section to archives and preservation is unclear.]

Broadcast recordings and cable programmes designated by the Secretary of Commerce, Industry and Technology can be copied and placed into an archives. (84)

#### **Prevention of Copyright Piracy Ordinance (Chp. 544)**

[This ordinance is an extension of the copyright ordinance. It does give some clues as to how records are preserved.]

The Commissioner shall establish and maintain a register in such form and containing such information respecting licences and manufacturers' codes as he thinks fit. The Commissioner shall make the register available to public inspection subject to such conditions as he thinks fit. (31.1-2) [This suggests that the office of primary responsibility is charged with preserving their own records. If this is the case, there is no centralised repository, which would be a barrier. This seems also to be the case with the Trade Marks Ordinance, in which the Register of the office stores the information pertaining to trade marks (Chapter 559)]

#### **Land Titles Ordinance (Chapter 585)**

[This ordinance shows how an individual government agency defines and keeps its records. As noted below, the Land Registry is on the verge of digitising its land registry records.]

*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. (2)

*Image record*: means a record produced using the imaging method and, where context permits, includes a record in legible form. (2)

*Imaging method*: means a method by which documents in legible form or in the form of microfilm are scanned by a scanner and the information recorded therein is converted into electronic images, which are then stored on electronic storage media capable of being retrieved and reproduced in a legible form.

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

The Land Registrar shall keep in the Land Registry, or make and keep in the Land Registry a microfilm, image record or other record (including an image record of a microfilm) of, the following documents- ‘list of legal documents.’ (6.1)

Where a microfilm, image record or other record of a document is made under subsection (1), the Registrar may- destroy or otherwise dispose of the document from which the record was made; or return that document to the person by whom, or on whose behalf, it was delivered to the Land Registry. The microfilm, image record or other record made of a document under subsection (1), the copy is treated for all purposes as the original. (6.2-3) [This can neither be considered an enabler or barrier, since it all depends on the standards used to copy the original. Yet, since the copy is equal to the original, especially if the original is destroyed, it is in the agencies best interest to have a reliable system for storage. Consequently, this could be an enabler]

The Title Register and the applications register may be kept in such form as the Registrar considers appropriate, including in a form other than a documentary form. (7) [This is not yet in force, probably awaiting the e-government switch. In this case, the register will probably resemble the one in Alsace-Moselle.]

#### **Baseline IT Security Policy, Sep 2004 (g17)**

<http://www.ogcio.gov.hk/eng/prodev/download/s17.pdf>

[This document’s scope is the entire Hong Kong government. It covers security considerations in eight areas. Some of these areas impact records management. It states what aspects are of paramount importance to a bureau or department. The basic rules are mandatory. Although not cited, many of the baseline IT policies are very similar to ISO 15489. The only relevant information in the policy is the definitions they use.]

*Information System*: an electronic information system that processes data electronically through the use of information technology- including but is not limited to: computer systems, servers, workstations, terminals, storage media, communication devices and network resources. (4.1a)

*Integrity*: only authorised persons are allowed to make changes to the information stored or processed by Information Systems in any aspects. (4.1.c)

*IT Security Policy*: a documented list of management instructions that describe in detail the proper use and management of computer and network resources with the objective to protect these resources as well as the information stored or processed by the Information Systems from any unauthorised disclosure, modification or destruction. (4.1e)

**IT Security Guidelines, Sep 2004 (g3)**

<http://www.ogcio.gov.hk/eng/prodev/download/g3.pdf>

[This is a more detailed version of the Baseline IT Security Policy (g17). It provides the same definitions, but gives more detail regarding ‘data security.’ This section discusses “Classified Data” and the protection involved with each level of “classification.” In most cases, this involves encryption. This raises problems for long-term storage.]