

Information paper on
11 November 2000

Panel on Security of the Legislative Council

HKSAR Identity Card Project – Initial Views on Legislative Amendments

INTRODUCTION

The issue of Hong Kong identity (ID) card is governed by the Registration of Persons (ROP) Ordinance and ROP Regulations (Cap. 177). They provide for the registration of persons in Hong Kong, and of persons elsewhere who have the right of abode in Hong Kong, for the issue, carrying and production of identity cards and for purposes connected therewith.

2. The introduction of a new smart ID card with multi-application capacity and the launching of a region-wide ID card replacement exercise will require changes to the relevant legislation. This paper provides a broad overview of the essential changes as presently perceived, pending further legal advice to be obtained.

AMENDMENTS TO THE ROP LEGISLATION

Use of ID Card

3. The ROP Ordinance will require to be amended to cover the ‘smart’ element of the ID card, i.e. the chip on the card which will hold data.

4. If a smart ID card is to support other non-immigration applications (other applications), corresponding amendments may need to be made to the relevant ordinances and regulations as well. However, as the inclusion of other applications onto the smart ID card is subject to separate feasibility studies and we have yet to decide on whether and how these other applications are to be included depending on public views, it is not possible to specify the exact extent of amendments needed at this

stage.

Content of Forms of ID Card

5. Schedule 1 of the ROP Regulations provides for the content of forms of ID card. Data items printed on the surface of the existing ID card are stipulated in this Schedule. As the new ID card will have a chip which is capable of storing data (including the template of a card-holder's thumbprints and conditions of stay), it is necessary to amend the Schedule to specify clearly which data items are to be printed on the card surface and what immigration data are to be stored in the chip. Our initial view is that the type of other applications to be stored in the chip may have to be defined in the ROP Ordinance and the relevant data items for these applications may be required to be stipulated in other relevant legislation. However, this will have to be further examined when we have a firm view on whether and how other applications are to be included onto the smart ID card.

Changes in Registration, Issue and Renewal Requirements

6. Regulation 4(1)(a)(ii) of the ROP Regulations provides for the taking and recording of an ID card applicant's left thumb-print or alternatively, if that is not possible, of such other single fingerprint. As the new ID card system requires the capturing of two thumbprints or alternatively, any other two fingerprints, this provision will need to be suitably amended.

Prohibition Against Making Alterations to the Chip of a Smart ID Card

7. Regulation 12(1) of the ROP Regulation makes it an offence for a person, who without the authority of the Commissioner of Registration, to make any mark or entry upon, or erases, cancels or alters any mark or entry in an ID card. As the new smart ID card will have data stored in the chip as well, this provision should be amended to cover such data.

Prohibition Against Use, Possession and Transfer of an Unlawfully Altered Smart ID Card

8. Section 7A of the ROP Ordinance prohibits any person who, without lawful authority or reasonable excuse, uses or possesses a forged ID card or other document issued for the purposes of the Ordinance.

Regulation 12(2) of the ROP Regulations also prohibits a person to possess an ID card which is defaced or unlawfully altered. In addition, section 7AA(1)(b) of the ROP Ordinance debar any person from transferring to another person a forged ID card and other document issued under the Ordinance. These provisions may have to be suitably amended to cover the data in the chip of a smart ID card so as to ensure that a forged ID card includes unlawfully altered data inside the chip.

Introduction of a New Record Management System

9. Section 7 of the ROP Ordinance stipulates that the Chief Executive in Council may make such regulations as may be necessary for the purposes of the ROP Ordinance. Section 7(2)(g) provides for the making of regulations relating to the use of films and photographic reproduction of such films. As it is our plan to convert the microfilm records into digital images, a new provision may need to be added to cater for the change.

New ID Card Replacement Exercise

10. During the last two replacement exercises, all Hong Kong ID card holders were called forward to have their old ID cards replaced by phases. A similar approach will be adopted in the forthcoming exercise.

11. Throughout the exercise, orders will be published in the Gazette to require all ID card holders to replace their existing ID cards at the designated New Identity Card Issuing Offices (NICIOs) within a specified period of time and according to age groups. The designated NICIOs and their locations will need to be included in the ROP Regulations.

12. Section 7B(1) of the ROP Ordinance empowers the Secretary for Security to direct members of the public to come forward for replacement of their ID cards issued on or before a cut-off date. This section will have to be amended by updating the existing cut-off date (i.e. "1 July 1987") to a date immediately before the introduction of a new ID card system. Orders will also need to be made for the invalidation of existing ID cards by phases, after the replacement period is over.

13. Section 7C(1) of the ROP Ordinance empowers the Secretary for Security to direct ID cards issued before a specified date to be invalid. This section will be amended by updating the existing specified date of

“1 July 1987” to a date immediately before the introduction of a new ID card system.

Fee for Replacement of Lost, Defaced or Damaged Cards

14. Schedule 2 provides the fee for replacement of an ID card due to lost, deface, damage or change of particulars. It will need to be revised if the fee is to be changed.

Admissibility of Data Inside the Chip

15. Section 4 of the ROP Ordinance provides that certified true copy of records kept by the Commissioner of Registration shall be admissible as evidence in criminal and civil proceeding before court without further proof. Since personal data, facial portrait and thumbprints of an ID card holder will be stored inside the chip of the new ID card, legislative amendment may be required to accommodate admissibility in court of the data inside the chip as prima facie.

Provisions on Protection of Data Privacy

16. New provisions will be provided or current provisions will be updated for the purpose of protection of personal data. These include provisions to guard against illegal use or disclosure of records, provisions to ensure data is securely stored and to prevent unauthorised access to the data in the card. The Privacy Commissioner will be consulted before a list of possible amendments is drawn up.

AMENDMENTS TO OTHER ORDINANCES

17. As set out in paragraph 4 above, amendments to other legislation arising from the inclusion of other applications on the smart ID card can only be defined after there is a firm view on whether and how other applications are to be included. If the driving licence is to be an early application of the smart ID card, the Road Traffic Ordinance (Cap. 374) and its Regulations will have to be suitably amended.

TIMELINE

18. To enable the issue of a smart ID card in early 2003, all

amendments to the ROP Ordinance relating to the introduction of a smart ID card must be completed before then. Amendment of other ordinances relating to the inclusion of other applications onto a smart ID card must also be done before such applications are put onto the card.

CONCLUSION

19. This paper only provides a broad overview of possible legislative amendments required for the implementation of a new ID card system. It is by no means exhaustive and will require further refinement. We will provide more details to Members at a later stage after further examination and when a firm decision is made on whether and how other applications should be included onto the smart ID card.

Security Bureau
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