

Information paper on
18 January 2001

Panel on Security of the Legislative Council

**HKSAR Identity Card Project –
Initial Views on Legislative Amendments**

INTRODUCTION

We are committed to ensuring that necessary legislative amendments as necessitated by the introduction of a smart identity (ID) card with multi-application capacity will be effected in a timely manner. In order to achieve this, we are actively examining whether and how the existing legislation related to the registration of persons should be amended, taking into account the findings of consultancy studies on security requirements and privacy impact assessment as soon as they are available.

2. This paper provides a broad overview of the essential legislative changes as presently perceived, but modifications may need to be made when security requirements and privacy impact are further examined. Moreover, all proposals will have to be scrutinized in greater depth by the Department of Justice.

REGISTRATION OF PERSONS (ROP) LEGISLATION

3. The issue of Hong Kong ID card is governed by the 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.

AMENDMENTS TO THE ROP LEGISLATION

Preamble

4. The long title of the ROP Ordinance may need to be revised to cater for the inclusion of other non-immigration applications (other applications).

Use of ID Card

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

6. If a smart ID card is to support 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 public views, it is not possible to specify the exact extent of amendments needed at this stage.

Content of Forms of ID Card

7. 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 for non-permanent residents), 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 need 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

8. 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

9. 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.

Duty to Notify Damages of Identity Card

10. Regulation 13(1) of the ROP Regulation requires the holder of the ID card to report and surrender in 14 days his damaged / defaced identity card and apply for a replacement ID card in such a manner as the registration officer may require. Regulation 13(2) authorize a registration officer to issue to that person a replacement ID card and the ID card so surrendered will cease to be valid under Regulation 13B. As the new ID card will have an additional component, i.e. the chip, the regulations may have to be amended to cater for situations where malfunctioning of the chip can be rectified by reloading of new programs but without requiring the issue of a new ID card.

Burden of Proof

11. Regulation 21 of the ROP Regulation states that the burden of proving the truth of the contents of the ID card itself shall lie on the applicant for such ID card, or the person to whom such ID card has been issued, or any other person alleging the truth of such content. Since the data in chip will include other applications and the related data, these provisions should be reviewed to include the data in the chip of a smart ID card.

Prohibition against Use, Possession and Transfer of an Unlawfully altered Smart ID Card

12. 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 debars 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

13. Section 7(1) 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

14. 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.

15. 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.

16. 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 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 upon the introduction of new ID cards.

17. Orders will also need to be made for the invalidation of existing ID cards by phases, after the replacement period is over. Section 7C(1) of the ROP Ordinance empowers the Secretary for Security to declare 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 upon the introduction of a new ID card system.

Fee for Replacement of Lost, Defaced or Damaged Cards

18. Schedule 2 of the ROP Regulations 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

19. 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

20. New provisions may have to be provided or current provisions may need to be updated for the purpose of protection of personal data. These may include provisions to guard against illegal use or disclosure of records and the soliciting of unauthorized disclosure of data, and to restrict the reading of “non-visible” data in chip and the use of template of thumbprints by agencies other than Immigration Department. The Privacy Commissioner for Personal Data will be consulted before a list of possible amendments is drawn up.

AMENDMENTS TO OTHER ORDINANCES

21. Amendments to other legislation may be needed arising from the inclusion of other applications on the smart ID card, but such amendments can only be defined after there is a firm view on whether and how such 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 subsidiary Regulations will have to be suitably amended.

TIMELINE

22. To enable the issue of a smart ID card in early 2003 (when the existing computer of the ROP system reaches the end of its life expectancy), all amendments to the ROP legislation relating to the introduction of a smart ID card must be completed before then. Amendment of other legislation relating to the inclusion of other applications onto a smart ID card must also be done before such applications are put onto the card.

23. We will pursue all necessary legislative amendments between 2001-2002 in parallel with other preparatory/implementation work, e.g. tendering, system analysis and design, development, installation of hardware and software, testing and debugging etc. We estimate that all such work will take two years to complete. It is impractical to try to complete legislative amendments before the tendering process or before the actual work model is known as any such amendments will not be able to reflect the real operating requirements. More importantly, such a legislative approach will mean that we cannot proceed with the preparatory work which must be carried out immediately as there is genuine operational need to have a new supporting computer system up and running by early 2003.

Security Bureau

10 January 2001