

Information paper on
6 February 2001

Panel on Security of the Legislative Council

Amendment of Legislation for Implementing the HKSAR Identity (ID) Card Project

INTRODUCTION

At the meeting on 18 January 2001, some Members asked the Administration to consider whether it would be possible to complete the necessary legislative amendments before seeking funding approval. Some also doubted if it would be appropriate to approve funds for a scheme which had yet to be backed up by legislation.

TIMING FOR AMENDING THE LEGISLATION

2. We have carefully reflected on Members' suggestion but are of the view that it is not practicable to defer Phase 1 of the funding application (please refer to another paper on Funding Arrangement presented to the Panel's meeting on 18 January) pending the completion of all the legislative amendments. The reasons are as follows -

- (a) The existing computer system will reach the end of its life expectancy by the end of 2002. The availability of consumables is only guaranteed till mid-2003. Furthermore, the printing equipment used by the Printing Department for the production of ID cards can only last until 2003. We must, therefore, introduce a new computer system in 2003 otherwise we may not be able to fulfil our statutory obligation of issuing ID cards to Hong Kong people;
- (b) It will take about 27 months to develop a new computer system to

replace the existing one. The tasks include invitation for and evaluation of tender proposals (7 months), system design (4 months), system development and testing (10 months), user acceptance tests and debugging (5 months) and trial run (1 month). The timeframe is very tight having regard to the complexity of the project and the high security and data protection requirements. Since the new computer system must be launched in the first part of 2003, we cannot afford to squeeze in an extra time slot ahead of the above tasks for conducting the legislative amendments;

- (c) As regards non-immigration applications, we have yet to consult the other relevant LegCo Panels as to whether and how these applications are to be incorporated into the proposed smart ID card, pending completion of feasibility studies being conducted by respective departments. We are unable to take a definitive view on the scope of legislative amendments required;
- (d) Similarly, the extent of legislative amendments required is not clear until we have actually selected the vendors and determined the future work models. The privacy impact assessments, which are scheduled at various stages of the project, will also have bearing on the data protection aspects of the legislation.

3. It remains our view that legislative amendments should be conducted in parallel with, but not in advance of, the development of the new computer system. Nevertheless, we share Members' view that relevant legislative amendments should be introduced as soon as possible. To this end, we have already submitted a paper to this Panel on 18 January 2001 identifying broadly various legislative amendments required. Now that we have the opportunity to discuss the initial privacy impact assessment report with the Office of the Privacy Commissioner for Personal Data (PCO), we are able to set out in more concrete terms the coverage of the legislative amendments insofar as they relate to the data privacy issues. Details of our proposals are at Annex. We will continue to exchange views with the PCO and will report progress to this Panel. We hope it will give Members the needed assurance that adequate attention is being paid to the legislation aspect of the ID card scheme and Hong Kong people's data privacy rights.

4. On the question of timing, we aim to submit a draft amendment bill to LegCo for vetting by the end of 2001. This should give Members ample time to discuss the content of the bill.

LEGALITY OF GRANTING FUNDING APPROVAL BEFORE ENACTING LEGISLATIVE AMENDMENTS

5. On the legality of the funding request, we have consulted the Department of Justice and been advised that the expenditure to be authorized under the funding request in question is confined to matters covered by existing legal and administrative powers, and it is not necessary from a legal point of view to have the implementing legislation passed by LegCo prior to seeking/granting funding approval. As such, the funding submission will not pre-empt LegCo in examining the implementing legislation, e.g. what data to be stored in the chip of the new smart ID card.

6. Indeed the legal reason for the requirement to obtain funding approval at this time is not linked to the need for new legislative backing. Instead the requirement is based on the legal provisions in the Public Finance Ordinance Cap. 2 which require the Administration to seek the legislature's approval for all public expenditure (i.e. whether or not the public project for which that expenditure is needed will itself require new legislative provisions or can be implemented administratively).

Security Bureau
2 February 2001

**Coverage of the Legislative Amendments
on Data Privacy Issues**

Amendments to the Registration of Persons (ROP) Ordinance/Regulations and other legislation as appropriate with respect to data privacy protection will cover the following areas:-

- (a) data to be collected for the registration of ID card;
- (b) data to be stored in the chip of the new smart ID card;
- (c) administration relating to the registration and issue of ID card;
- (d) how the data on the card, the ROP database and associated images will be used;
- (e) the provision of criminal sanctions against any person attempting to store data, or to use/disclose data or to perform functions on the card in a manner unknown to the person, or against the person's wishes, or harmful to the person's interest;
- (f) making it an offence to solicit unauthorized disclosure of ROP data; and
- (g) placing limits and/or conditions on the use of ROP data by persons or organizations to whom ROP data is disclosed and making it an offence to breach those limits/conditions.

2. Consideration will also be given to moving the prohibition on disclosure of data (presently contained in the ROP Regulations) to the ROP Ordinance, so that it cannot be overridden by pre-existing provisions in Ordinances giving a power to obtain information.