

REGISTRATION OF PERSONS (AMENDMENT) BILL 2001

SUBMISSION FOR PUBLIC HEARING

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1. I am a barrister-at-law and a Professor of Information Systems at the City University of Hong Kong (“CityU”). I teach e-business regulatory environment at the Master’s degree level at the CityU. I have been conducting research in the areas of e-business and e-government for a number of years. I am making this submission in response to the invitation for public views issued by the Bills Committee on Registration of Persons (Amendment) Bill 2001 (“the Bill”).

Proposed Non-Immigration Uses

2. One of the key advantages of the new smart ID cards is that they potentially can be used for a range of non-immigration purposes. These non-immigration uses leverage the power and convenience of modern information technologies (especially the Internet) to provide extra convenience to users and potentially enable a substantial improvement in the effectiveness and economic efficiency of the transactions involved in such uses.
3. To ensure that the very substantial cost (i.e. taxpayers’ money) of implementing the new smart ID cards will yield maximum benefit for the community, it is essential that the Government should proactively explore other beneficial (non-immigration) use of the smart ID cards. In this context, 4 initial non-immigration uses of the smart ID cards have been proposed by the ITBB and the corresponding legislative amendments are included in the Bill.

Digital Certificate

4. It is well recognized that e-commerce technologies can substantially improve the effectiveness and efficiency of business transactions, thus potentially rendering our economy more competitive. Research has consistently indicated that the lack of trust towards Internet-based transactions is a main reason why citizens are slow to adopt e-commerce technologies. The lack of trust is due to the fear of loss of information security and privacy in electronic transactions. The Electronic Transactions Ordinance is enacted to provide for a secure environment for electronic transactions, thereby hoping to allay the fear that dampens the adoption of e-commerce in the HKSAR. Digital certificate is an essential part of the secure environment.
5. Currently, the citizen adoption of digital certificate in Hong Kong is slow. One reason is that many citizens regard the effort needed to acquire, install, and use digital certificates to be not insignificant. The other reason is that currently there are not many applications demanding the use of digital certificates; hence citizens do not feel they can benefit much from their effort to acquire and install digital certificates. Because the number of digital certificate users is relatively small, e-commerce vendors are reluctant to roll out applications supporting the use of digital certificates. Without these secure applications, citizens lack the trust needed to engage in e-commerce. Hence, the vicious circle repeats itself, damaging the overall adoption of e-commerce in Hong Kong.
6. Currently, citizens inclining to adopt digital certificates do not do so because they find the necessary processes inconvenient. The proposed scheme to provide citizens with the option of having digital certificates automatically loaded onto their new smart ID cards at the time of issue offers citizen just the sort of convenience they need. This measure will no doubt help break the vicious cycle that slows the adoption of e-commerce in Hong Kong.

7. The adoption of digital certificates is currently very slow in Hong Kong. As a result, it is not commercially attractive for private sector players to become Authorized Certification Bodies. Citizens now don't have any real choices other than the post office digital certificates. The proposed digital certificate use will help ensure a sufficiently large base of digital certificate users in Hong Kong to make it viable for other providers to come to the market, thus potentially increasing the number of choices for citizens and allaying the fear that the proposed scheme will result in the Hong Kong Post becoming a monopoly provider of digital certification services. To achieve this beneficial effect it is essential that Citizens should be offered the option of loading digital certificates from other providers even though the first digital certificate is to be provided free by the Hong Kong Post (for 1 year) and automatically loaded onto the smart ID card.

Library Card

8. This is a straightforward value-added non-immigration use that offers the benefit of user convenience and operational efficiency. The use of the HKID number (rather than a different library ticket number) as an identifier of the library user's record is a measure driven by user convenience and operational efficiency. However, privacy considerations dictate that effective measures and safeguards must be implemented to ensure that only authorized users with special equipment will be able to read this surface card data from the relevant storage compartment in the smart ID card chip. Data should be encrypted. Mutual authentication techniques should be employed. Indeed, access security measure for data held in this compartment of the smart ID card should not be any less than other data on the card.

Driving License and Change of Address

9. They are two straightforward value-added non-immigration uses that offer the benefit of user convenience and operational efficiency. The proposed manner of

implementing these uses does not seem to raise any significant additional concerns (other than those already affecting the existing driving license and change of address systems) from a security and privacy perspective.

General Considerations

Optional Choice

10. One of the key privacy principles involved in this Bill is that citizens are given the option to opt-out from the non-immigration uses. This opt-out choice is meaningful only if citizens (by opting-out) are not put in a more disadvantageous position than they are in now in relation to the government related services that they are obtaining through means (both manual and on-line) other than the smart ID card. However, in the future, citizens opting to have the non-immigration uses loaded onto their smart ID cards should be entitled to obtain services more conveniently than the position they are in now. Otherwise it defeats one of the main purposes of the entire smart ID card scheme and the huge amount of investment entailed. There is not much point in the scheme at all if improved user convenience and operational efficiency cannot be achieved.

Privacy and Security

11. The proposed amended Regulation 12 makes the unauthorized storage or tampering of data in the chip of a smart ID card an offence. To strengthen the intended deterrence effect, the unauthorized access to and use of such data should be made an offence too to deter a main source of potential encroachment on privacy. The penalty proposed should be increased as far as possible to strengthen the intended deterrence effect. To mark the distinctive importance placed on the security and privacy of data held in the chips of smart ID cards, these offenses should be distinctive from and made more serious than the generic hacking offences available under the current Computer Crimes Ordinance.

12. There appears to be some concern on whether, as a matter of principle, a Privacy Impact Assessment (“PIA”) ought to be performed on each and every proposed non-immigration use before such use can be allowed. In my view it is wrong to insist on a PIA for every non-immigration use regardless of the nature of such a use. The important point is that internal government databases should not be allowed to be cross-linked. Once that prohibition is guaranteed, an application merely enabling a more effective way (e.g. online through smart ID cards) of collecting and processing existing data for an existing purpose (which the collecting body has already been authorized to do) should have insignificant privacy impact. To demand PIA on such uses introduces unnecessary delay and wastes public funds. The current proposed non-immigration uses fall into this category. However, for uses entailing new data to be collected or significantly new ways of data processing or data usage, a separate PIA may be justifiable before such uses are allowed.

Legislative Approach

13. Non-immigration uses are introduced through amending the Registration of Persons (ROP) Ordinance (Cap. 177) to introduce a new Schedule specifying those uses requiring additional data to be stored in the chip or printed on the surface of the smart ID cards. New uses not requiring additional data to be stored or printed in relation to smart ID cards will not need to be specified as such.
14. This approach has the advantage of logical consistency and operational effectiveness. A new non-immigration use may have impacts on two fronts: (1) the smart ID cards (in the sense that some positive acts, e.g. storage of new data, need to be performed to enable the use); and (2) the procedures and manners in which such use (e.g. library usage) will be carried out. The former should be subject to legislative control through the ROP Ordinance since the subject matter and the very legitimacy of smart ID cards are governed by that Ordinance. The latter should be subject to legislative control of the relevant legislation, *if any*, governing such a use, whether with or without smart ID cards. For example,

legislation regulating the use of public libraries should cover all means of obtaining usage, whether by smart IS cards or not. To specify all non-immigration uses in the ROP legislation regardless of whether the smart ID cards themselves are being affected in a material matter muddles the issue conceptually and may result in unnecessary duplications, thereby introducing inefficiency in the legislative processes and the subsequent implementation of the resulting laws.

15. Given that we accept the broad principle of adding further beneficial non-immigration uses to the smart ID cards when the right opportunity arises, subjecting to obvious privacy and security safeguards, it is appropriate to deal with such further uses in subsidiary legislation rather than in the ROP Ordinance. To do otherwise would put in unnecessary obstacles in the way of potentially beneficial uses, thereby delaying citizens and organizations from benefiting from the fruits of this very significant taxpayer investment in the smart ID cards.

Experience from other countries

16. Because of significant differences in culture, economic structures and priorities, local politics, and demographics, experiences from other countries may not be entirely useful or relevant to the issues we are facing in Hong Kong. At any rate, Hong Kong happens to be leading the world in the implementation of a compulsory citizen smart ID cards scheme. The only other country with comparable experience of implementing a similar scheme is Finland, which has a small population comparable to Hong Kong. However, it is too early to draw lessons from the Finnish experience at this stage.
17. Much of the current controversies surrounding national proposals to introduce citizen smart ID card schemes (e.g. in the UK and the USA) relates to countries not having any national ID card schemes at all. The focus of the controversies is therefore not so much on the smart ID cards *per se*, but on whether it is justifiable from a civil rights perspective to introduce legislation for compulsory citizen ID cards. Since compulsory citizen ID card legislation (i.e. the ROP Ordinance) has

taken root in Hong Kong, much of the current controversies in the other countries surrounding such proposed schemes are of little relevance to Hong Kong at the moment. Many countries worldwide are currently contemplating the introduction of citizen smart ID card schemes for reasons such as national security, fighting illegal immigration and frauds. In countries where there are already existing compulsory citizen ID card schemes, the proposed change to a smart ID card regime has typically attracted few controversies.

18. One of the main reasons for arguing against the introduction of a citizen smart ID card scheme is the cost involved, especially in a country where no citizen ID registration system exists. However, this argument is irrelevant in our situation since LegCo has already approved the funding of such scheme provisionally. On the contrary, the priority in Hong Kong should be to ensure that citizens are able to reap the benefit of such a large investment of taxpayers' money without unnecessary delay.

Conclusion

19. The adoption of e-commerce in Hong Kong is already lacking behind our competitors. The smart ID card scheme with non-immigration uses will help speed up the adoption of e-commerce in Hong Kong by facilitating the development of a critical mass of users. Hong Kong is in an advantageous position to pursue this development. The 4 non-immigration uses proposed currently are clearly value-added but by no means revolutionary. The proposed legislative amendment is needed, belated but broadly in the right direction. I would urge the Administration to be even more proactive in the future in seeking out beneficial uses of the smart ID cards to ensure Hong Kong citizens will reap the benefit of a good e-commerce infrastructure in which so much taxpayers' money has already been invested.

END OF SUBMISSION