



香港國際仲裁中心

Hong Kong International Arbitration Centre

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10 October 2002

By fax 2877 8024 only
Mrs Sharon Tong
Clerk to Bills Committee on Registration of Persons
(Amendment) Bill 2001
3/F Citibank Tower
3 Garden Road
Hong Kong

Dear Mrs Tong

**Suggested Comments on the Registration of Persons (Amendment) Bill 2001
in relation to the introduction of the new smart identity (ID) card with multi-
applications**

As promised, I enclose a paper in relation to the captioned matter for you to table at the
Legislative Council meeting tomorrow.

If you have any queries, please do not hesitate to contact the undersigned.

Yours sincerely

Christopher To
Secretary-General

Encl.

9 October 2002

Commerce, Industry and Technology Bureau
2/F Murray Building
Garden Road
Hong Kong

Dear Sirs,

**Suggested Comments on the Registration of Persons (Amendment) Bill 2001
in relation to the introduction of the new smart identity (ID) card with multi-
applications**

1. General

Information technology has become part of our daily life, ranging from the usage of emails for communication purposes with family, friends and colleagues to the common value storage cards for transportation (“Octopus”) making life convenient for all within the community while at the same time enhancing the efficiency of government resources and operations.

Although the introduction of the smart identity (ID) card can open new possibilities for users in the area of non-immigration applications as defined in paper CB(1)666/01-02(01) dated 20 December 2001¹, nevertheless there are inherent risks associated with such introductions. The common issues revolve around the management and handling of sensitive personal data and privacy.

If proper controls are put in place as defined by Paper SBCR 1/1486/91 dated 20 December 2001² the general public can be assured that the risk associated with the multi-purpose³ smart ID card can be minimized.

On 12 July 2002, the European Parliament and the Council of the European Union issued a Directive 2002/58/EC in relation to issues “concerning the processing of personal data and the protection of privacy in the electronic communication sector”⁴. Within the Directive there are fundamental guidelines advising member states to adopt necessary legislation to prevent unauthorised access of personal data and to impose penalties on any person who fails to comply with the national measures taken under the Directive.

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¹ Legislative Council Panel on Information Technology and Broadcasting – Legislative Council Panel on Security – “Non-immigration Applications for Incorporation into the Smart ID Card”.

² Legislative Council Brief, “Registration of Person (Amendment) Bill 2001 by the Security Bureau.

³ Incorporating “Voluntary functions” such as Driver’s licence details, HK Post E-Cert, Online Change functions such as address changes and Library usage.

⁴ Directive on privacy and electronic communications as defined in Article 1 “harmonises the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the community”.

Another important legal notice⁵ from the European Parliament relates “to the protection of individuals with regard to the proceeding of personal data on the free movement of such data”⁶. This directive applies to the processing of personal data wholly or partly between members states by automatic means, which form part of a filing system. Indeed, the European Union is much more advanced in providing the legal framework to facilitate the processing and free flow of personal data electronically, provided there are adequate privacy safeguards. By comparison, Hong Kong has adopted a more conservative approach in the implementation of the smart ID card. The Government has assured in its earlier papers to LegCo that there will be no sharing of databases among Government departments. This is probably a reflection of the sentiments of the community and LegCo right now. We have a comprehensive and strict data protection regime, as laid down in the Personal Data (Privacy) Ordinance. The Registration of Persons (Amendment) Bill 2001 will also have new measures to enhance the privacy protection for personal data. These, together with appropriate security and privacy protection measures adopted in the technical system implementation, should be able to address the concerns LegCo and the community have.

In Spain, the Ministry of Science and Technology in collaboration with the Ministries of Public Administration, Economy, Justice, Treasury and Tax published a second draft⁷ of the Electronic Signature Law. A key feature of the new draft is the introduction of an electronic identity card, which allows citizens (of Spain), when signing documents electronically, to verify their own identity as well as the accuracy of the document. The e-ID card has the same legal value as a conventional ID card.

Whereas in Asia, government representatives from six countries⁸ recently convened a meeting in Malaysia to discuss issues relating to the introduction of “smart identity cards” for its citizens. As a result of the meeting a decision was made with the view of establishing a working group with the task of focusing on issues and concerns relating to the introduction and usage of “smart identity cards”.

Clearly the international community as a whole values the need to establish some form and means of using smart technology to enhance their respective citizens lifestyles while at the same time maintaining the rigid controls to protect personal data and privacy.

On this note the fundamental question one needs to ask is whether Hong Kong should adopt a smart ID card system. Clearly from a consumer’s point of view one cannot doubt the convenience of having “one-card” that has multiple functions while at the same time with adequate mechanisms in place for protection of personal data and privacy, consumer confidence will be reinforced thus paving the way towards an environment that adheres to advances in information technology. Whereas from a business prospective it provides a unique opportunity to establish an environment of trust that encourages the further adoption of electronic commerce activities both regionally and internationally.

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⁵ Dated 24 October 1995.

⁶ Directive 95/46/EC of the European Parliament and of the Council of the European Union.

⁷ The draft was published after a through process of public consultation, during which over 50 entities and associations contributed their views and expertise on the original draft.

⁸ These countries include the Mainland of China, Japan, Korea, Malaysia, Taiwan and Thailand.

2. Legislation Amendments

On the assumptions that there is a fundamental need to introduce the smart “ID” card with multi-purpose functions legislative amendments to the Registration of Persons Ordinance (“ROP”) (Cap. 177) will need to be provided in consultation with the Privacy Commissioner for Personal Data.

Under paper SBCR 1/1486/91 as produced by the Security Bureau on 20 December 2001, fundamental amendments to the ROP were clearly identified and for simplicity are hereby reproduced

*“(a) provisions relating to changes brought about by the smart element of the new ID card and revised work processes under the new ROP system;
(b) provisions relating to the inclusion of non-immigration applications in the new ID card;
(c) provisions relating to the protection of data privacy; and
(d) provisions relating to the launching of an ID card replacement exercise.”*

If adequate changes to existing legislation are in place to address the concerns, is there a fundamental need to re-invent or introduce an entirely new comprehensive legislative regime to govern the smart ID card. If there is a need, how should such new legislation fit within the confines of current and associated legislation?

By adapting changes to existing legislation not only reassures one’s confidence that Hong Kong’s legal system is one of our strongest assets but a system that is adaptable to changes in current trends. Too often foreign investors feel uneasy when new laws and substantial changes to legislation occur, they are more comfortable with the status quo approach to doing business. For Hong Kong to continue to maintain its presence as the Asian hub for international business these issues will need to be addressed within the context of the proposed introduction of the smart ID card. To ensure consistency and certainty of the legal regime in Hong Kong, I support that the Government should not adopt an approach that would unnecessarily restrict the future possible uses of the smart ID card (as technology and people’s receptiveness to technology may change over time). A super-legislation on all possible uses of the smart ID card is clearly not a practicable approach.

Without doubt some form of legislative framework governing the use of such smart ID cards containing multi-purpose applications are essential, as well as the management and access of such data by authorized personnel. Whether one introduces new legislation or merely adapts changes to existing laws, the fundamental point that one needs to bear in mind is the issue of continuity, trust and above all confidence that such legislative measures are adequate to provide the necessary protection and relief.

Nevertheless from an international perspective adoption and amendments to existing legislation as put forward by the Information Technology and Broadcasting Branch of the Commerce, Industry and Technology Bureau and the Security Bureau does address the major concerns while at the same time maintaining such continuity. This approach should be adopted where possible.

3. Non-immigration Applications for Incorporation into the Smart ID Card

With proper controls and the necessary vetting processes in place, the idea of “one-card” would not only be convenient but would have the potential of reducing unnecessary repetitive costs within government departments and allow for streamlining of information filing and storage. Whereas from a consumer’s point of view affording greater flexibility and usage both on-line (eCommerce) and off-line (library services).

Provisions and guidelines on usage and corrections/amendments of data would need to be in place to reassure consumers and the community at large of such applications and their implications⁹. Whereas information sessions/road shows and the like could be established if needed with the view of promulgating the beneficial aspects of the smart ID card with non-immigration applications to all especially in the “buy-in” stages with the consumer. Thus re-enforcing the true benefits as well as areas of concern one might have with the smart ID card and its associated applications. The voluntary opt in approach by consumers allows for greater freedom and choices and should be adopted where possible.

4. Technology and Security Measures

With adequate technical knowledge and experiences gained from other countries¹⁰ the Information Technology and Broadcasting Branch of the Commerce, Industry and Technology Bureau and the Security Bureau would without doubt chose the best system available with the consumer interests at heart while at the same time observing the fundamental issues relating to personal data and privacy. Technology should not be a major obstacle within the confines of the proposal.

5. Summary

The initiative as put forward by the Information Technology and Broadcasting Branch of the Commerce, Industry and Technology Bureau and the Security Bureau are in line with the Government’s commitment in making Hong Kong the digital city of Asia.

The Government’s approach to enhancing Hong Kong as a regional and international hub for finance and trade are crucial to our survival in the long term. Businesses are already using the most advanced information systems to enhance efficiency and productivity. If we stand by and adopt a “wait and see” attitude we will definitely be left behind. Innovation is the key to survival but at the same time adequate measures in protecting personal data and privacy within the confines of the smart ID card and its non-immigration applications are equally important. Henceforth measures proposed to amend the current ROP Ordinance are sufficient for such purposes and do reflect the necessary protection afforded to consumer at large.

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⁹ Similar to that adopted by the Securities and Futures Commission – Booklets and explanatory guides on the proposed changes to the Company Ordinance and its implications to Directors and Shareholders.

¹⁰ Through bench marking approaches.

With necessary internal controls and measures as well as the legislative support in place one hopes that the time will come whereby all applications could be carried out within a “one-card” philosophy. A reality that is truly possible with current technology advances.

On this basis, the current proposals as put forward to amend the current ROP Ordinance in relation to the introduction of the new smart identity (ID) card with multi-applications (non-immigration applications) should be adopted where possible.

Yours faithfully,

Christopher To