

REGISTRATION OF PERSONS (AMENDMENT) ORDINANCE 2003

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 9 OF 2003

L.S.

TUNG Chee-hwa
Chief Executive
27 March 2003

An Ordinance to amend the Registration of Persons Ordinance to make provision for the issue and application of identity cards embodying chips, to re-enact regulations 23 and 24 of the Registration of Persons Regulations as provisions of that Ordinance, to dispense with the requirement to furnish certain particulars to a registration officer in an application for identity card, to confer a power to verify identity by matching fingerprint, to prohibit tampering with identity cards or chips therein, to restrict use of particulars and handling of particulars as set out in the new sections 9 and 12 in section 7 of this Ordinance and to increase the maximum fine that may be imposed by regulation made under the Ordinance and to make consequential amendments to the Specification of Public Offices and the Immigration Service Ordinance.

[12 May 2003]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Registration of Persons (Amendment) Ordinance 2003.

(2) This Ordinance shall come into operation on 12 May 2003.

2. Long title amended

The long title to the Registration of Persons Ordinance (Cap. 177) is amended—

- (a) by repealing “persons in Hong Kong, and of” and substituting “and recording of particulars relating to persons in Hong Kong and”;
- (b) by repealing “and production” and substituting “, production and application”.

3. Interpretation

Section 1A is amended—

(a) by renumbering it as section 1A(1);

(b) in subsection (1), by adding—

““chip” (晶片) means a chip—

(a) which forms a component part of an identity card issued on or after the specified date; and

(b) is capable of—

(i) recording, storing and processing data; and

(ii) transmitting data to or receiving data from any device electronically;

“fingerprint” (指紋) includes a thumb-print;

“member of the Immigration Service” (入境事務隊成員) means the holder of a rank specified in Schedule 1 to the Immigration Service Ordinance (Cap. 331);

“specified date” (指明日期) means the date specified under subsection (2);”;

(c) by adding—

“(2) The Commissioner of Registration may, by notice published in the Gazette, specify a date for the purposes of the definition of “specified date” in subsection (1).

(3) A notice referred to in subsection (2) is not subsidiary legislation.” .

4. Power to make regulations

Section 7 is amended—

(a) in subsection (2)—

(i) in paragraph (c)—

(A) by repealing “facsimiles” and substituting “records”;

(B) by repealing “印取” and substituting “套取”;

(ii) in paragraph (e), by adding “, scanning or image capturing” after “photographing”;

(iii) by repealing paragraph (f);

(iv) by adding—

“(gb) the use of digital images and the reproduction of such digital images in relation to identity cards;”;

(v) by repealing paragraph (h) and substituting—

“(h) the issue of identity cards (including the issue of permanent identity cards to persons with the right of abode in Hong Kong wherever resident) and their form;”;

- (vi) in paragraph (*j*), by adding “, viewing of information reproduced from data stored in chips embodied in identity cards and matching of fingerprints for verification of identity” after “cards”;
- (vii) in paragraph (*n*), by adding “(whether in tangible or digital form)” after “records”;
- (viii) in paragraph (*p*), by adding “(including any fee prescribed for the purposes of section 10)” before the full stop;
- (b) by adding—
 - “(2A)(a) Without prejudice to the generality of the powers conferred by subsection (1), regulations made under that subsection may provide for—
 - (i) prescribed information or particulars to be included in identity cards;
 - (ii) prescribed data to be stored in chips;
 - (iii) information or particulars other than prescribed information or particulars that may be included in identity cards with the consent of applicants for or holders of identity cards;
 - (iv) data other than prescribed data that may be stored in chips with the consent of applicants for or holders of identity cards.
 - (b) For the purposes of paragraph (*a*), information, particulars or data are prescribed information, particulars or data, as the case may be, if they are or relate to—
 - (i) the name, address, place of birth, date of birth, sex, marital status or occupation of the relevant person or the nationality which he claims;
 - (ii) any photograph or fingerprint of the relevant person;
 - (iii) any travel document held by the relevant person;
 - (iv) the right of abode or right to land of the relevant person;
 - (v) any condition of stay to which the relevant person is subject;
 - (vi) issue of identity card to the relevant person; or
 - (vii) the number of the identity card issued to the relevant person.”;
- (c) in subsection (3), by repealing “of \$20,000” and substituting “at level 5”.

5. Requirement to apply for new identity cards

Section 7B(1) is amended by repealing “1 July 1987, or issued” and substituting “the specified date, or issued on or”.

6. Power to declare old identity cards invalid

Section 7C(1) is amended by repealing “1 July 1987, or issued” and substituting “the specified date, or issued on or”.

7. Sections added

The following are added—

“9. Restriction on use of particulars and record kept on particulars

Subject to section 11—

- (a) particulars furnished to a registration officer under this Ordinance may be used for and only for the purpose of enabling the Commissioner to issue identity cards and to keep records on such particulars;
- (b) the records referred to in paragraph (a) may be used for and only for the following purposes—
 - (i) enabling verification of identity of individuals by public officers in discharge of their official duties;
 - (ii) enabling verification of identity of individuals for any other lawful purposes; or
 - (iii) such purposes as may be authorized, permitted or required by or under any Ordinance.

10. Power to certify and furnish certified copies

A registration officer may, upon receipt of the written and signed request from the person to whom an identity card relates (accompanied, if such person is living outside Hong Kong, with his photograph and a copy of his left or right thumb-print or such other fingerprint as the registration officer may require, both properly authenticated by a notary public) and payment of the fee prescribed in Schedule 2 to the Registration of Persons Regulations (Cap. 177 sub. leg.)—

- (a) certify to the correctness or otherwise of such matters relating to such person contained in the written request which are within his knowledge; and
- (b) furnish a certified copy of the photograph of such person or relevant document in his custody.

11. Duty not to disclose photographs, fingerprints and particulars

Subject to section 10, a registration officer shall not—

- (a) produce for inspection, or supply a copy of, the photograph of a person registered under the provisions of the Registration of Persons Regulations (Cap. 177 sub. leg.) or his fingerprint; or
- (b) disclose or supply a copy of the records kept by the Commissioner on particulars furnished to a registration officer under this Ordinance,

except and unless with the written permission of the Chief Secretary for Administration which—

- (c) may refer to a person or class or category of persons by name, office or description;
- (d) may contain such terms and conditions as the Chief Secretary for Administration may deem fit to impose; and
- (e) must state the reason for giving such permission.

12. Prohibition of unauthorized handling of particulars

Any person who, without lawful authority or reasonable excuse, gains access to, stores, uses, discloses, erases, cancels or alters any record kept by the Commissioner on particulars furnished to a registration officer under this Ordinance shall be guilty of an offence and shall be liable to a fine at level 5 and to imprisonment for 2 years.”.

Registration of Persons Regulations

8. Interpretation

Regulation 2(1) of the Registration of Persons Regulations (Cap. 177 sub. leg.) is amended by adding—

““portable identity card reader” (便攜式身分證閱讀器) means an instrument which—

- (a) can reproduce, from the data stored in the chip embodied in an identity card, any information specified in Schedule 1 but not other information;
- (b) can scan a person's fingerprint for the purposes of matching with the template referred to in paragraph 1 of Schedule 1 and stored in the chip embodied in an identity card;
- (c) cannot keep record of any fingerprint so scanned; and
- (d) is of a type approved under regulation 11B;”.

9. Registration, issue and renewal requirements

Regulation 4 is amended—

- (a) by repealing subregulation (1)(a)(ii) and substituting—
 - “(ii) the taking and recording of—
 - (A) his left and right thumb-prints;
 - (B) where it is only possible to take one thumb-print from him, his only thumb-print and one other fingerprint;
 - (C) where it is not possible to take any thumb-print from him, his fingerprints of 2 other fingers;”;
- (b) by repealing subregulation (1)(b)(vii) and (ix);
- (c) by repealing subregulation (1)(b)(xi) and substituting—
 - “(xi) any—
 - (A) travel document bearing an endorsement to the effect that he is authorized under the Immigration Ordinance (Cap. 115) to remain in Hong Kong; or
 - (B) document issued under that Ordinance authorizing him to remain in Hong Kong, held by him;”;
- (d) in subregulation (1)(b), by adding—
 - “(xia) (where the applicant does not have a right of abode in Hong Kong) the conditions of stay (including a limit of stay) imposed in relation to him under section 11 of the Immigration Ordinance (Cap. 115);”;
- (e) in subregulation (4), by repealing “left thumb-prints or other single”.

10. Regulation added

The following is added—

**“4A. Inclusion of certain particulars
and data with consent**

(1) Without prejudice to regulation 5(1)(a), the Commissioner or any person acting pursuant to a permission given by the Commissioner may, for the purposes referred to in column 1 of Schedule 5 and with the consent of the applicant for an identity card or the person to whom an identity card relates—

(a) include in the identity card the information or particulars;
and

(b) store in the chip embodied in the identity card the data, referred to in column 2 of Schedule 5 which are not information, particulars or data specified in regulation 4(1) or Schedule 1.

(2) If—

(a) the Commissioner or any person acting pursuant to a permission under subregulation (1) has stored any data in a chip embodied in an identity card under that subregulation with the consent of the person to whom the identity card relates; and

(b) the person to whom the identity card relates presents the identity card to the Commissioner or the person acting pursuant to such permission, as the case may be, and requests the removal of such data from the chip,

the Commissioner or the person acting pursuant to such permission, as the case may be, shall as soon as practicable remove the data from the chip.

(3) A permission referred to in subregulation (1) may be—

(a) given by the Commissioner—

(i) to any person or any class of persons; or

(ii) generally or in a particular case,
in such manner; and

(b) subject to such condition,

as the Commissioner thinks fit.”.

11. Duty to keep and maintain records

Regulation 8(2) is repealed and the following substituted—

“(2) For the purposes of such records or for such other purposes as a registration officer may consider necessary, he may record fingerprints, information and documents furnished or made for the purposes of registration or for the issue or renewal of an identity card by—

(a) photographing;

(b) scanning; or

(c) image capturing.”.

12. Duty to carry and produce identity card

Regulation 11(3) is amended—

- (a) by repealing “the left thumb-print, or, if this is not possible, such other single fingerprint” and substituting “2 fingerprints”;
- (b) by repealing “時印” and substituting “時套”;
- (c) by repealing “及印” and substituting “及套”.

13. Regulations added

The following are added—

“11A. Power to verify identity by fingerprint match

- (1) If—
 - (a) a person produces his identity card to a police officer or a member of the Immigration Service in compliance with a requirement made under any Ordinance; and
 - (b) the officer or member has reason to believe that the identity card is not issued under the Ordinance to the person,the officer or member may, by using a portable identity card reader—
 - (c) view the information specified in Schedule 1 reproduced from the data stored in the chip embodied in the identity card;
 - (d) scan the person’s thumb-print or other fingerprint; and
 - (e) match the same with the template referred to in paragraph 1 of Schedule 1 and stored in the chip embodied in an identity card.
- (2) Any person who, without reasonable excuse, refuses to allow a police officer or a member of the Immigration Service to view any information or scan any fingerprint under subregulation (1) shall be guilty of an offence and shall be liable to a fine at level 2.

11B. Approval of portable identity card reader

The Commissioner may by notice published in the Gazette approve types of instruments as portable identity card reader for the purpose of regulation 11A.”.

14. Prohibition against making alteration to identity card

Regulation 12 is amended—

- (a) by adding—

“(1A) Any person who, without lawful authority or reasonable excuse—

- (a) stores data in a chip;
- (b) gains access to any data stored in a chip;
- (c) erases, cancels, alters or adds to any data stored in a chip; or
- (d) renders a chip ineffective,

shall be guilty of an offence.

(1B) For the purposes of subregulation (1A), a person to whom an identity card relates has lawful authority to gain access to—

- (a) data specified in Schedule 1 which are stored in the chip embodied in the identity card if he gains such access by using facilities provided by or with the approval of the Government; or
- (b) data specified in Schedule 5 which are stored in the chip embodied in the identity card if he gains such access only for the purpose for which the data are stored.”;

(b) in subregulation (2)—

- (i) by repealing “the authority of the Commissioner,” and substituting “lawful authority or reasonable excuse, uses or”;
- (ii) by repealing “defaced or”;

(c) by adding—

“(2A) Any person who, without lawful authority or reasonable excuse, uses or has in his possession an identity card embodying a chip in respect of which an offence under subregulation (1A) has been committed shall be guilty of an offence.”;

(d) in subregulation (4), by repealing “or (2)” and substituting “, (1A), (2) or (2A)”.

15. Duty to report corrections

Regulation 18(1)(b) is amended by adding “or includes” after “shows”.

16. Burden of proof

Regulation 21(1) is repealed and the following substituted—

- “(1) Subject to regulation 22, the burden of proving the truth of—
- (a) the contents of any written application for an identity card;
- or

- (b) the contents of the identity card which are particulars furnished under regulation 4(1)(b) by the applicant for the identity card,

shall lie on—

- (c) the applicant;
- (d) the person to whom the identity card has been issued; or
- (e) any other person alleging the truth of such contents.”.

17. Power to certify and furnish certified copies

Regulation 23 is repealed.

18. Duty not to disclose photographs, fingerprints and particulars

Regulation 24 is repealed.

19. Savings and transitional

Regulation 27 is amended by adding—

“(3) An identity card that is valid immediately prior to the specified date shall remain so until it ceases to be valid in accordance with the Ordinance, and the regulations, as amended by the Registration of Persons (Amendment) Ordinance 2003 (9 of 2003).

(4) An identity card for which an application is made before the specified date may be issued as if the Registration of Persons (Amendment) Ordinance 2003 (9 of 2003) had not been enacted and—

- (a) may be collected by the applicant, or sent to him by the registration officer, within 70 days of the specified date; or
- (b) if not so collected or delivered, may be destroyed, and the applicant shall thereupon be deemed not to have applied for the identity card.”.

20. Contents of Forms of Identity Card

Schedule 1 is amended—

- (a) by repealing “[reg. 5]” and substituting “[regs. 2(1), 4A, 5, 11A & 12(1B)]”;

- (b) in paragraph 1—
- (i) in subparagraph (f), by repealing “and”;
 - (ii) by repealing subparagraph (g) and substituting—
 - “(g) such data, symbols, letters or numbers representing prescribed information, particulars or data within the meaning of section 7(2A)(b) of the Ordinance as the Commissioner may determine; and”;
 - (iii) by adding—
 - “(h) in the form of data stored in the chip in the identity card—
 - (i) template of the applicant’s thumb-prints or other fingerprints taken under regulation 4(1)(a); and
 - (ii) (where the applicant does not have a right of abode in Hong Kong) the conditions of stay (including a limit of stay) imposed in relation to him under section 11 of the Immigration Ordinance (Cap. 115).”.

21. Fees

Schedule 2 is amended—

- (a) within the square brackets, by repealing “regs. 5, 13, 14, 23” and substituting “s. 10; regs. 5, 13, 14”;
- (b) in item 8, by repealing “regulation 23” and substituting “section 10 of the Ordinance”.

22. Schedule 5 added

The following is added—

“SCHEDULE 5

[regs. 4A & 12(1B)]

PURPOSES, INFORMATION, PARTICULARS AND
DATA REFERRED TO IN REGULATION 4A

Column 1	Column 2
Purposes	Information, Particulars and Data
<p>1. Storage of a certificate defined in section 2(1) of the Electronic Transactions Ordinance (Cap. 553) issued by the Postmaster General and recognized under section 22 of that Ordinance.</p>	<p>A certificate defined in section 2(1) of the Electronic Transactions Ordinance (Cap. 553) issued by the Postmaster General and recognized under section 22 of that Ordinance.”.</p>

Consequential Amendments

Specification of Public Offices

23. Schedule amended

The Specification of Public Offices (Cap. 1 sub. leg.) is amended, in the Schedule where the Chief Secretary for Administration is the specified public office, by repealing “Registration of Persons Regulations (Chapter 177 subsidiary legislation), regulation 24.” and substituting “Registration of Persons Ordinance (Chapter 177), section 11.”.

Immigration Service Ordinance

24. Scheduled Offences

Schedule 2 to the Immigration Service Ordinance (Cap. 331) is amended, in Part I—

- (a) in item 1, in columns 2 and 3, by adding—
 - “section 11 unauthorized handling of particulars”;
- (b) in item 2, in columns 2 and 3, by repealing—
 - “regulation 12(4) making alteration to identity card”and substituting—
 - “regulation 11A(2) obstructing public officers in verification of identity
 - regulation 12(1) making alteration to identity card or documents
 - regulation 12(1A) tampering with chip in identity card
 - regulation 12(2) possession of altered identity card or documents
 - regulation 12(2A) possession of identity card embodying chip tampered with”.