

# 立法會

## *Legislative Council*

LC Paper No. CB(2)2829/11-12  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/8/10

### **Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011**

**Minutes of fifteenth meeting  
held on Wednesday, 2 May 2012, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

**Members present** : Dr Hon Philip WONG Yu-hong, GBS (Chairman)  
Hon Paul TSE Wai-chun, JP (Deputy Chairman)  
Hon Emily LAU Wai-hing, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon WONG Kwok-hing, MH  
Hon WONG Ting-kwong, BBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Cyd HO Sau-lan  
Hon CHAN Kin-por, JP  
Hon IP Kwok-him, GBS, JP  
Dr Hon Samson TAM Wai-ho, JP  
Hon Alan LEONG Kah-kit, SC

**Members absent** : Hon James TO Kun-sun  
Dr Hon Priscilla LEUNG Mei-fun, JP

**Public Officers attending** : Constitutional and Mainland Affairs Bureau  
  
Miss Adeline WONG  
Under Secretary for Constitutional and Mainland Affairs  
  
Mrs Philomena LEUNG  
Principal Assistant Secretary for Constitutional and  
Mainland Affairs

Department of Justice

Ms Mabel CHEUNG  
Senior Government Counsel

**Clerk in attendance** : Ms Elyssa WONG  
Chief Council Secretary (2)5

**Staff in attendance** : Mr Arthur CHEUNG  
Senior Assistant Legal Adviser 2

Miss Carrie WONG  
Assistant Legal Adviser 4

Ms Catherina YU  
Senior Council Secretary (2)6

Ms Sandy HAU  
Legislative Assistant (2)5

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Action

**I. Meeting with the Administration**

[LC Paper Nos. CB(2)1701/11-12(02), CB(2)1754/11-12(01), CB(2)1788/11-12(01), CB(2)1854/11-12(01) to (03) and CB(2)1864/11-12(01)]

Members noted the following papers issued to the Bills Committee/tabled at the meeting –

- (a) the Administration's responses to outstanding issues raised by the Bills Committee and submissions by deputations [LC Paper No. CB(2)1854/11-12(01)];
- (b) submission from the Privacy Commissioner for Personal Data on his major concerns on specific clauses of the Bill (as at 26 April 2012) [LC Paper No. CB(2)1854/11-12(02)];
- (c) list of follow-up actions for the Administration (position as at 27 April 2012) [LC Paper No. CB(2)1854/11-12(03)]; and
- (d) Committee Stage amendments on new Part VIA proposed by the Administration [LC Paper No. CB(2)1864/11-12(01)].

Action

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Bills Committee requested the Administration to –
  - (a) re-consider the drafting of subsections (1) and (2) in the proposed new section 35D, where the disapplication of the proposed new section 35C was differently expressed;
  - (b) consider adding the word "intended" before "use by a data user ..." in the proposed new section 35D(2) to tally with provisions elsewhere; and
  - (c) explain why in the proposed new section 35H the reference to sections 35C and 35G was necessary since only section 35E rather than those two sections actually concerned the giving of consent for the purpose of data protection principle 3.

**II. Any other business**

Next meeting

4. Members noted that the next meeting would be held on 7 May 2012 at 2:30 pm.
5. There being no other business, the meeting ended at 10:30 am.

Council Business Division 2  
Legislative Council Secretariat  
24 September 2012

**Proceedings of the fifteenth meeting of the  
Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011  
on Wednesday, 2 May 2012, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000000-000709	Chairman	Opening remark	
000710-001341	Admin	<p><u>The Administration's responses to issues raised by the Bills Committee</u> [LC Paper No. CB(2)1701/11-12(02)]</p> <p>Members noted the Administration's responses on the proposed revised/new sections 47, 50, 59, 63D, 66 and new Part VIA of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") as detailed in LC Paper No. CB(2)1701/11-12(02).</p>	
001342-002143	Chairman Admin Ms Emily LAU SALA2	<p><u>The Administration's response to issues on section 46 of PDPO raised by the Bills Committee</u> [LC Paper No. CB(2)1754/11-12(01)]</p> <p>SALA2's response to Ms Emily LAU's enquiry that section 46 should not be too specific as there were different legal or regulatory requirements concerning personal data privacy in places outside Hong Kong and the Privacy Commissioner for Personal Data ("PCPD") should be entrusted to comply with the requirement for secrecy.</p> <p>The Administration's response to Ms Emily LAU's enquiry that –</p> <p>(a) in response to members' concern, under the proposed new sections 46(7) to (9), PCPD's disclosure of matters to an authority of a place outside Hong Kong to enable or assist that authority in investigation into suspected contravention and enforcement of legal or regulatory requirements concerning personal data privacy was permitted only if, among other conditions, there was in force in that place any law which was substantially similar to, or served the same purposes as, PDPO;</p>	

Time marker	Speaker	Subject	Action required
		<p>(b) PCPD had not entered into reciprocal agreements with the Mainland authorities; and</p> <p>(c) PCPD would make public information on his signing of any cooperation agreements with authorities in jurisdictions outside Hong Kong by way of press releases. PCPD would also report to the Panel on Constitutional Affairs on his work.</p>	
002144-004104	<p>Chairman Admin Ms Emily LAU SALA2</p>	<p><u>The Administration's response to outstanding issues raised by the Bills Committee and submissions by deputations</u> [LC Paper No. CB(2)1854/11-12(01)]</p> <p><u>Clause 21 (section 35E of PDPO)</u></p> <p>Ms Emily LAU's concern about how to ascertain the receipt of the written confirmation by the data subject.</p> <p>The Administration's response that existing legislation had provisions on this in respect of written confirmation sent by post, by fax or by email. Given that the data subject might wish to receive the written confirmation by fax, email or other methods, the Administration had suggested not confining the sending of the written confirmation to the address of the data subject. The relevant legislation governing the sending of information electronically was the Electronic Transactions Ordinance (Cap. 553) ("ETO").</p>	
004105-004319	<p>Chairman Mr WONG Kwok-hing Admin</p>	<p>The Administration's response to Mr WONG Kwok-hing's enquiry that the data user could request the data subject to provide a correspondence address for sending the written confirmation by post. Should the data subject wish to receive the written confirmation by electronic means such as by email or by Short Message Service ("SMS"), he should provide the data user with the email address or mobile phone number.</p>	
004320-004729	<p>Chairman Mr Vincent FANG Admin</p>	<p>Mr Vincent FANG's concern that enterprises had to keep voluminous records arising from the new requirements for written confirmation.</p> <p>The Administration's response that –</p> <p>(a) the data user should ensure that the written confirmation had been</p>	

Time marker	Speaker	Subject	Action required
		<p>successfully sent to data subjects and retain proof in this regard. It was therefore pivotal for enterprises to keep the relevant records. A data user who contravened section 35E(1) committed an offence and was liable on conviction to a fine of \$500,000 and to imprisonment for 3 years;</p> <p>(b) it was necessary to introduce the new requirements to afford better personal data privacy protection notwithstanding it might bring about an increase in the operating and compliance costs of enterprises; and</p> <p>(c) PCPD's guidelines to the direct marketing trade would also cover proper record maintenance by data users.</p>	
004730-004918	Chairman Mr CHAN Kin-por Admin	<p>Mr CHAN Kin-por's view that data subjects should be provided with more choices of the means to receive written confirmation. Mr CHAN's suggestion of specifying in the provisions that written confirmation could be sent by electronic means including SMS.</p> <p>The Administration's response that "other methods" referred to in its paper included SMS. SMS was a kind of electronic records under ETO.</p>	
004919-010829	Chairman Mr Alan LEONG Ms Emily LAU Admin	<p>The Administration's response to Mr Alan LEONG's enquiry on the execution of the proposed new section 35E.</p> <p>The Administration's response to the Chairman's enquiry that data subjects could lodge a complaint with PCPD should data users continue to use their personal data in direct marketing despite they had requested the data users not to do so. It was an offence should a data user fail to comply with a data subject's request to cease to use his personal data in direct marketing.</p> <p>The Administration's response to Ms Emily LAU's enquiry on PCPD's suggestion on section 35E(1) as detailed in LC Paper No. CB(2)1854/11-12(01).</p> <p>Ms Emily LAU's view that PCPD should be requested to provide his further views in writing on the Administration's comments on his suggestions to specific clauses of the Bill.</p>	

Time marker	Speaker	Subject	Action required
010830-011145	Chairman Ms Emily LAU Admin Mr CHAN Kin-por Mr WONG Ting-kwong	<p>Ms Emily LAU's expression of concern about the increase in the operating costs of the direct marketing trade arising from the new requirements.</p> <p>The Administration's response that –</p> <p>(a) the proposed new requirements might incur additional compliance costs for business operations but it was difficult to quantify the magnitude of such compliance costs; and</p> <p>(b) during the consultation with the direct marketing trade, many enterprises indicated their acceptance of the proposed new requirements given their understanding of the concern of members and the public.</p> <p>Mr CHAN Kin-por's remarks on the implications of the proposed new requirements on the direct marketing trade which included close of business, downsizing, etc.</p> <p>Mr WONG Ting-kwong's view that the new requirements proposed in the Bill were appropriate as it had struck a proper balance between safeguarding personal data privacy and facilitating business operations of the direct marketing trade.</p>	
011146-011547	Ms Emily LAU Admin Ms Cyd HO SALA2	<p>The Administration's response to Ms Emily LAU and Ms Cyd HO's enquiry that under PDPO, a data subject might make a data access request to a data user for the provision of an audio recording of a telephone communication between them. Government departments also abided by the relevant provisions under PDPO in handling data access requests.</p> <p>SALA2's referral to the Administration's view on the economic implications of the new requirements proposed in the Bill as stipulated in the Legislative Council brief provided by the Administration [File Ref.: CMAB/CR/7/22/45].</p>	
011548-012122	Chairman Admin Ms Emily LAU SALA2	<p><u>Committee Stage amendments ("CSAs") proposed by the Administration</u> [LC Paper No. CB(2)1864/11-12(01)]</p> <p><u>Further revisions to Part VIA proposed by the Administration</u> [Annex A to LC Paper No.</p>	

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		<p>CB(2)1864/11-12(01)]</p> <p><u>Section 35D</u></p> <p>The Administration's response to Ms Emily LAU's enquiry that PCPD would provide guidelines on the presentation of the information on the use of personal data in direct marketing in an easily understandable and easily readable manner.</p>	
012123-014112	Admin SALA2 Ms Emily LAU	<p><u>Section 35E</u></p> <p>The Administration's response to SALA2's enquiry that –</p> <p>(a) given that the meaning of "permitted class of marketing subjects" and "permitted kind of personal data" had already been provided in the Bill, the deletion of the words "either generally or selectively" from sections 35E(2)(a) and (b) would not affect the clarity of the provisions;</p> <p>(b) under section 35E(1)(c), the use of personal data should be consistent with the data subject's consent; and</p> <p>(c) a data subject might require a data user to cease to use his personal data in direct marketing under section 35G irrespective of whether the data subject had earlier given consent to the data user to the use.</p> <p>SALA2's concern that the personal data of data subjects had already been used in direct marketing even when there were disputes over the data subjects' consent and before the necessary rectifications were made. SALA2's view that to better protect the personal data of data subjects, data users should be allowed to use the personal data in direct marketing provided that data subjects had no objection to the contents in the written confirmation.</p> <p>The Administration's response that data users should ensure that data subjects' consent was accurately recorded in the written confirmation and make corrections to the written confirmation if so requested by data subjects.</p> <p>The Administration's response to Ms Emily LAU's enquiry on the modes of sending written confirmation.</p>	



Time marker	Speaker	Subject	Action required
014113-014255	Admin	<p><u>Sections 35J and 35K</u></p> <p>Members noted the Administration's proposals on sections 35J and 35K.</p>	
014256-015800	SALA2 Admin Ms Emily LAU	<p><u>Section 35A</u></p> <p>Information provided by SALA2 on the meaning of "direct marketing" under the Privacy Act 1993 (New Zealand).</p> <p>The Administration's response to Ms Emily LAU's enquiry that reference was made to the Privacy Act 1993 (New Zealand) in drafting the meaning of "direct marketing".</p> <p><u>Sections 35D and 35E</u></p> <p>SALA2's suggestion for the Administration to –</p> <ul style="list-style-type: none"> <li>(a) re-consider the drafting of subsections (1) and (2) in the proposed new section 35D, where the disapplication of the proposed new section 35C was differently expressed;</li> <li>(b) consider adding the word "intended" before "use by a data user ..." in the proposed new section 35D(2) to tally with provisions elsewhere; and</li> <li>(c) provide the reasons why in the proposed new section 35H the reference to sections 35C and 35G was necessary since only section 35E rather than those two sections actually concerned the giving of consent for the purpose of data protection principle 3.</li> </ul>	Admin (paragraph 3 of the minutes)
015801-015930	Chairman Ms Cyd HO Ms Emily LAU	Ms Cyd HO's indication of her intention to move CSAs to the proposed new section 63D.	
015931-020042	Chairman	Date of next meeting	