

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

**List of follow-up actions for the Administration  
(position as at 30 December 2011)**

<b>Date of meeting</b>	<b>Follow-up actions</b>	<b>Administration's response</b>
8 November 2011	<p>The Administration was requested to provide information on -</p> <p>(a) the arrangements adopted in overseas places in respect of the use of personal data in direct marketing and specifically whether an opt-in or opt-out regime was adopted; and</p> <p>(b) the mechanism under the Administration's proposed opt-out regime for facilitating data subjects to object to the use or transfer of their personal data for direct marketing purposes and sale of their personal data, identify the transferees of their personal data and the original source of data transfer.</p>	<p>The Administration's written response was circulated to members vide LC Paper No. CB(2)500/11-12(01) on 6 December 2011 and discussed at the meeting on 7 December 2011.</p>
26 November 2011	<p>The Administration was requested to -</p> <p>(a) consider amending or withdrawing the proposal for the 30-day response period;</p> <p>(b) consider adopting an opt-in regime for the sale of personal data and an opt-out one for the use of personal data; and</p>	<p>Response awaited.</p>

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	(c) devise a mechanism to request data users to provide information on each and every transferee of data subjects' personal data upon data subjects' request.	
7 December 2011	<p>The Administration was requested to provide a written response to –</p> <p>(a) the views expressed in deputations' submissions on individual clauses of the Bill; and</p> <p>(b) views and concerns raised by members and the Legal Adviser to the Bills Committee on Personal Data (Privacy) Amendment Bill ("the Bill") on the following clauses -</p> <p><u>Long title</u></p> <p>(i) whether the drafting of the long title of the Bill could be more concise;</p> <p>(ii) the Administration's considerations underpinning the drafting of the long title of an Ordinance, e.g. whether there were any policy considerations behind any change in the drafting;</p> <p><u>Section 2</u></p> <p>(i) the need for changing the plural form of the word "data" to the collective singular in the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO");</p>	<p>The Administration's response on (a) was circulated vide LC Paper No. CB(2)569/11-12(01) on 14 December 2011 and was discussed at the meeting on 13 December 2011.</p> <p>Response on (b) awaited.</p>

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	<p>(ii) in connection with section 2, whether "rule of law" could be replaced by any alternative to avoid confusion with its usual meaning;</p> <p><u>Section 8</u></p> <p>(i) whether the drafting of the proposed amendment to section 8(1)(g) was appropriate, as it did not duly reflect the mutual assistance relationship between Privacy Commissioner for Personal Data ("PCPD") and its counterparts in jurisdictions outside Hong Kong and it was more a power than function;</p> <p>(ii) the appropriateness of using the word "shall" in section 8(1)(g), which might give rise to an interpretation that PCPD had a duty to provide assistance upon request from its counterparts outside Hong Kong and did not have discretion to decide whether to accede to such requests;</p> <p><u>Section 8(2A)</u></p> <p>(i) the existing fee-charging mechanism for PCPD's services and products and past examples on PCPD's fee-charging services and products;</p> <p>(ii) given that it should be PCPD's top priority to devote its resources to the general public rather than individual</p>	

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	<p>organizations, the relationship between PCPD's fee-charging power under the proposed new section 8(2A) and its duty to promote awareness and understanding of, and compliance with, the provisions of PDPO, in particular the data protection principles under section 8(1)(c); and</p> <p>(iii) whether the proposed new section 8(2A) should be revised having regard to members' concerns and suggestions and to reflect the more specific need for charges as outlined in PCPD's submission on its current fee charging arrangement.</p>	
13 December 2011	<p>The Administration was requested to -</p> <p><u>Section 11A</u></p> <p>(a) provide precedents for the proposed new section 11A on immunity concerning a corporation sole both as a person and a body corporate and explain the difference in drafting between section 11A and the similar immunity clause in the Ombudsman Ordinance (Cap. 397);</p> <p><u>Section 14(9)(c)</u></p> <p>(b) consider replacing section 67(4)(c) with section 67(4) in section 14(9)(c), as section 67(4) should be applicable to the whole of section 14(4) because a data user return should be in the specified form;</p>	Response awaited.

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	<p><u>Section 14A</u></p> <p>(c) clarify whether the information contained in the data user return under the proposed new section 14A(1) should include accompanying documents and notice of changes;</p> <p>(d) refer to what actual provisions "under this or any other Ordinance" that "the person is entitled or obliged to do so" in subsection (3);</p> <p>(e) consider the Law Society of Hong Kong's revision to the proposed new section 14A(6), which suggested that the knowing or reckless provision of "corrected" but still false or misleading information in the data user return in accordance with the proposed new section 14A(4) should also be subject to the sanction under section 14A(6);</p> <p><u>Section 15</u></p> <p>(f) consider making corresponding amendments to section 15 (including sections 15(2)(a) and (b)) in view of the proposed new section 14A under which there might be information provided subsequent to the original return;</p> <p>(g) clarify whether "prescribed form" in section 15(3) of PDPO was different from "specified form" in section 67 of PDPO;</p> <p><u>Section 18</u></p> <p>(h) review the phrase "having the data user informing / supplying..." in</p>	

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	<p>the proposed new section 18(5);</p> <p><u>Section 19</u></p> <p>(i) consider whether to increase penalty for data users who was unable to comply with a data access request under the proposed new section 19(1), e.g. imposing a daily penalty of \$10,000; and</p> <p>(j) in connection with the proposed new section 19(1)(b), clarify whether a person who did not hold any such data could still be regarded as a data user as defined and therefore be caught by the duty to inform the requestor that he/she did not hold the data.</p>	