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By Post and fax: 2185-7845

Bills Committee on Personal Data (Privacy) (Amendment) Bill 2011  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Dear Sirs,

**Personal Data (Privacy) (Amendment) Bill 2011**

Further to our written submissions on the Personal Data (Privacy) (Amendment) Bill 2011 (the Amendment Bill) dated 21 October 2011 and 2 March 2012, we note that the Administration has presented a revised proposal on the regulatory regime of the use of personal data in direct marketing and sale of personal data (Revised Proposal) to the Bills Committee on 24 February 2012. We would like to provide our comments on the Revised Proposal for the consideration of the Bills Committee.

**Proposal to allow verbal response for telebanking**

1. The Revised Proposal requires that, if a data user intends to use personal data for direct marketing / transfer for use in direct marketing or sale (Use of Personal Data for Direct Marketing or Sale), the data user should provide the relevant information and a response facility to the data subjects and receive a written reply from the data subject indicating no objection to the Use of Personal Data for Direct Marketing or Sale (Written Response).
2. In the case of e-banking, HKAB understands that communication by the data subject through the e-banking channel or internet should satisfy the Written Response requirement. If the Bills Committee thinks otherwise, please let us know accordingly.
3. For the banking industry, a Written Response is not feasible for certain financial services delivery channels including telebanking and it will be more practicable and convenient to customers to indicate no objection to the Use of Personal Data for Direct Marketing or Sale during the telephone conversation with the bank, rather than in writing.

*Chairman* The Hongkong and Shanghai Banking Corporation Ltd  
*Vice Chairmen* Bank of China (Hong Kong) Ltd  
Standard Chartered Bank (Hong Kong) Ltd  
*Secretary* Ronie Mak

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4. Telebanking is a fairly common delivery channel adopted for banking products such as credit cards, unsecured personal loans or general insurance products etc. Where new customers approach the bank by phone or are marketed by the bank over the phone, their personal data will be collected over the phone during the sales of these products. During the process, telesales staff will require the customer to confirm acceptance of applicable terms and conditions over the phone and the whole transaction will be concluded by verbal communications without the need for any written documents to be signed by the customer. In most cases, this is the only conversation/communication with that customer and it would be impracticable for the bank and inconvenient to the customer to require a Written Response from the customer.
5. As a practicable alternative to Written Response towards strengthening personal data privacy, we believe that this could be achieved in practice by adopting the following measures:
  - (i) during the telephone conversation, the customer will be provided with relevant information relating to the kinds of personal data to be used for direct marketing / transfer for use in direct marketing or sale and the classes of persons to whom the data will be transferred and will be given an opportunity to opt out of the direct marketing / transfer for use in direct marketing or sale;
  - (ii) where the customer has given a clear indication of no objection to the Use of Personal Data for Direct Marketing or Sale during the telephone conversation (Verbal Response), the data user must send a written confirmation thereof to the customer for retention;
  - (iii) the telephone conversation will be recorded and retained by the data user for a specified retention period as audit trail to facilitate investigation in case of subsequent enquiries or complaints; and
  - (iv) a log recording the dates of the customer's Verbal Response and the subsequent one-way written confirmation sent to the customer will also be kept by the data user until such time as the data user no longer intends to use the customer's data for direct marketing / transfer for use in direct marketing or sale.
6. Furthermore, we trust that our members will take reference from the guidelines to be issued by the Privacy Commissioner for Personal Data (PCPD) in refining their own policies, procedures and controls for conducting direct marketing activities going forward under the enhanced regime.

### Grandfathering provisions

7. We welcome the suggestion in the Revised Proposal to clarify the grandfathering arrangement under the new section 35I(1) such that, where personal data of a customer had been used for direct marketing in compliance with the existing requirements of the Personal Data (Privacy) Ordinance prior to the commencement date of the relevant sections of the Amendment Bill, that customer's personal data may continue to be used afterwards with respect to "the same class of marketing subjects".
8. In this connection, we would like to stress the importance of imposing the effective date of the relevant provisions as the cut-off date for the grandfathering arrangement, as currently proposed. This is to avoid any interim gap period when no further grandfathering of personal data is possible while the new regime has yet to come into place. Any such gap period is likely to create confusion to customers as different data users may adopt different practices in addressing the issue. For example, pending procedures being implemented to cater for the new regime, some data users may decide not to make use of customers' personal data collected from new customers during the gap period for direct marketing, even though the customers may in fact have no objection to this. On the other hand, other data users with a smaller customer base may be able to adopt the requirements under the new regime ahead of the effective date so as to capture personal data collected during any interim period for direct marketing. To ensure a more consistent approach being adopted by data users, we believe the current proposal to use the effective date of the relevant provisions as the cut-off date for the grandfathering arrangement is appropriate.

### Definition of "sell"

9. We note the Administration's suggestion to amend the Bill to confine the proposed regulatory regime to sale of personal data for direct marketing purposes. As at present, for the banking industry, it is not uncommon for a bank to transfer customer data to its group companies for the marketing of financial products or services in providing holistic financial services to customers and maintaining customer loyalty to the group as a whole. Such activities have generally been accepted to customers as (i) companies of the same group are governed by the same set of internal policies and standards and (ii) the fact that the bank may derive any gain or benefit from transfer pricing or profit sharing among the group for rational resource allocation should be within customer's reasonable expectation. In any case, following the Octopus incident in 2010, HKAB had worked with the PCPD in refining the model Personal Information Collection Statement (Enhanced PICS) which HKAB has made available to its members for reference in tailoring their own PICS provided to their customers upon account opening and on an annual basis thereafter. The Enhanced PICS provides greater specificity on bank marketing and



is presented in a way which is easier to read and comprehend. Specifically, the Enhanced PICS makes it clearer to the customer that the bank may market specified services and products to its group companies (in respect of which the bank may or may not be remunerated), consistent with the existing Personal Data (Privacy) Ordinance. However, it appears to us that it is not entirely clear that the definition of “sell” of personal data as currently set out in the Bill would not inadvertently catch intragroup transfer for products / services related to the data user’s business. To avoid any potential ambiguity, we would request the Bills Committee to review and refine the definition of “sell” of personal data as appropriate.

#### Sufficient lead time for implementation

10. To implement the requirements under the Revised Proposal, it will be necessary to carry out a number of documentation and procedural changes and IT system enhancements, such as to include an opt-out response facility in various application forms and other documents (whether in physical or electronic form), revise existing telephone banking procedures, etc. To provide sufficient time to the banking industry to prepare for the new legislation, HKAB seeks the Bills Committee’s support for a lead time of not less than 10 months from the passing of the Amendment Bill to the effective date of the relevant sections of the new legislation.

#### Various outstanding issues

Taking this opportunity, we would like to reiterate our concerns on some outstanding issues under HKAB’s earlier submissions dated 21 October 2011 and 2 March 2012. In particular, we would respectfully ask the Bills Committee to consider HKAB’s comments on new sections 14A (Verification of data user returns) and 58(6) (Crime, etc.) as set out in our submission of 2 March 2012 and on new section 63B (Due diligence exercise) as set out in our submission of 21 October 2011, as these are important to HKAB members.

We understand the Administration will put forward further amendments to the Bill in due course. HKAB looks forward to providing further comments on these amendments as and when available. Meanwhile, if you have any further questions, please do not hesitate to contact Ivy Wong, Manager at 2526-8895.

Yours faithfully,

Ronie Mak  
Secretary

c.c. HKMA (Attn: Ms Meena Datwani)

Dr. the Hon David K.P. Li, GBM, GBS, JP, Member of the Legislative Council