

立法會
Legislative Council

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 20 October 2010

**Proposed amendments to motion on
“Improving personal data privacy protection”**

Further to LC Paper No. CB(3) 19/10-11 issued on 7 October 2010, three Members (Hon James TO Kun-sun, Hon WONG Ting-kwong and Hon CHAN Kin-por) have respectively given notice of their intention to move separate amendments to Hon WONG Kwok-hing’s motion on “Improving personal data privacy protection” scheduled for the Council meeting of 20 October 2010. As directed by the President, the respective proposed amendments will be printed in the terms in which they were handed in on the Agenda of the Council.

2. The President will order a joint debate on the above motion and amendments. To assist Members in debating the motion and amendments, I set out below the procedure to be followed during the debate:

- (a) the President calls upon Hon WONG Kwok-hing to speak and move his motion;
- (b) the President proposes the question on Hon WONG Kwok-hing’s motion;
- (c) the President calls upon the three Members, who intend to move amendments, to speak in the following order, but no amendment is to be moved at this stage:
 - (i) Hon James TO;
 - (ii) Hon WONG Ting-kwong; and

(iii) Hon CHAN Kin-por;

- (d) the President calls upon the designated public officer(s) to speak;
- (e) the President invites other Members to speak;
- (f) the President gives leave to Hon WONG Kwok-hing to speak for the second time on the amendments;
- (g) the President calls upon the designated public officer(s) again to speak;
- (h) in accordance with Rule 34(5) of the Rules of Procedure, the President has decided that he will call upon the three Members to move their respective amendments in the order set out in paragraph (c) above. The President invites Hon James TO to move his amendment to the motion, and forthwith proposes and puts to vote the question on Hon James TO's amendment;
- (i) after Hon James TO's amendment has been voted upon, the President deals with the other two amendments; and
- (j) after all amendments have been dealt with, the President calls upon Hon WONG Kwok-hing to reply. Thereafter, the President puts to vote the question on Hon WONG Kwok-hing's motion, or his motion as amended, as the case may be.

3. For Members' ease of reference, the terms of the original motion and of the motion, if amended, are set out in the **Appendix**.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

(Translation)

**Motion debate on
“Improving personal data privacy protection”
to be held at the Legislative Council meeting
of Wednesday, 20 October 2010**

1. Hon WONG Kwok-hing’s original motion

That, in recent months, ‘Octopus’ and ‘Autotoll’ operated by public transport operators, the finance and insurance sector, and the electronic communications sector, etc., were found to have contravened the Personal Data (Privacy) Ordinance (‘PDPO’) and engaged in unauthorized transfer or sale of the personal data collected to make profits, with extensive implication and significant impact, affecting the personal data privacy right of millions of Hong Kong people; among the above, ‘Octopus’, the monopoly operator of electronic money, even admitted that it had made a profit of over \$44 million by selling its clients’ personal data; the ‘Octopus’ scandal has revealed that various smart cards currently available in the market, such as bonus cards, membership cards, credit cards, stored value cards and top-up cards, etc., are generally not in full compliance with the requirements of the PDPO, the public’s personal data privacy are not properly protected and organizations are able to take advantage of the loopholes and grey areas of the PDPO to indiscriminately collect personal data beyond the scope of purpose for data collection publicly claimed by such organizations, and turn such data into their cash cows, and in the absence of monitoring, the situation has become very serious, causing considerable disturbance to people’s daily life; however, due to the limited powers conferred by the law on the Office of the Privacy Commissioner for Personal Data (‘PCPD’) and constraint of resources, the PCPD is not able to exercise effective regulation, and the responsible government departments concerned have also failed to seriously shoulder the responsibility of protecting personal data privacy; in this connection, this Council urges the Government to immediately adopt the following measures to protect the general public’s personal data privacy right:

- (a) to urge law enforcement departments to conduct a comprehensive and thorough investigation into all the companies and organizations involved in transfer and sale of clients’ personal data and infringement of the public’s privacy and to prosecute the same for criminal liability, and require such companies or organizations to destroy the public’s personal data, which were illegally collected, under the supervision of an independent third party and to offer an apology and compensation to affected clients;
- (b) to comprehensively review and amend the PDPO immediately to plug the loopholes of the legislation and eliminate the grey areas, and at the same time increase the criminal sanction to achieve a deterrent effect;

- (c) to provide additional resources for the PCPD, so as to enhance its efficiency in handling complaints and step up enforcement to effectively protect the public's personal data privacy right;
- (d) to introduce clear clauses and requirements to ensure that consumers have the right to opt in, so as to ensure that consumers provide their personal data within the scope of the 'purpose of data collection' as specified by the organizations concerned without threats and inducements, and to step up efforts to combat and eradicate the indiscriminate collection of the public's personal data;
- (e) to legislate the regulation of application forms for all kinds of membership cards, credit cards, etc., including requiring that the fonts and contents of the advice and terms on the protection of consumers' personal data privacy right should be reasonably legible, in terms of font size, location and surface area, to any person with normal eyesight, and ensuring that people who are unable to clearly read the terms and thoroughly understand the scope of data to be collected will still be provided with clear advice on the choices available to them and information on the protection of personal data privacy right;
- (f) to legislate the regulation of all private and public corporations in Hong Kong by stipulating that they should in no circumstances transfer any personal data to third party companies, including their partner and subsidiary companies, without the explicit written consent and authorization from their clients, nor should such personal data be sold or used for profit-making purposes; and
- (g) to make reference to successful overseas experience and the operation mode of the Airport Authority Hong Kong and actively explore the option of the public sector operating the 'Octopus' smart card, so as to ensure that the personal data privacy of millions of Hong Kong people who have to use the Octopus card can be protected in a comprehensive and effective manner, thus fully preventing the personal data privacy of all Hong Kong people from being turned into cash cows again by public or private corporations.

2. Motion as amended by Hon James TO Kun-sun

That, *privacy is a common value protected by international human rights treaties, but the privacy protection for the public under the existing legislation and regime in Hong Kong is not sufficient*; in recent months, 'Octopus' and 'Autotoll' operated by public transport operators, the finance and insurance sector, and the electronic communications sector, etc., were found to have contravened the Personal Data (Privacy) Ordinance ('PDPO') and engaged in unauthorized transfer or sale of the personal data collected to make profits, with extensive implication and significant impact, affecting the personal data privacy right of millions of Hong Kong people; among the above, 'Octopus', the monopoly operator of electronic money, even admitted that it had made a profit of over \$44 million by selling its clients' personal

data; the ‘Octopus’ scandal has revealed that various smart cards currently available in the market, such as bonus cards, membership cards, credit cards, stored value cards and top-up cards, etc., are generally not in full compliance with the requirements of the PDPO, the public’s personal data privacy are not properly protected and organizations are able to take advantage of the loopholes and grey areas of the PDPO to indiscriminately collect personal data beyond the scope of purpose for data collection publicly claimed by such organizations, and turn such data into their cash cows, and in the absence of monitoring, the situation has become very serious, causing considerable disturbance to people’s daily life; however, due to the limited powers conferred by the law on the Office of the Privacy Commissioner for Personal Data (‘PCPD’) and constraint of resources, the PCPD is not able to exercise effective regulation, and the responsible government departments concerned have also failed to seriously shoulder the responsibility of protecting personal data privacy; in this connection, this Council urges the Government to immediately adopt the following measures to protect the general public’s personal data privacy right:

- (a) to urge law enforcement departments to conduct a comprehensive and thorough investigation into all the companies and organizations involved in transfer and sale of clients’ personal data and infringement of the public’s privacy and to prosecute the same for criminal liability, and require such companies or organizations to destroy the public’s personal data, which were illegally collected, under the supervision of an independent third party and to offer an apology and compensation to affected clients;
- (b) to comprehensively review and amend the PDPO immediately to plug the loopholes of the legislation and eliminate the grey areas, *step up efforts to regulate enterprises’ resale of clients’ personal data and direct marketing*, and at the same time increase the criminal sanction to achieve a deterrent effect;
- (c) to provide additional resources for the PCPD, so as to enhance its efficiency in handling complaints and step up enforcement to effectively protect the public’s personal data privacy right;
- (d) to introduce clear clauses and requirements to ensure that consumers have the right to opt in, so as to ensure that consumers provide their personal data within the scope of the ‘purpose of data collection’ as specified by the organizations concerned without threats and inducements, and to step up efforts to combat and eradicate the indiscriminate collection of the public’s personal data;
- (e) to legislate the regulation of application forms for all kinds of membership cards, credit cards, etc., including requiring that the fonts and contents of the advice and terms on the protection of consumers’ personal data privacy right should be reasonably legible, in terms of font size, location and surface area, to any person with normal eyesight, and ensuring that people who are unable to clearly read the terms and thoroughly understand the scope of data to be

collected will still be provided with clear advice on the choices available to them and information on the protection of personal data privacy right;

- (f) to legislate the regulation of all private and public corporations in Hong Kong by stipulating that they should in no circumstances transfer any personal data to third party companies, including their partner and subsidiary companies, without the explicit written consent and authorization from their clients, nor should such personal data be sold or used for profit-making purposes; and
- (g) to make reference to successful overseas experience and the operation mode of the Airport Authority Hong Kong and actively explore the option of the public sector operating the ‘Octopus’ smart card, so as to ensure that the personal data privacy of millions of Hong Kong people who have to use the Octopus card can be protected in a comprehensive and effective manner, thus fully preventing the personal data privacy of all Hong Kong people from being turned into cash cows again by public or private corporations;
- (h) *to appoint an independent investigation committee to thoroughly investigate the sale and handling of clients’ personal data by ‘Octopus’ and other sectors;*
- (i) *to urge the Privacy Commissioner for Personal Data (‘the Privacy Commissioner’) to expand the applicability of the register of data users to financial institutions such as ‘Octopus’ and banks, the insurance and telecommunications sectors, etc., require the enterprises concerned to declare to the Privacy Commissioner the collection, holding, use and disclosure of data, and submit a privacy compliance audit report to the Privacy Commissioner every two years; and*
- (j) *to fully implement section 33 of the PDPO as soon as possible to regulate the transfer of personal data to place outside Hong Kong.*

Note: Hon James TO Kun-sun’s amendment is marked in *bold and italic type* or with deletion line.

3. Motion as amended by Hon WONG Ting-kwong

That, *it is a community consensus in Hong Kong that the Government and all public and private organizations should faithfully and properly protect the public’s personal privacy, but* in recent months, ‘Octopus’ and ‘Autotoll’ operated by public transport operators, the finance and insurance sector, and the electronic communications sector, etc., were found to have contravened the Personal Data (Privacy) Ordinance (‘PDPO’) and engaged in unauthorized transfer or sale of the personal data collected to make profits, with extensive implication and significant impact, affecting the personal data privacy right of millions of Hong Kong people;

among the above, ‘Octopus’, the monopoly operator of electronic money, even admitted that it had made a profit of over \$44 million by selling its clients’ personal data; the ‘Octopus’ scandal has revealed that various smart cards currently available in the market, such as bonus cards, membership cards, credit cards, stored value cards and top-up cards, etc., are generally not in full compliance with the requirements of the PDPO, the public’s personal data privacy are not properly protected and organizations are able to take advantage of the loopholes and grey areas of the PDPO to indiscriminately collect personal data beyond the scope of purpose for data collection publicly claimed by such organizations, and turn such data into their cash cows, and in the absence of monitoring, the situation has become very serious, causing considerable disturbance to people’s daily life; however, due to the limited powers conferred by the law on the Office of the Privacy Commissioner for Personal Data (‘PCPD’) and constraint of resources, the PCPD is not able to exercise effective regulation, and the responsible government departments concerned have also failed to seriously shoulder the responsibility of protecting personal data privacy; in this connection, this Council urges the Government to immediately adopt the following measures to protect the general public’s personal data privacy right:

- (a) to urge law enforcement departments to conduct a comprehensive and thorough investigation into all the companies and organizations involved in transfer and sale of clients’ personal data and infringement of the public’s privacy and to prosecute the same for criminal liability, and require such companies or organizations to destroy the public’s personal data, which were illegally collected, under the supervision of an independent third party and to offer an apology and compensation to affected clients;
- (b) to comprehensively review and amend the PDPO immediately to plug the loopholes of the legislation and eliminate the grey areas, and at the same time increase the criminal sanction to achieve a deterrent effect;
- (c) *to immediately implement section 33 of the PDPO to control the transfer of personal data to place outside Hong Kong, so as to prevent the lack of proper protection on personal privacy due to unreasonable resale of personal data to overseas companies;*
- ~~(e)~~(d) to provide additional resources for the PCPD, so as to enhance its efficiency in handling complaints and step up enforcement to effectively protect the public’s personal data privacy right;
- ~~(d)~~(e) to introduce clear clauses and requirements to ensure that consumers have the right to opt in, so as to ensure that consumers provide their personal data within the scope of the ‘purpose of data collection’ as specified by the organizations concerned without threats and inducements, and to step up efforts to combat and eradicate the indiscriminate collection of the public’s personal data;
- (f) *to amend the Unsolicited Electronic Messages Ordinance and the Do-not-call Registers required under the Ordinance to regulate*

person-to-person telemarketing activities, so as to ensure that consumers' personal data will not be used improperly in commercial marketing activities, which may cause enormous nuisance to the consumers concerned;

- (e)(g) to legislate the regulation of application forms for all kinds of membership cards, credit cards, etc., including requiring that the fonts and contents of the advice and terms on the protection of consumers' personal data privacy right should be reasonably legible, in terms of font size, location and surface area, to any person with normal eyesight, and ensuring that people who are unable to clearly read the terms and thoroughly understand the scope of data to be collected will still be provided with clear advice on the choices available to them and information on the protection of personal data privacy right;
- (f)(h) to legislate the regulation of all private and public corporations in Hong Kong by stipulating that they should ~~in no circumstances~~ **not** transfer any personal data to third party companies, including their partner and subsidiary companies, without ~~the explicit written consent and authorization from their clients, nor should such personal data be sold or used~~ **stating clearly in separate terms for confirmation by the person concerned in any contracts involving transfer or conveyance of personal data whether such personal data are transferred or conveyed** for profit-making purposes; and
- (g)(i) to make reference to successful overseas experience and the operation mode of the Airport Authority Hong Kong and actively explore the option of the public sector operating the 'Octopus' smart card, so as to ensure that the personal data privacy of millions of Hong Kong people who have to use the Octopus card can be protected in a comprehensive and effective manner, thus fully preventing the personal data privacy of all Hong Kong people from being turned into cash cows again by public or private corporations.

Note: Hon WONG Ting-kwong's amendment is marked in ***bold and italic type*** or with deletion line.

4. Motion as amended by Hon CHAN Kin-por

That, in recent months, 'Octopus' and 'Autotoll' operated by public transport operators, ~~the finance and insurance sector, and the electronic communications sector, etc., were found to have contravened~~ ***individual financial and insurance institutions, and electronic communications institutions, etc., were alleged to have been involved in contravening*** the Personal Data (Privacy) Ordinance ('PDPO') ~~and engaged by~~ ***engaging*** in unauthorized transfer or sale of the personal data collected to make profits, with extensive implication and significant impact, affecting the personal data privacy right of millions of Hong Kong people; among the above, 'Octopus', the monopoly operator of electronic money, even admitted that it had made a ~~profit~~ ***an***

income of over \$44 million by selling its clients' personal data; the 'Octopus' scandal has revealed that various smart cards currently available in the market, such as bonus cards, membership cards, credit cards, stored value cards and top-up cards, etc., are generally not in full compliance with the requirements of the PDPO, the public's personal data privacy are not properly protected and organizations are able to take advantage of the loopholes and grey areas of the PDPO to indiscriminately collect personal data beyond the scope of purpose for data collection publicly claimed by such organizations, and turn such data into their cash cows, and in the absence of monitoring, the situation has become very serious, causing considerable disturbance to people's daily life; however, due to the limited powers conferred by the law on the Office of the Privacy Commissioner for Personal Data ('PCPD') and constraint of resources, the PCPD is not able to exercise effective regulation, and the responsible government departments concerned have also failed to seriously shoulder the responsibility of protecting personal data privacy; in this connection, this Council urges the Government to immediately adopt the following measures to protect the general public's personal data privacy right, ***and in adopting such measures, it also needs to ensure that all industries and trades can do business in Hong Kong according to the law and also must not smother the room for survival of the industries concerned, including the direct marketing industry, thereby enabling a large number of practitioners to make a living:***

- (a) to urge law enforcement departments to conduct a comprehensive and thorough investigation into all the companies and organizations involved in transfer and sale of clients' personal data and infringement of the public's privacy, ***contravening the PDPO*** and to prosecute the same for criminal liability, and require such companies or organizations to destroy the public's personal data, which were illegally collected, under the supervision of an independent third party and to offer an apology and compensation to affected clients;
- (b) to comprehensively review and amend the PDPO immediately to plug the loopholes of the legislation and eliminate the grey areas, and at the same time increase the criminal sanction to achieve a deterrent effect;
- (c) to provide additional resources for the PCPD, so as to enhance its efficiency in handling complaints and step up enforcement to effectively protect the public's personal data privacy right;
- (d) to ***examine the pros and cons of adopting opt-in and opt-out mechanisms in Hong Kong with reference to the practices of different places, and then*** introduce clear clauses and requirements ~~to ensure that consumers have the right to opt in, so as to ensure~~ ***so*** that consumers provide their personal data within the scope of the 'purpose of data collection' as specified by the organizations concerned without threats and inducements, and to step up efforts to combat and eradicate the indiscriminate collection of the public's personal data;

- (e) to legislate the regulation of application forms for all kinds of membership cards, credit cards, etc., including requiring that the fonts and contents of the advice and terms on the protection of consumers' personal data privacy right should be reasonably legible, in terms of font size, location and surface area, to any person with normal eyesight, and ensuring that people who are unable to clearly read the terms and thoroughly understand the scope of data to be collected will still be provided with clear advice on the choices available to them and information on the protection of personal data privacy right;
- (f) to legislate the regulation of all private and public corporations in Hong Kong by stipulating that they should in no circumstances ~~transfer any personal data to third party companies, including their partner and subsidiary companies,~~ ***use any personal data beyond the purposes of data collection*** without the explicit written consent and authorization from their clients, ~~nor should such personal data be sold or used for profit making purposes;~~ and
- (g) to make reference to successful overseas experience and the operation mode of the Airport Authority Hong Kong and actively explore the option of the public sector operating the 'Octopus' smart card, so as to ensure that the personal data privacy of millions of Hong Kong people who have to use the Octopus card can be protected in a comprehensive and effective manner, thus fully preventing the personal data privacy of all Hong Kong people from being turned into cash cows again by public or private corporations.

Note: Hon CHAN Kin-por's amendment is marked in ***bold and italic type*** or with deletion line.