

ITBB CR7/5/11(99) Pt. VI
LS/B/77/98-99
2869 9216
2877 5029

Secretary for Information, Technology and Broadcasting
(Attn : Miss Priscilla To (AS(E))
Information, Technology and Broadcasting Bureau
1/F Murray Building
Garden Road
Hong Kong

18 February 2000

Urgent By Fax
Fax No. : **2511 1458**

Dear Miss To,

Telecommunication (Amendment) Bill 1999

At the Bills Committee meeting on 17 February 2000, the Chairman of the Bills Committee raised concern over the protection of personal data which a licensee may be required to supply to the Telecommunications Authority ("TA") under proposed section 7I of the Bill. Following the discussion on this issue at the said Bills Committee meeting, I set out below the problems that may arise from the implementation of proposed section 7I if the Bill is enacted:

- (a) Under the Personal Data (Privacy) Ordinance (Cap. 486), a data user shall not do an act, or engage in a practice, that contravenes a data protection principle unless the act or practice is required or permitted under that Ordinance. One of the data protection principles under Cap. 486 provides that a data user shall not, without the prescribed consent of the data subject, use the personal data for any purpose other than the purpose for which the data were to be used at the time of collection of the data. Cap. 486 applies to both the licensees and the TA in their capacity as data users.
- (b) If the information required by TA under proposed section 7I of the Bill consists of personal data as defined in Cap. 486, the licensee concerned is obliged under Cap. 486 to obtain the prescribed consent of the data subject before the licensee could disclose the personal data to TA. In case the data subject does not give consent to such disclosure, it would appear that the licensee would be faced with a difficult choice as between compliance with the provisions of Cap. 486 and with section 7I of the Bill given that compliance with one could possibly result in a breach of the other.

.../P. 2

- (c) TA may also face a similar difficulty in circumstances where the licensee concerned has managed to obtain the data subject's consent for the personal data to be disclosed to TA, but the extent of such consent does not cover the possible disclosure of the personal data by TA under section 7I of the Bill. Cap. 486 would require TA to obtain the data subject's consent if TA considers that the disclosure of the information which consists of personal data is in the public interest. What will happen if the data subject does not consent to disclosure by TA? Should TA comply with Cap. 486 or section 7I of the Bill?
- (d) Certain personal data and personal data held for certain purposes are exempt from the provisions of the data protection principles under Part VIII of Cap. 486. However, public interest as provided in proposed section 7I of the Bill is not one of the exemptions under Cap. 486. This would possibly give rise to conflicting obligations under Cap. 486 and the Bill.
- (e) If it is intended that the obligation of a licensee to supply information to TA and TA's power to disclose information under the Bill should prevail notwithstanding any other law, it would appear that this intention has to be reflected expressly in the Bill. Cap. 486 may also be amended to add a new category of exemption to cover disclosure of personal data by a licensee to TA or by TA to the public as may be required by the Bill.

I should be grateful if you would give your comments to the above matters in both languages as soon as possible.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

c.c. Department of Justice (Attn: Mr. Geoffrey A Fox, SALD)
(Attn: Ms Phyllis Poon, GC)

LA