立法會
Legislative Council

LC Paper No. CB(2)1386/02-03

Ref : CB2/BC/6/01

Paper for the House Committee meeting on 7 March 2003

Report of the Bills Committee on
Registration of Persons (Amendment) Bill 2001

Purpose

This paper reports on the deliberations of the Bills Committee on Registration of Persons (Amendment) Bill 2001.

Background

2. The existing form of identity (ID) card was introduced in 1987 and the supporting computer system, the Registration of Persons (ROP) system, was installed in 1982. According to the Administration, the design of both the ID card and the ROP system have become aged and outdated with the passage of time. Due to the advancement of technology, the existing ID cards are no longer secure and forgery-proof as they were 10 years ago.

3. In May 1999, the Immigration Department (ImmD) commissioned a consultancy study to review its information systems strategy. In the review, the consulting company alerted that the ROP system would reach the end of its life expectancy by 2002 and must be replaced. ImmD commissioned a separate feasibility study in November 1999 to examine and recommend options for the introduction of a new ID card and a new ROP system. The consultants proposed three options, namely -

(a) a non-smart ID card;

(b) a smart ID card capable of supporting ImmD's core business only; and

(c) a smart ID card which supported multiple applications.

4. At its meeting on 17 October 2000, the Executive Council decided that a new ID card and a new supporting computer system should be introduced in early 2003. The new ID card should take the form of a smart card and have the capacity to support multiple applications.

The Bill

5. The Bill seeks to amend the Registration of Persons Ordinance (ROP Ordinance) (Cap. 177) and the Registration of Persons Regulations (ROP Regulations) to provide the legislative framework for the introduction of a new smart ID card with multi-application capacity. The Bill also provides for the launching of a territory-wide ID card replacement exercise.

The Bills Committee

6. At the House Committee meeting on 11 January 2002, Members formed a Bills Committee to study the Bill. The Bills Committee was activated on 7 June 2002. The membership list of the Bills Committee is in **Appendix I**.

7. Under the chairmanship of Hon IP Kwok-him, the Bills Committee has held 15 meetings with the Administration. The Bill Committee has met with nine organisations/individuals and has also received written submissions from seven other organisations/individuals. The names of these 16 organisations and individuals are listed in **Appendix II**.

8. The Bills Committee, joined by other interested Members, will visit the ImmD on 8 March 2003 to view a demonstration on the prototype of the Smart Identity Card System (System) to better understand the new work processes under the System.

Deliberations of the Bills Committee

<u>Restriction on use of ROP particulars</u>

9. The proposed section 9 seeks to restrict the use of the ROP particulars collected under regulation 4 of the ROP Regulations to enable the Commissioner of Registration to keep a register of persons, to enable the identification of individuals, and for such other purposes as may be authorised, permitted or required by or under any Ordinance.

10. Members have pointed out that the proposed section as presently drafted may adversely affect the way in which private organisations and individuals use information on ROP particulars. For example, the registration authority would not be able to deal

with requests from the public for the issue of Certificate of Registered Particulars as evidence of change of name.

11. Members have also pointed out that the existing reference to ROP particulars in the proposed section 9, especially when read together with the proposed section 11, which imposes criminal liability for unauthorised handling of particulars, may inadvertently cast the net too wide and adversely affect the way in which people can use particulars shown on the ID card and particulars duly obtained from the ImmD pursuant to a legitimate request. As such people include not only law enforcement agencies, but also law firms and the data subjects themselves, many people could face serious legal consequences.

12. Having considered members' views, the Administration has agreed to introduce amendments to make it clear that in the proposed section 9(a), particulars furnished to a registration officer may be used for enabling the Commissioner to issue ID cards and to keep records on such particulars. For records kept by the Commissioner, they may be used for the following purpose, in cases where the requesting party is a public officer, enabling him to verify the identity of individuals when discharging his official duties, and, in cases where the requesting party is not a public officer, enabling him to verify the identity of individuals for lawful purposes. The above amendments to the proposed section 9 make it clear that the scope of the restriction applies only to records kept by the Commissioner on ROP particulars furnished to a registration officer. The Administration has pointed out that the proposed amendments should not be taken to mean that ROP particulars duly released by ImmD can then be disclosed or used at will subsequently by the requesting party. The requesting party has then become a data user and will be subject to the restrictions under the Personal Data (Privacy) Ordinance (PDPO) (Cap. 486).

Duty not to disclose photographs, fingerprints and particulars

13. Under the proposed section 10 of the ROP Ordinance, a registration officer should not disclose photographs, fingerprints and particulars furnished under regulation 4(1) of the ROP Regulations, unless with the written permission of the Chief Secretary for Administration (CS). The proposed section reproduces in full regulation 24 of the ROP Regulations. According to the Administration, the proposal to raise the status of the provision from subsidiary legislation to primary legislation is to comply with the recommendations of the Privacy Impact Assessment study so that it will not be overridden by provisions in ordinances, if any, giving a power to obtain ROP information.

14. Some members have expressed concern about the possible abuse of ROP data by government departments, and have enquired about the mechanism for processing requests for ROP data under regulation 24 and the practice of the Police in making requests for ROP data and destroying such data after use. These members have also expressed concern whether adequate control measures are in place to ensure that the

ROP data would not be used by the Police for purposes other than those stated in its original request.

15. The Administration has explained that all requests for disclosure of ROP data kept by the ImmD are dealt with in accordance with regulation 24, except where a request is covered by regulation 23 which basically deals with requests from ID card holders for certified copies. Regarding requests for ROP data by public officials, they must be made and signed by an authorised officer of an appropriate rank, such as a Superintendent or above of the Police or an officer at the Assistant Director level of other government departments. Before making a request, the authorising officer must be satisfied that the personal data to be requested is for a lawful purpose directly related to a function or activity of his department, that the collection of data is necessary, and that the data requested are adequate but not excessive. Where the data subject has not voluntarily given his express consent to the use of his personal data, as would be the case in many requests, the relevant exemption provision in PDPO must be specified and full justifications for the request must be given. Similarly, requests by non-Government organisations and other individuals for ROP data under regulation 24 have to be supported by full justifications and have to state the relevant exemption provisions in the PDPO.

16. The Administration has assured members that each and every request for ROP data is carefully considered before a permission is given under regulation 24 to a registration officer to disclose ROP data, having regard to factors such as whether the purpose for which the request is made is the same as, or directly related to, any of the purposes for which the personal data were to be used at the time of collection, whether the consent of the data subject has been obtained, and whether the data requested are adequate but not excessive. In case of doubt, the advice of the Department of Justice and Privacy Commissioner for Personal Data (Privacy Commissioner) will be sought as appropriate. When an approval is granted to disclose the data requested, the registration officer will specify in writing to the recipient that such data should only be used for the purpose stated in the request and should be destroyed when it is no longer required.

17. In the case of the Police, the Administration has explained that Police officers are required to follow clearly laid down procedures governing the making of the requests for ROP data for investigation purposes and their destruction after use. Under the procedures, the officer (normally the officer-in-charge of a case) requesting such data must apply to an authorising officer and fully justify to the latter's satisfaction that the data requested is necessary to assist the investigation in question. Before authorising such applications, the authorising officers, invariably senior Police officers at the rank of Superintendent or above, must satisfy themselves that the ROP data requested are necessary to assist the investigation taking into account all circumstances surrounding the case. Furthermore, all Police officers have been instructed to take all practical steps to ensure that all ROP data obtained are protected against unauthorised access. ROP data which are no longer required for the purposes made in the request will be destroyed.

18. At the request of members, the Administration has provided information on provision of ROP data between January and November 2002. Members have noted that during the period, ROP data relating to 74,270 data subjects were disclosed pursuant to regulation 24. The great majority of cases were requests from the Police and the Independent Commission Against Corruption for the purposes of prevention and detection of crime.

19. Members share the view of Professor Matthew LEE of the City University of Hong Kong that a provision should be added to ensure that CS has considered all relevant factors in determining whether to give his written permission for a request for disclosure. The Administration has agreed to introduce an amendment to require CS to state the reason for giving the permission.

20. Regarding permission by CS to disclose ROP data under regulation 24, members have noted that CS's power has been delegated to a Principal Assistant Secretary for Security. Members have queried whether such a delegation of power is appropriate.

21. The Administration has explained that since the early 1970s, CS has delegated his power under regulation 24 to the Secretary for Security (S for S), Deputy Security for Security (DS(S)) and Principal Assistant Secretary for Security (PAS(S)) pursuant to section 43 of the Interpretation and General Clauses Ordinance (Cap.1). Most of the requests for ROP records are straightforward requests for addresses or confirmation of ID card numbers of the data subjects for purposes such as crime investigation and service of summons, etc. Having regard to the nature and frequency of the requests for ROP records (an average of about 5 000 such request were processed every month in 2002), the Administration considers that the existing delegation of power is appropriate. The delegation represents a fine balance between operational requirements to deal with such requests as and when received and the need to closely supervise the disclosure of ROP data by the registration officer through the exercise of delegated power by officers in the Security Bureau at sufficiently senior levels. The Administration has stressed that before a permission under regulation 24 is granted, PAS(S) will duly examine the requests having regard to the factors stated in paragraph 16 above. In case of doubt, PAS(S) will consult DS(S), S for S or CS taking into account the advice of the Department of Justice and the Privacy Commissioner. There have been cases where CS had been consulted before approving requests for the release of ROP data.

22. At the request of members, the Administration has agreed to convey to the Privacy Commissioner the concerns of members about the delegation of CS's power and the destruction of ROP data disclosed pursuant to regulation 24, and members' request that the Privacy Commissioner should also look at whether the protection of data privacy is fully complied with in the context of privacy compliance audit (paragraphs 55 to 61 below refer).

Power to certify and furnish certified copies

23. Regulation 23 empowers a registration officer to certify and furnish certified copies. Some members have queried whether it is appropriate to subject the proposed section 10 to regulation 23, as this could leave a loophole whereby the operation of the proposed section may in future be altered through an amendment to the regulation which is subsidiary legislation. To allay members' concern, the Administration has agreed to make an amendment to move the existing regulation 23 to the ROP Ordinance.

Prohibition of unauthorised handling of particulars

24. The proposed section 11 of the ROP Ordinance provides that any person who, without lawful authority or reasonable excuse, gains access to, stores, uses or discloses, any ROP particulars furnished to a registration officer under the ROP Ordinance will be an offence and liable to a fine at level 5, currently at $50 000, and to imprisonment for two years.

25. To be consistent with the amendments to the proposed section 9 referred to in paragraph 12 above, the Administration will introduce an amendment to make it clear that criminal liability under the proposed section 11 will only arise where any person, without lawful authority or reasonable excuse, gains access to, stores, uses or discloses, any records kept by the Commissioner for Registration on ROP particulars furnished to a registration officer.

26. In response to members' query on whether unauthorised copy, reproduction and deletion of particulars should also be made an offence, the Administration has advised that "uses" in the proposed section 11 covers "copy" and "reproduction". An amendment will also be made to include unauthorised erasure, cancellation or alteration of any records kept by the Commissioner of Registration on ROP particulars furnished to a registration officers an offence.

Inclusion of non-registration of persons applications in the new identity card

27. Under the Bill, the Chief Executive in Council is empowered to make regulations for non-ROP information or particulars to be included in ID cards and data to be stored in the chip of the ID card for non-ROP applications. The proposed regulation 4A of the ROP Regulations provides for the Commissioner of Registration or any person acting pursuant to a permission given by the Commissioner to include such information and particulars to be printed on the card face of a new ID card and the storage of such data in the chip of the ID card under the new Schedule 5.

28. According to the Administration, among the non-ROP applications to be introduced, i.e. digital certificate (e-Cert), library card and driving licence, only the e-Cert application requires the storage of non-ROP data in the chip. The e-Cert application will therefore be specified in the new Schedule 5 to the ROP Regulations. In

addition, all of the proposed non-ROP applications are voluntary. Card holders will have the choice of whether non-ROP information and data should be included in their new ID card.

29. Members consider that the proposed regulation 4A should reflect clearly that the inclusion of non-ROP information, particulars and data referred to in the proposed regulation is voluntary, and that the inclusion of such information, particulars and data in an ID card and the storage of such data in a chip requires the consent of the card holder. Members also consider that the principle that any inclusion of non-ROP information, particulars and data into an ID card requires the consent of the card holder should be provided in the ROP Ordinance.

30. Members have also expressed concern that the proposed regulation as presently drafted may allow the Commissioner of Registration or any person acting pursuant to the Commissioner's permission to include any information in an ID card or a chip at will, using the pretext that this is necessary for a prescribed purpose. Members have suggested that the purposes of including non-ROP information, particulars and data in an ID card as well as the information, particulars and data to be included should be clearly spelt out.

31. Having considered members' views and concerns, the Administration has redrafted the proposed regulation 4A to expressly provide that the inclusion of non-ROP information, particulars and data in an ID card and the storage of such data in a chip will require the consent of the card holder, and that the purpose of inclusion and the information, particulars and data to be included in an ID card will be set out in columns 1 and 2 of Schedule 5 to the ROP Regulations respectively. Amendments will also be made to Schedule 5 to set out clearly that in column 1 the purpose for inclusion is for the storage of a certificate defined in section 2(1) of the Electronic Transactions Ordinance (Cap.553) issued by the Postmaster General and recognised under section 22 of that Ordinance, and in column 2 the information, particulars and data to be included. A provision will also be added to provide for the removal of such data included in the chip embodied in an ID card if so requested by the ID card holder concerned.

32. The Administration has also agreed to add a new section 7(2A) to the ROP Ordinance to set out the principle that information or particulars or data other than those prescribed for ROP purposes could only be included in ID cards or stored in chips with the consent of the applicants for or holders of ID card, and to set out the information, particulars or data which are related to ROP purposes.

33. At the request of members, the Administration has undertaken to brief the relevant Panels before introducing subsidiary legislation to provide for the incorporation of new non-ROP related applications on the card face of a smart ID card or in the chip embedded in it.

Information, particulars or data prescribed for ROP purposes

34. The information, particulars or data prescribed for ROP purposes are set out in the proposed amendment to section 7 of the ROP Ordinance, i.e. new section 7(2A)(b). Hon James TO has expressed serious concern about the new section 7(2A)(b)(i), which in effect empowers the Chief Executive in Council to make regulations to provide for the information on a person's nationality, marital status and occupation to be included in his ID card without the consent of the person. He is worried that the amendment, if passed, would empower the Administration to make another regulation to require ID card applicants to report all their nationalities. If the intention of the Administration is not to require an ID card applicant to furnish information on all his other nationalities, Hon James TO considers that the enabling provision should be restricted to a person's claimed nationality, i.e. the nationality which he claims. He is strongly opposed to giving such a wide power to the Administration. Hon James TO has pointed out that in fact under regulation 4 of the ROP Regulations, any person who applies for an ID card is required to furnish, among other particulars, the nationality which he claims.

35. Regarding particulars on a person's marital status and occupation, Hon James TO does not consider that there is a need for the inclusion in the ID card of for such information, as they are not related to ROP purposes. He has pointed out that a person's marital status and occupation could change, especially when one's occupation could change quite often. Under regulation 18 of the ROP Regulations, an ID card holder has a duty to report corrections to the particulars submitted to a registration officer. Any person who fails to do so commits an offence and is liable to a fine at level 3 (currently at $10,000) and to imprisonment for one year. He is therefore strongly opposed to such an enabling provision.

36. The Administration has assured members that the Administration has no intention to require an ID card applicant to furnish information on all his nationalities. The Administration has explained that the reference to nationality will cover claimed nationality, and it is not unusual that the enabling provision is wider that what is needed. The setting out of the prescribed information, particulars or data in the new section 7(2A)(b) is in response to members' request to provide the principle that the inclusion of non-ROP information, particulars or data, i.e. other than those prescribed for ROP purposes, in an ID card should have the consent of the applicant for or holder of an ID card.

37. Having considered the views of members, the Administration has agreed to amend the reference from "nationality" to "nationality which he claims" in new section 7(2A)(b)(i). The Administration maintains that marital status and occupation should be particulars prescribed for ROP purposes. Hon Margaret NG, Hon Emily LAU and Hon James TO have expressed support for the amendment. However, Hon Mrs Selina CHOW, Hon LAU Kong-wah, Hon Miriam LAU, Hon LEUNG Fu-wah and Hon Howard YOUNG have expressed reservations about the need for such an amendment.

38. Hon James TO has proposed that the Bills Committee should move an amendment to delete the reference to "marital status" and "occupation" in new section 7(2A)(b)(i). As there were divided views among members, a vote was taken on whether the Bills Committee should move an amendment to delete the reference to "marital status" in new section 7(2A)(b)(i). Hon Margaret NG, Hon Emily LAU and Hon James TO voted in favour of the Bills Committee moving the amendment, while Hon Mrs Selina CHOW, Hon LAU Kong-wah, Hon Miriam LAU, Hon LEUNG Fu-wah and Hon Howard Young voted against. The Bills Committee therefore decided that the amendment would not be moved by the Bills Committee.

39. A vote was also taken on whether the Bills Committee should move an amendment to delete the reference to "occupation" in new section 7(2A)(b)(i). Hon Margaret NG, Hon Emily LAU, Hon LEUNG Fu-wah and Hon James TO voted in favour of the Bills Committee moving the amendment, while Hon Mrs Selina CHOW, Hon LAU Kong-wah, Hon Miriam LAU and Hon Howard YOUNG voted against. As the votes were equally divided, Hon IP Kwok-him, Chairman of Bills Committee, casted his casting vote that the amendment would not be moved by the Bills Committee.

40. Hon James TO has indicated that he will move an amendment to delete the reference to "marital status" and "occupation" in new section 7(2A)(b)(i).

41. Regarding the particulars furnished to a registration officer for the purpose of ROP, members have queried the need for the collection of all the particulars of the applicant set out in regulation 4(1)(b) of the ROP Regulations. The Privacy Commissioner is also of the view that unless justification could be given on the collection of personal data of citizens, such as residence, place of business, employment, the requirement to report corrections of particulars under regulation 18(1) of ROP Regulations should be revised to bring it consistent with actual need and with Data Protection Principle 1(1) of PDPO.

42. The Administration has advised that for the purpose of ROP, it is necessary to require an applicant to furnish the particulars stipulated in regulation 4(1)(b). Such particulars would be useful if there are doubts on the identity of a person, and would also assist in tracing the whereabouts of a person or contacting his family members, should this become necessary. The Administration has further advised that it is the legislative intent of regulation 18(1) for ID card holders to report correction of particulars. The onus must rest on the card holders themselves as they are the ones who know which particulars have become incorrect. This is also in line with Data Protection Principle 2 of PDPO in that all practical steps should be taken to ensure the accuracy of personal data.

43. At the request of members, the Administration has agreed to repeal regulation 4(1)(b)(vii) and (ix) so that information on previous country or place of residence and particulars of children of a registrant will no longer be collected. The requirement to

furnish any travel document under regulation 4(1)(b)(xi) will be limited to any travel document bearing an endorsement to the effect that he is authorised under the Immigration Ordinance to remain in Hong Kong or document issued under the Ordinance authorising him to remain in Hong Kong.

44. Under regulation 4(1)(b)(xii), an ID card applicant may be required to furnish such further particulars relating to any of the particulars furnished under regulation 4(1)(b) as the registration officer considers necessary. The Administration has explained that such further particulars that may be required to furnish would be reasonable and have to be relating to the particulars furnished under regulation 4(1)(b). This is the existing mechanism, and so far, there has not been any complaint about the abuse of power by registration officers under this provision.

45. Hon James TO has expressed concern about giving such a power to a registration officer. He is worried that as provided under this provision, a registration officer could require an ID card applicant to provide further information on his nationality, for instance, the registration officer could ask the applicant whether he has another nationality. Hon James TO has indicated that he will consider moving an amendment to regulation 4(1)(b)(xii).

Power to verify identity by fingerprint match

46. The proposed regulation 11A of the ROP Regulations provides for a Police officer, an officer of the ImmD or an authorised person who has reason to doubt the identity of any person to require the person to produce his ID card and verify his identity by matching his fingerprint with the fingerprint template included in the ID card.

47. Members have expressed concern that the regulation as presently drafted may give rise to possible abuse of power by enforcement officers in the verification of fingerprints of card holders. They have also queried why any person authorised by the Chief Executive should be given such a power.

48. Having taking into account the views of members, the Administration has redrafted the proposed regulation 11A to authorise only Police officers and members of the Immigration Service to use portable ID card readers to view ROP data in an ID card and to scan a person's fingerprint for matching with his fingerprint template in his ID card, if they have reasons to believe that the ID card produced is not issued under the ROP Ordinance to the person concerned. The Administration has also agreed to add provisions to require the Commissioner of Registration to publish in the Gazette the types of approved portable ID card readers to be used, and to provide for the definition of portable ID card readers. In addition, the Chief Executive in Council's power to make regulation as provided for in section 7 of the ROP Ordinance will be expanded to include the power of viewing of information reproduced from data in the chip embodied in ID cards by Police officers and members of the Immigration Service, as such a power

is provided for in the proposed new regulation 11A(1)(c). The relevant amendments will be made by the Administration.

49. According to the Administration, a portable ID card reader will be equipped with -

(a) a card slot for reading data in the chip;

(b) LCD display for showing the personal particulars and photo of the card holder. If the card holder is a temporary resident, his/her condition of stay and limit of stay stored in the chip will also be displayed;

(c) key-pad for selection of functions;

(d) fingerprint scanner for scanning the card holder's live fingerprint image which will then be compared with the fingerprint template in the chip to see if it is a successful match (the fingerprint image will not be seen); and

(e) memory for logging details of inspection performed for audit trail purpose.

50. Some members have expressed concern about the abuse use of portable ID card reader, and asked whether all frontline Police officers would carry such readers. The Administration has responded that portable ID card readers will be used mainly to facilitate anti-illegal immigrant operations during which law enforcement officers in the field can use a reader to confirm instantly the identity of a person and/or if a person's permission to stay (in case of temporary resident) is valid without holding him up for further checks. The Administration envisages that the number of portable ID card readers required would be small.

Prohibition against making alteration to identity card

51. Under the Bill, any person who, without lawful authority, stores data in a chip, adds to, erases, cancel or alters any data stores in a chip, or renders a chip ineffective, will be guilty of an offence. Any person who, without lawful authority or reasonable excuse, uses or possesses an ID card with unlawfully altered data in the chip will be guilty of an offence. These are provided in the proposed regulation 12(1A) and (2A) respectively. The proposed regulation 12(4) provides that any person who commits an offence under regulation 12(1A) and (2A) will be liable to a fine at level 4 (currently at $25,000) and to imprisonment for two years.

52. Members share the view of Professor Matthew LEE of the City University of Hong Kong that unauthorised access to data stored in the chip of a smart ID card, e.g. hacking, should be an offence. The Administration agrees and will introduce the relevant amendment.

53. According to the Administration, the System will provide ample facilities for Hong Kong residents to view the particulars stored in the chip of their smart ID cards within the existing chain of ROP offices and the new Smart Identity Card Centres. Before an ID card is issued, the applicant will be invited to read the particulars in respect of the applications by way of a computer terminal and to confirm that the particulars are correct. In addition, there will be self-service kiosks to facilitate ID card holders to read the ROP data in the chip, as well as conduct PIN management functions if they have opted for a digital certificate.

54. In response to members' concern that an ID card holder may commit an offence for gaining access to the particulars in the chip through self-service kiosks, the Administration will introduce a new regulation 12(1B) to specify that an ID card holder has lawful authority to gain access to his ROP data stored in the chip if he gains such access by using facilities provided by or with the approval of the Government, or to gain access to his non-ROP data specified in Schedule 5 stored in the chip if he gains such access only for the purpose for which the data are stored.

Privacy compliance audit

55. A privacy compliance audit in relation to a personal data system is a systematic verification of compliance with privacy policies, data protection principles, codes of practice or other regulatory requirements with respect to information handling and privacy. The privacy compliance audit examines the information management processes of the data system, assesses the extent to which the processes are implemented in accordance with stated privacy protection requirements, and provides assurance on the level of privacy compliance.

56. Members considers it important that privacy compliance audits on the System should be conducted to ensure the compliance of data protection requirements and prevention of abuse of data collected, especially when non-ROP information and data could be included in the chip of the smart ID card. Members have suggested that privacy compliance audits should be conducted on a regular basis in the initial two to three years after the System is implemented, and reports of the audits should be submitted to the Legislative Council (LegCo). Some members are of the view that a privacy compliance audit should at least be conducted one year after the implementation of the System. To enhance public confidence on the smart ID card scheme, some members have also suggested that the Bill should provide for the conduct of privacy compliance audits. Members have sought the views of the Privacy Commissioner on the matter.

57. The Privacy Commissioner supports the view that the conduct of a post-implementation compliance audit is a necessary step to ensure that all relevant safeguards are in place and all privacy issues duly addressed. He is also of the view that subsequent regular compliance audit will be conducive to the maintenance of public confidence in the smart card regime as a whole. In the case of the System, the Privacy

Commissioner has advised that there are two approaches to the provision of the privacy compliance audit services -

(a) engaging independent professional auditors - this approach requires the commissioning of privacy compliance audit studies with professional audit firms with the necessary privacy audit skills and experience; and

(b) appointing the Office of the Privacy Commissioner (PCO) as an independent auditor - subject to the provision of additional resources to the PCO, this may be an alternative to achieve independence in the audit process. A drawback in this approach is that such appointment may create potential conflict between the PCO's role in the audit and its role in compliant investigation under the PDPO. To minimise the impact, a memorandum of understanding may need to be drawn up between the parties to the effect that any outcome of the audit should not prejudice any other regulatory power of the Privacy Commissioner to enforce compliance.

58. Regarding some members' suggestion to incorporate into the Bill a duty of the Privacy Commissioner to carry out privacy compliance audit specifically for the System, the Privacy Commissioner has expressed reservations. In the view of the Privacy Commissioner, it would be more appropriate to incorporate the audit requirement as a provision in a code of practice that governs the System. This approach has the benefit that rules on the collection, use and access of smart ID card data can be developed in parallel with the implementation of the scheme and in tandem with the development in technology. It is more flexible and allows a progressive development of the audit criteria and benchmark data. The Privacy Commissioner also considers that the code of practice should be applicable to all government departments that may be users of the smart ID card data, and be extended to non-government users either in whole or in part.

59. The Administration considers that it is more appropriate to provide in a code of practice the conduct of privacy compliance audit rather than in the Bill, as it will allow more flexibility. The Administration has undertaken to draw up the code of practice in consultation with the Privacy Commissioner after the completion of the fourth Privacy Impact Assessment study which is planned to be conducted about three months after the System cut-over date. The Administration has informed members that the code of practice will set out the ground rules on the collection, use of and access to smart ID card data and the conduct of privacy compliance audit. The code of practice will be covered by section 12 of the PDPO, i.e. to be approved by the Privacy Commissioner.

60. Regarding the conduct of privacy compliance audit, the Administration has advised that it will make the necessary arrangements with the Privacy Commissioner for a privacy compliance audit to be conducted in 12 months after the implementation of the System, and thereafter on a need basis. The Administration will work out the detailed audit arrangements with the Privacy Commissioner in due course. The Administration

has also undertaken to provide a copy of the audit report to LegCo after the audit is completed. At the request of members, the Administration has agreed to state the undertakings in S for S's speech to be made during the Second Reading debate on the Bill.

61. As regards the arrangements between the Administration and the Privacy Commission, members note that details of the agreed arrangements will be incorporated in a memorandum of understanding to be drawn up between the parties. These will include the terms of reference, the duration, the provision of resources and other relevant matters pertinent to the conduct of the privacy compliance audit. Members also note that the code of practice, when approved by the Privacy Commissioner, will form the benchmark for which the compliance of the System will be assessed and audited.

Possession of a valid identity card and entitlement to right

62. In the context of the ID replacement exercise, S for S is empowered under section 7C of the ROP Ordinance to issue orders published in the Gazette to declare any ID cards not replaced during the span of the exercise to be invalid. Hon James TO has expressed concern whether the possession of an invalid ID card would affect a person's right of abode (ROA), including the acquiring, exercising or proof of ROA, and whether it would affect his right to medical, health, education and welfare services and that, in the case of retired civil servants, right to pension. He is particularly concerned that those overseas Hong Kong permanent residents who do not apply for the new smart ID card may lose their right.

63. The Administration has explained that the invalidation of an ID card does not have the effect of invalidating a person's ROA in Hong Kong. Under section 2A of the Immigration Ordinance (IO) (Cap. 115), a Hong Kong permanent resident enjoys ROA in Hong Kong. The conditions under which a permanent resident will lose his status which are unrelated to the possession of a valid or an valid ID card is specified in paragraph 7 of Schedule 1 to the IO. If a person has been issued with a permanent ID card but subsequently ceases to have that status, the possession of a valid permanent ID card will not give him the ROA. A returning resident who has ROA in Hong Kong but whose permanent ID card has been declared invalid can apply for replacement of his ID card within 30 days of his return to Hong Kong.

64. The Administration has further explained that possession of a permanent ID card is one of the proofs that a person had ROA in Hong Kong. It is not the only acceptable or conclusive evidence. There are other means in which a person's status as a permanent resident of Hong Kong can be established, for instance, by his holding of a valid travel document bearing a valid certificate of entitlement. Regarding the entitlement to other rights, the Administration has confirmed that the possession of an invalid identity card will not affect a person's right to medical, health, welfare services and education and that, in the case of retired civil servants, right to pension.

65. Upon Hon James TO's enquiry, the Administration has confirmed that a HKSAR permanent resident living overseas who does not apply for a new identity card during his return to Hong Kong will not be liable to an offence under the proposed section 7B(4) of the ROP Ordinance, if his period of stay in Hong Kong is less than 30 days.

66. At the request of members, the Administration has undertaken to launch publicity programmes through overseas Economic and Trade Offices to notify overseas HKSAR permanent residents of the ID card replacement exercise and the requirement to apply for a new ID card within 30 days of their return to Hong Kong.

Commencement date of the Bill and the System and identity card replacement exercise

67. Clause 1(2) of the Bill provides that the Bill shall come into force on a day to be appointed by S for S by notice published in the Gazette. Under Clause 3 of the Bill, the Commissioner of Registration may by notice published in the Gazette specify a date on which the System comes into operation. The Bill also provides that the notice on the date specified by the Commissioner of Registration is not subsidiary legislation. Members have queried why the notice on the specified date referred to in Clause 3 is not subsidiary legislation.

68. The Administration plans to fix a specified date for the commencement of the System one to two weeks after the Bill comes into operation. The Administration is of the view that maximum flexibility should be allowed to enable the Commissioner of Registration to take into account the progress of all implementation work and last-minute debugging as necessary, since the introduction of smart ID cards is an unprecedented event. If the System commencement date is to be specified by way of subsidiary legislation, the need to ensure that the requirement for the scrutiny period under the negative vetting procedure as provided under section 34 of Cap.1 is met could unnecessarily delay the issue of new ID cards even if the System becomes ready to commence operation. The Administration plans to start issuing new ID cards in late May 2003, and launch the replacement exercise, which will take place by phases, in late July 2003.

69. The Administration has proposed to introduce an amendment to bring the Bill, if passed, into force on 12 May 2003, given the tight implementation time-table. The Commissioner of Registration will then specify 26 May 2003 as the date for the System to commence operation for the introduction of smart ID card.

70. Hon James TO has expressed concern about the proposed amendment to appoint 12 May 2003 as the commencement date of the Bill. He has pointed out that as provided under the Bill, S for S will appoint a date on which the Bill will come into force by a notice published in the Gazette. The commencement notice is subsidiary legislation subject to the negative vetting procedure under section 34 of Cap.1. This means that LegCo will have the opportunity to amend the commencement date of the Bill, even if

the Bill is passed, if the System is not ready to operate. Hon James TO is worried that the System may not be ready to operate in May 2003 for the issuance of new ID cards. He feels strongly that LegCo should not be asked to agree to the commencement date of the Bill as proposed by the Administration without ascertaining the readiness of the System to commence operation.

71. The Administration has responded that the commencement date of the Bill refers to the date on which the legislative framework of the new smart ID card with multi-application capacity will come into force. After that date, the Commissioner of Registration will specify a date on which the System comes into operation for the introduction of smart ID cards. The commencement date of the Bill and the operational details for the System to commence operation are two different things. The Administration has pointed out that as required under section 7B of the ROP Ordinance, the commencement date for the new ID card replacement exercise will have to be set out in an order by S for S published in the Gazette. An order made under section 7B is subsidiary legislation subject to the negative vetting procedure under section 34 of Cap.1. This means that LegCo will still have the opportunity to amend the commencement date of the ID card replacement exercise.

72. To address Hon James TO's concern, the Administration has undertaken to brief the Panel on Security on the progress of the implementation of the System before the Commissioner of Registration specifies the date on which the System comes into operation. The Administration has also undertaken that if, on 8 March 2003, the demonstration on the prototype of the System indicates that the System is not ready, the Administration is willing to reconsider the commencement date of the Bill.

73. Despite the Administration's undertakings, Hon James TO still has reservations about the proposed amendment to Clause 1(2) to appoint 12 May 2003 as the commencement date of the Bill.

Committee Stage amendments

74. Apart from the Committee Stage amendments (CSAs) in paragraphs 12, 19, 23, 25, 26, 31, 32, 43, 48, 52, 54 and 69 above, the Administration has agreed to move other minor and technical amendments to the Bill. A copy of the draft CSAs is in **Appendix III**.

75. Hon James TO has indicated that he will move an amendment to delete the reference to “marital status” and “occupation” in new section 7(2A)(b)(i) (paragraph 40 above refers). Hon James TO has also indicated that he will consider moving an amendment to regulation 4(1)(b)(xii) (paragraph 45 above refers).

Follow-up actions of the Administration

76. The Administration has undertaken -

(a) to brief the relevant Panels before introducing subsidiary legislation providing for the incorporation of new non-ROP related applications in the chip of a smart ID card (paragraph 33 above refers);

(b) to draw up a code of practice in consultation with the Privacy Commissioner setting out the rules on the collection, use of and access to smart ID card data and the conduct of privacy compliance audit (paragraph 59 refers);

(c) to provide a copy of the privacy compliance audit report to LegCo after the audit is completed and to state such undertakings in S for S's speech to be made during the Second Reading debate on the Bill (paragraph 60 above refers);

(d) to launch publicity programmes through overseas Economic and Trade Offices to notify overseas HKSAR permanent residents of the ID card replacement exercise and the requirement to apply for a new card within 30 days of their return to Hong Kong (paragraph 66 above refers); and

(e) to brief the Panel on Security on the progress of the implementation of the System before the Commissioner of Registration specifies the date on which the System comes into operation (paragraph 72 above refers);

Recommendation

77. The Bills Committee supports that the Second Reading debate on the Bill be resumed at the Council meeting on 19 March 2003, subject to the CSAs to be moved by the Administration.

Advice Sought

78. Members are invited to note the deliberations of the Bills Committee and the recommendation of the Bills Committee in paragraphs 77 above.

Council Business Division 2
Legislative Council Secretariat
6 March 2003

Appendix I

Bills Committee on
Registration of Persons (Amendment) Bill 2001

Membership list

Chairman	Hon IP Kwok-him, JP
Members	Dr Hon David CHU Yu-lin, JP Hon Margaret NG Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP Hon James TO Kun-sun Hon SIN Chung-kai Hon Howard YOUNG, JP Hon LAU Kong-wah Hon Miriam LAU Kin-yee, JP Hon Emily LAU Wai-hing, JP Hon Henry WU King-cheong, BBS, JP Hon LEUNG Fu-wah, MH, JP Hon Audrey EU Yuet-mee, SC, JP
	(Total : 13 Members)
Clerk	Mrs Sharon TONG LEE Yin-ping
Legal Adviser	Mr Arthur CHEUNG
Date	10 July 2002

Appendix II

Bills Committee on Registration of Persons (Amendment) Bill 2001

A. Organisations and individuals which/who have given oral representations to the Bills Committee

1. Professor Graham GREENLEAF, University of Hong Kong
2. Office of the Privacy Commissioner for Personal Data
3. Hong Kong Institution of Engineers (Electronics and Information Technology Divisions)
4. Asia Pacific Smart Card Association
5. Professor K Y LAM
6. Professor Matthew LEE, City University of Hong Kong
7. Hong Kong Computer Society
8. Hong Kong Trade Development Council
9. Hong Kong Tourism Board

B. Organisations and individuals which/who have provided written submissions only

1. Mr YEUNG Wai-sing, member of Eastern District Council
2. Travel Industry Council of Hong Kong
3. Mr IP Shing-hing, member of Eastern District Council
4. Center for Information Security and Cryptography, University of Hong Kong
5. Hong Kong General Chamber of Commerce
6. Mr Andrew WATKINS
7. Hong Kong International Arbitration Centre

REGISTRATION OF PERSONS (AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

Clause	Amendment Proposed
Long title	By deleting everything after "re-enact" and before "to verify" and substituting – "regulations 23 and 24 of the Registration of Persons Regulations as provisions of that Ordinance, to dispense with the requirement to furnish certain particulars to a registration officer in an application for identity card, to confer a power".
1(2)	By deleting everything after "on" and substituting "12 May 2003.".
2(a)	By deleting "香港境內的人的" and substituting "其".
3(b)	By adding after the proposed definition of "fingerprint" - ""member of the Immigration Service" (入境事務隊成員) means the holder of a rank specified in Schedule 1 to the Immigration Service Ordinance (Cap. 331);".
4(a)	(a) In subparagraph (v), by deleting the proposed paragraph (haa).

(b) In subparagraph (vi), by adding ", viewing of information reproduced from data stored in chips embodied in identity cards" before "and".

(c) By adding –

"(vii) in paragraph (n), by adding "(whether in tangible or digital form)" after "records";

(viii) in paragraph (p), by adding "(including any fee prescribed for the purposes of section 9A)" before the full stop;".

(d) By adding –

"(aa) by adding –

"(2A) (a) Without prejudice to the generality of the powers conferred by subsection (1), regulations made under that subsection may provide for –

(i) prescribed information or particulars to be included in identity cards;

(ii) prescribed data to be stored in chips;

(iii) information or particulars other than prescribed information or particulars that

may be included in identity cards with the consent of applicants for or holders of identity cards;

(iv) data other than prescribed data that may be stored in chips with the consent of applicants for or holders of identity cards.

(b) For the purposes of paragraph (a), information, particulars or data are prescribed information, particulars or data, as the case may be, if they are or relate to –

(i) the name, address, place of birth, date of birth, sex, marital status or occupation of the relevant person or the

nationality which he claims;

(ii) any photograph or fingerprint of the relevant person;

(iii) any travel document held by the relevant person;

(iv) the right of abode or right to land of the relevant person;

(v) any condition of stay to which the relevant person is subject;

(vi) issue of identity card to the relevant person; or

(vii) the number of the identity card issued to the relevant person.”.”.

7 (a) By deleting the proposed section 9 and substituting –

"**9. Restriction on use of particulars and record kept on particulars**

Subject to section 10 –

(a) particulars furnished to a registration officer under this Ordinance may be used for and only for the purpose of enabling the Commissioner to issue identity cards and to keep records on such particulars;

(b) the records referred to in paragraph (a) may be used for and only for the following purposes –

(i) enabling verification of identity of individuals by public officers in discharge of their official duties;

(ii) enabling verification of identity of individuals for any other lawful purposes; or

(iii) such purposes as may be authorized, permitted or required by or under any Ordinance.".

(b) By adding after the proposed section 9 –

"**9A. Power to certify and furnish certified copies**

A registration officer may, upon receipt of the written and signed request from the person to whom an identity card relates (accompanied, if such person is living outside Hong Kong, with his photograph and a copy of his left or right thumb-print or such other fingerprint as the registration officer may require, both properly authenticated by a notary public) and payment of the fee prescribed in Schedule 2 to the Registration of Persons Regulations (Cap. 177 sub. leg.) –

(a) certify to the correctness or otherwise of such matters relating to such person contained in the written request which are within his knowledge; and

(b) furnish a certified copy of the photograph of such person or relevant document in his custody.".

(c) In the proposed section 10 –

(i) by deleting "the provisions of regulation 23 of the Registration of Persons Regulations (Cap. 177 sub. leg.)" and substituting "section 9A";

(ii) by deleting “which may –” and substituting “which –”.

(d) In the proposed section 10(b), by deleting everything after “copy of the” and substituting “records kept by the Commissioner on particulars furnished to a registration officer under this Ordinance,”.

(e) In the proposed section 10(c) –

(i) by adding “may” before “refer”;

(ii) by deleting “and”.

(f) In the proposed section 10(d) –

(i) by adding “may” before “contain”;

(ii) by deleting the full stop and substituting “; and”.

(g) In the proposed section 10, by adding –

“(e) must state the reason for giving such permission.”.

(h) In the proposed section 11, by deleting “or discloses, any” and substituting “, discloses, erases, cancels or alters any record kept by the Commissioner on”.

8 By deleting everything after “adding –” and substituting –

“““portable identity card reader” (便攜式身分證閱讀器) means an instrument which –

(a) can reproduce, from the data stored in the chip embodied in an identity card, any information specified in Schedule 1 but not other information;

(b) can scan a person’s fingerprint for the purposes of matching with the template

referred to in paragraph 1 of Schedule 1 and stored in the chip embodied in an identity card;

(c) cannot keep record of any fingerprint so scanned; and

(d) is of a type approved under regulation 11B;".".

9 By adding –

"(aa) by repealing subregulation (1)(b)(vii) and (ix);

(ab) by repealing subregulation (1)(b)(xi) and substituting –

"(xi) any –

(A) travel document bearing an endorsement to the effect that he is authorized under the Immigration Ordinance (Cap. 115) to remain in Hong Kong; or

(B) document issued under that Ordinance authorizing him to remain in Hong Kong,

held by him;";".

10 (a) In the proposed regulation 4A, by deleting everything before subregulation (2) and substituting –

"4A. Inclusion of certain particulars and data with consent

(1) Without prejudice to regulation 5(1)(a), the Commissioner or any person acting

pursuant to a permission given by the Commissioner may, for the purposes referred to in column 1 of Schedule 5 and with the consent of the applicant for an identity card or the person to whom an identity card relates -

(a) include in the identity card the information or particulars; and

(b) store in the chip embodied in the identity card the data,

referred to in column 2 of Schedule 5 which are not information, particulars or data specified in regulation 4(1) or Schedule 1.".

(b) In the proposed regulation 4A, by adding –

"(1A) If –

(a) the Commissioner or any person acting pursuant to a permission under subregulation (1) has stored any data in a chip embodied in an identity card under that subregulation with the consent of the person to whom the identity card relates; and

(b) the person to whom the identity card relates presents the identity card to the Commissioner or the person acting pursuant to such permission, as the case may be, and requests the removal of such data from the chip,

the Commissioner or the person acting pursuant to such permission, as the case may be, shall as soon as practicable remove the data from the chip.".

13 By deleting the clause and substituting –

"**13. Regulations added**

The following are added –

"**11A. Power to verify identity by fingerprint match**

(1) If –

(a) a person produces his identity card to a police officer or a member of the Immigration Service in compliance with a requirement made under any ordinance; and

(b) the officer or member has reason to believe that the identity card is not issued under the Ordinance to the person,

the officer or member may, by using a portable identify card reader –

(c) view the information specified in Schedule 1 reproduced from the data stored in the chip in the identity card;

(d) scan the person's thumb-print or other fingerprint; and

(e) match the same with the template referred to in paragraph 1 of

Schedule 1 and stored in the chip embodied in an identity card.

(2) Any person who, without reasonable excuse, refuses to allow a police officer or a member of the Immigration Service to view any information or scan any fingerprint under subregulation (1) shall be guilty of an offence and shall be liable to a fine at level 2.

11B. Approval of portable identity card reader

The Commissioner may by notice published in the Gazette approve types of instruments as portable identity card reader for the purpose of regulation 11A.".

14(a) (a) In the proposed regulation 12(1A) –

(i) by adding "or reasonable excuse" after "authority";

(ii) by adding -

"(aa) gains access to any data stored in a chip;";

(iii) in paragraph (b), by deleting "adds to, erases, cancels or alters" and substituting "erases, cancels, alters or adds to".

(b) By adding after the proposed regulation 12(1A) –

"(1B) For the purposes of subregulation (1A), a person to whom an identity card relates has lawful authority to gain access to –

(a) data specified in Schedule 1 which are stored in the chip embodied in the identity card if he gains such access by using facilities provided by or with the approval of the Government; or

(b) data specified in Schedule 5 which are stored in the chip embodied in the identity card if he gains such access only for the purpose for which the data are stored.".

17 By deleting everything after "is" and substituting "repealed.".

19 By deleting everything after "amended" and substituting –

"by adding –

"(3) An identity card that is valid immediately prior to the specified date shall remain so until it ceases to be valid in accordance with the Ordinance, and the regulations, as amended by the Registration of Persons (Amendment) Ordinance 2003 (of 2003).

(4) An identity card for which an application is made before the specified date may be issued as if the Registration of Persons (Amendment) Ordinance 2003 (of 2003) had not been enacted and –

(a) may be collected by the applicant, or sent to him by the registration officer, within 70 days of the specified date; or

(b) if not so collected or delivered, may be destroyed, and the applicant shall thereupon be deemed not to have applied for the identity card.”.”.

20 (a) In paragraph (a), by repealing “5 & 11A” and substituting “2(1), 4A, 5, 11A & 12(1B)”.

(b) In paragraph (b), by deleting subparagraph (ii) and substituting –

“(ii) by repealing subparagraph (g) and substituting –

“(g) such data, symbols, letters or numbers representing prescribed information, particulars or data within the meaning of section 7(2A)(b) of the Ordinance as the Commissioner may determine; and”;”.

New By adding –

“**20A. Fees**

Schedule 2 is amended –

(a) within the square brackets, by repealing “regs. 5, 13, 14, 23” and substituting “s. 9A; regs. 5, 13, 14”;

(b) in item 8, by repealing “regulation 23” and substituting “section 9A of the Ordinance”.”.

21 By deleting the proposed Schedule 5 and substituting -

“SCHEDULE 5 [regs. 4A & 12(1B)]

PURPOSES, INFORMATION, PARTICULARS AND DATA REFERRED TO IN REGULATION 4A

	Column 1 Purposes	Column 2 Information, Particulars and Data
1.	Storage of a certificate defined in section 2(1) of the Electronic Transactions Ordinance (Cap. 553) issued by the Postmaster General and recognized under section 22 of that Ordinance.	A certificate defined in section 2(1) of the Electronic Transactions Ordinance (Cap. 553) issued by the Postmaster General and recognized under section 22 of that Ordinance.”.

23(b) By adding –

“regulation 11A(2)	obstructing public officers in verification of identity”

before –

“regulation 12(1)	making alteration to identity card or documents”.