

立法會
Legislative Council

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Panel on Financial Affairs

**Minutes of special meeting
held on Tuesday, 27 July 2010 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon KAM Nai-wai, MH
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP

Members attending: Hon LEE Cheuk-yan
Hon LAU Kong-wah, JP
Hon TAM Yiu-chung, GBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat

Members absent : Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Abraham SHEK Lai-him, SBS, JP
Hon Vincent FANG kang, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

**Public officers
attending**

: Agenda Item I

Miss Natalie LI
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) (5)

Mr Arthur YUEN, JP
Deputy Chief Executive
Hong Kong Monetary Authority

Mr Nelson MAN
Executive Director, Banking Supervision Department
Hong Kong Monetary Authority

Mr Arthur HO, JP
Deputy Secretary for
Constitutional and Mainland Affairs (1)

**Attendance by
invitation**

: Agenda Item I

Mr Roderick WOO, JP
Privacy Commissioner for Personal Data
Office of the Privacy Commissioner for Personal Data, Hong
Kong

Ms Prudence CHAN
Chief Executive Officer
Octopus Cards Limited

Mr Philip HO
Consultant
Octopus Cards Limited

Ms Cora CHEUNG
Head of Operations
Octopus Cards Limited

Mr Leonard TURK
Legal Director and Secretary
MTR Corporation Limited

Ms May WONG
Deputy General Manager-Corporate Relations
MTR Corporation Limited

Clerk in attendance: Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Mr Noel SUNG
Senior Council Secretary (1)4

Ms Haley CHEUNG
Legislative Assistant (1)8

Action

I Regulation of issuers of multi-purpose stored value cards and related personal data protection issues

(LC Paper No. CB(1)2637/09-10(01) — Information paper provided by the Administration

LC Paper No. CB(1)2637/09-10(02) — Press release of Hong Kong Monetary Authority issued on 22 July 2010

LC Paper No. CB(1)2637/09-10(03) — Press release of Hong Kong Monetary Authority issued on 19 July 2010

LC Paper No. CB(1)2637/09-10(04) — Press release of Octopus Company Limited issued on 20 July 2010

LC Paper No. CB(1)2637/09-10(05) — Letter from Hon WONG Kwok-hing dated 21 July 2010 (Chinese version only)

LC Paper No. CB(1)2621/09-10(01) — Letter from Hon James TO Kun-sun dated 20 July 2010 (Chinese version only)

The Chairman welcomed the Privacy Commissioner for Personal Data (PCPD) and representatives of Octopus Cards Limited (OCL) and the MTR Corporation Limited (MTRCL) to the meeting, and reminded them that their views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap 382).

Briefing by Hong Kong Monetary Authority and the Administration

2. At the invitation of the Chairman, the Deputy Chief Executive, Hong Kong Monetary Authority (DCE/HKMA) briefed the meeting that all Authorized Institutions (AIs) regulated by HKMA, including the OCL, were required to abide by the legislation, and the relevant codes and regulations relating to protection of personal data privacy. All AIs were also required to put in place an effective internal control mechanism to ensure its operations complied with the relevant privacy laws and regulations, and identify any possibilities of breach of such statutory requirements. HKMA would work closely with the enforcement agencies concerned on investigation of allegations of breaches of privacy laws and/or regulations by AIs. As far as the protection of customers' personal data was concerned, AIs should at all times comply with the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) and the related codes and guidelines issued by the PCPD which gave practical guidance on compliance with the PDPO. HKMA had taken steps, e.g. conducting on-site examinations, to ensure that AIs complied with the statutory requirements on protection of customers' privacy. In the past few years, based on overseas experience, the HKMA focused its supervisory checks on ensuring that customers' personal data would not be leaked due to inadequate computer security measures, or misused by authorized or unauthorized staff since this was a common problem faced by other markets regarding the protection of personal data. HKMA was aware that PCPD was investigating into the privacy issues related to OCL, and had asked OCL to provide full co-operation to PCPD in the investigation. On 22 July 2010, the Monetary Authority (MA) issued a notice to OCL under section 59(2) of the Banking Ordinance (Cap. 155) (BO), requiring OCL to submit to the MA a report prepared by external auditors to be appointed by OCL and approved by the MA. The purpose of the report was to establish whether OCL had shared any Octopus cardholders' personal data to third parties and, if so, ascertain what due diligence was conducted by OCL to ensure that the use of such personal data was in compliance with the applicable legislation, codes and regulations. The auditors were expected to submit their report to the MA within 10 weeks after the commencement of the review. HKMA would consider making public the report. DCE/HKMA added that HKMA had commenced a review of the personal data protection procedures of all AIs, and so far found that the large retail AIs had not made any arrangement to transfer their customers' personal data to unconnected third parties. HKMA would take appropriate actions arising from any personal data protection issues identified during the review.

3. The Deputy Secretary for Constitutional and Mainland Affairs (1) (DS(CMA)1) said that the PDPO laid down the statutory requirements for protection of privacy in relation to personal data, and the Government was concerned about the incident of Octopus companies sharing customers' personal data with third parties. The Government paid close attention to the development of the investigation being conducted by PCPD on the incident.

Briefing by PCPD

4. The Chairman invited PCPD to brief the meeting on the actions taken by his office relating to the incident. PCPD said that as he would soon leave his post, and this would be the last time he attended a Legislative Council meeting as PCPD, he would like to thank Members for their support in the past five years. PCPD said that the incident had revealed that personal data were a valuable commodity in the market, as the Octopus Holdings Limited (OHL) was able to amass \$44 million from selling the Octopus cardholders' personal data. The use and transfer of personal data by the companies concerned had aroused wide public concern. PCPD remarked that it was important that the data subject was able to control and be alerted of the transfer of his personal data, and an effective mechanism should be put in place to control such transfers among companies. PCPD said that representatives of OHL/Octopus Rewards Limited (ORL) and Cigna had attended the open hearing on investigation of the collection and use of members' personal data under the "Octopus Rewards" programme on the previous day and responded to his questions. PCPD pointed out that he noted during the hearing that sometimes a company might arrange the staff of its business partner to be seconded to the company in order to use the customers' personal data of the company to sell the products of the business partner. PCPD said that the customers of the company might be misled to believe that the staff from the business partner were representing the company. PCPD stressed that companies should have social responsibility to properly protect the personal data of their customers. PCPD presented a sample registration form for the "Octopus Rewards" programme, and pointed out that the size of the words on the form regarding the use of the customers' personal data was so small that they could hardly be legible. PCPD said that usually the terms and conditions on the use of customers' personal data were written in extremely small fonts on companies' application/registration forms, and customers would have great difficulty reading them among many other terms and conditions.

5. PCPD further said that recently he had investigated complaints about the misuse of personal data by banks and found that two banks had contravened the PDPO. The two banks had appealed to the Administrative Appeals Board and hence he could not reveal the names of the banks. PCPD said that one of the banks had admitted that it had transferred the personal data of some 200 000 customers to another company. He had submitted a report to the Government in 2007 making more than 50 recommendations for amendment of the PDPO, with a view to enhancing the protection of privacy, in view of technological development which led to fast and wide dissemination of personal data. He hoped the Government would review his recommendations and submit relevant legislative proposals to Legislative Council as soon as possible. PCPD remarked that while his office had very often been criticized for being a "toothless tiger", the lack of enforcement powers was not a fault of his office, but a fault of the legislature.

Briefing by OCL

6. Ms Prudence CHAN, Chief Executive Officer of OCL, briefed members, with the aid of a Powerpoint presentation, on the background of "Octopus Rewards" programme as well as arrangements of Octopus companies in collecting and protecting customers' personal data.

(Post-meeting Note: The notes of the Powerpoint presentation (LC Paper No. CB(1)2728/09-10(01)) were issued to members vide a Lotus Notes e-mail after the meeting.)

7. At the request of Mr James TO, Ms Prudence CHAN agreed to provide the Panel with copies of the agreements signed between ORL and its business partners on sharing of Octopus cardholders' personal data.

(Post-meeting note: Members were informed vide LC Paper No. CB(1)2720/09-10 on 10 August 2010 that OHL needed more time to prepare the information requested by the Panel. OHL's written response was circulated to members vide LC Paper No. CB(1)2740/09-10 on 13 August 2010; and as the attachments were voluminous and in order to save paper, members were given copies of representative agreements between OHL/its subsidiaries and their business partners on sharing of cardholders' personal data and were advised vide LC Paper No. CB(1)2751/09-10 on 19 August 2010 that the full set of documents would be forwarded to members on request.)

Discussion

8. Mr LEE Cheuk-yan remarked that the whole incident involved the sale of Octopus cardholders' personal data for profits and it seemed that OHL would use every means to make profits. Mr LEE opined that Octopus companies had ignored the need to protect customers' personal data, to the point that it allowed staff of its business partners to act as their staff in selling insurance products. The crux of the issue was a matter of morality of the parties involved. Mr LEE doubted whether the total profits gained by Octopus companies through selling customers' personal data was just \$44 million. Given that the Government was a major shareholder of the MTRCL, which was a major shareholder of OHL, Mr LEE opined that the Government should be held responsible for the misuse of customers' personal data by Octopus companies. Mr LEE expressed disappointment that the Government was represented only by a Principal Assistant Secretary and the MTRCL only sent its Legal Director and Deputy General Manager (Corporate Relations) to attend the meeting. Mr LEE was of the view that the Government, rather than the PCPD, should conduct a comprehensive investigation into the incident, and publish its findings and proposed course of actions. Mr LEE asked whether the Government/MTRCL would conduct an investigation into the incident.

9. The Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) (PAS(FS)) responded that since the incident involved issues relating to the Octopus Group's compliance with the PDPO and the relevant guidelines, PCPD took up the investigation into the incident. She added that given the considerable concern expressed by the community about the incident, it was believed that MTRCL would take appropriate actions to follow up the case with OHL.

10. Mr Leonard TURK, Legal Director and Secretary of MTRCL said that MTRCL was aware of the public concern over the incident. Shareholders of OHL were assured by the company that its subsidiaries had complied with the PDPO and the related codes and regulations in the transfer of customers' personal data to their business partners. Given the growing public concern about the use of personal data by banks, insurance companies and commercial firms, regardless of compliance with the PDPO and related codes and regulations, the directors of OHL had to consider ways to address the public concern on the issue. An independent auditor had been appointed to investigate into the incident, and pending the report of the auditor, the directors of OHL would consider taking appropriate actions to address the public concern.

11. Mr Andrew LEUNG asked, given that PCPD was aware that Octopus companies possessed a large quantity of Octopus cardholders' personal data, what actions had been taken by PCPD over the years in advising Octopus companies on the proper use of the personal data.

12. PCPD responded that his office was only provided with limited resources to protect the personal data privacy of over seven million citizens in Hong Kong. For instance, the Compliance and Policy Division only had seven officers to look into the privacy protection arrangements of the public and private sectors, apart from investigations arising from complaints. In recent years, the Office of PCPD had reviewed the privacy protection arrangements in the Hospital Authority, the Independent Police Complaints Council and the Immigration Department which possessed large quantities of highly sensitive data. PCPD said that his office had also investigated into complaints of breaches of the PDPO by commercial companies such as banks, although in some cases, the details of the investigations could not be made public. PCPD stressed that he had never evaded his responsibility of protecting the personal data privacy of Hong Kong people, but given the constraints in resources, he had to set priorities in his work.

13. Mr LEE Wing-tat asked, given that Octopus companies had been selling Octopus cardholders' personal data to their business partners for a long time, and the sharing of customers' personal data among AIs was common, whether HKMA had taken any actions in this respect.

14. DCE/HKMA responded that HKMA had issued guidelines to AIs regarding protection of customers' personal data and had carried out on-site examinations of AIs on relevant arrangements. In the past, HKMA had put priority on prevention of

leakage of customers' information caused by computer hacking and/or access by unauthorized users given that other markets had faced significant data privacy breaches in these areas. In view of recent events and public concern regarding the sharing of customers' personal data among business partners, HKMA would review its priorities in supervising the handling of customers' personal data by AIs.

15. Mr James TO expressed grave concern that, with due respect to the public officers present, the Administration was not represented by an officer at the Secretary of Bureau or Permanent Secretary level at the meeting, notwithstanding the gravity of the incident and the wide public concern on the protection of 2.4 million Octopus cardholders' privacy, and the need to review measures to enhance the relevant legislation, policies and regulatory systems on the collection and use of personal data. Noting that all promotion and marketing programmes had been endorsed by the OHL Board of Directors, Mr TO asked whether the OHL Board of Directors was aware of the details of the business plans, including the sharing of Octopus cardholders' personal data with third parties, the profits to be gained, and the secondment of third party staff to Octopus companies for promotion activities. Mr Paul CHAN shared Mr TO's concern and asked whether the Boards of Directors of MTRCL and OHL were aware that Octopus companies had been selling Octopus cardholders' personal data to third parties for profit.

16. Ms Prudence CHAN responded that only the Board of Directors of OHL, and not the Directors of the MTRCL Board, had been briefed on all promotion and marketing programmes, but the detailed arrangements of the business programmes were worked out by the executive staff of the companies.

17. Mr James TO asked why Ms Prudence CHAN had stated publicly earlier on that Octopus companies had not shared the Octopus cardholders' personal data with other companies.

18. Ms Prudence CHAN responded that she agreed that the whole incident had not been appropriately handled. Over the past two weeks, the management of OHL had been verifying relevant information, and now the management had a more comprehensive view of the incident. Ms Prudence CHAN said that on behalf of the company, she would like to apologize to the public for the concerns and feedback arising from the incident.

19. Ms Emily LAU expressed disappointment that no Principal Officials or directors of OHL attended the meeting to answer Members' queries, and the HKMA was incompetent in regulating AIs in the sale of customers' personal data. Ms LAU opined that the image of "Octopus" had been tarnished in the incident. Ms LAU asked whether the OHL Board of Directors was aware that Ms Prudence CHAN had given misleading information to the public in the incident.

20. Ms Prudence CHAN responded that the public statements she had made on the incident two weeks ago were based on the information available at the time. The information now available was much more comprehensive than two weeks before.

She admitted that some of the information given to the public two weeks ago was at variance with the facts. The Board of Directors of OHL had asked the management to carefully check the records and disclose the relevant information to the public.

21. Ms Emily LAU reiterated that she was disappointed that the OHL Board of Directors was not represented at the meeting to answer Members' queries. Given the grave concern of the public on protection of cardholders' privacy, HKMA and the Constitutional and Mainland Affairs Bureau should also be held responsible for the sale of customers' personal data by Octopus companies. Ms LAU enquired what immediate measures would be taken to protect the personal data of Octopus cardholders before OCL submitted its audit review report to HKMA ten weeks later.

22. Ms Prudence CHAN responded that ORL had ceased sharing Octopus cardholders' personal data with its business partners for promotion/marketing purposes, in order to regain public confidence in the corporation.

23. Noting that ORL and its related companies had ceased sharing the Octopus cardholders' personal data with third parties, Mr James TO asked whether the companies concerned would still allow staff of business partners to be seconded to the companies and undertake promotion activities in the name of the companies.

24. In response, Ms Prudence CHAN said that staff of business partners would not be allowed to be seconded to ORL to undertake promotion or marketing activities. However, Octopus companies might engage third-party service provider to handle the customer hotline and the service provider staff would need access to the customers' information in order to deal with enquiries or complaints of the customers.

25. In reply to Mr TAM Yiu-chung's enquiry, Ms Prudence CHAN said that since 2002, Octopus companies had shared the personal data of Octopus cardholders with six business partners for promotion/marketing purposes. In the past four and a half years, the personal data of 1.97 million cardholders had been provided to the companies' business partners, and on average, each cardholder had been contacted 1.7 times during the period. Ms Prudence CHAN said that the total number of cardholders holding Personalised Octopus cards, having joined the "Octopus Rewards" programme and having made Automatic Add Value Service arrangement was about four million.

26. In reply to Mr TAM Yiu-chung's enquiry about the criteria used by Octopus companies in selecting business partners in sharing of the cardholders' personal data, and measures to ensure the business partners observing the data protection requirements, Ms Prudence CHAN said that Octopus companies had established a system based on international practice in selecting business partners for sharing of cardholders' data, including the risk assessment on operation, customer service, technological standard and composition of the directors of the companies. Ms Prudence CHAN said that the clauses of the agreements included confidentiality requirements for protection of the cardholders' privacy, arrangements for secure storage and delivery of the personal data, deletion/destruction and/or return of the

personal data. The corporation also conducted on-site audit to ensure all the data protection arrangements had been followed. The agreements had been vetted by both corporations' legal advisers to ensure that they were law-abiding, including compliance with the PDPO.

27. Mr TAM Yiu-chung asked whether OHL had considered any form of compensation to Octopus cardholders for the sharing of the cardholders' personal data with business partners for profit purpose.

28. Ms Prudence CHAN said that OHL would consider the views of Members in reviewing the procedures for sharing cardholders' personal data with its partners.

29. Mr CHAN Kin-por said that while he appreciated the concern of Members and the public regarding Octopus companies' handling of Octopus cardholders' personal data, the practice of sharing customers' data for promotional and marketing activities was very common in the market, notably among insurance and credit card companies. He considered that such activities were normal commercial practice. Mr CHAN opined that the crux of the issue was whether Octopus companies' handling of Octopus cardholders' personal data had violated the terms and conditions agreed with the cardholders.

30. In response, Ms Prudence CHAN said that information available showed that Octopus companies had not violated the provisions under the PDPO in handling cardholders' personal data, and the sharing of cardholders' personal data with their business partners had been done in accordance with the terms and conditions agreed with the cardholders.

31. Mr CHAN Kin-por asked what remedial action would be taken by Octopus companies regarding PCPD's comment that the words of the terms and conditions regarding personal data privacy on the application/registration forms for Octopus services were too small, and the data to be collected should not be more than required for the relevant service. Mr CHAN said that Octopus companies should review the amount of personal data collected from cardholders, e.g. whether the full number of the cardholder's Hong Kong Identity Card (HKID) was required. He also opined that Octopus companies should put in place a mechanism to guard against misuse of customers' personal data by their staff, and to compensate the cardholders concerned if their personal data had been misused. Mr CHAN also enquired whether there had been complaints about the misuse of cardholders' personal data, and the procedures for handling such complaints.

32. Ms Prudence CHAN responded that ORL was reviewing the application/registration forms with a view to making the terms and conditions more legible. OCL had to collect the HKID number of cardholders to verify the identity of the applicants as several applicants might have the same name. The purpose of collecting the personal data was to facilitate verification of identity especially in case of loss/replacement of cards. OCL would consider other measures for verification of the cardholders' identity such as verification based on the supplementary information

provided by the applicants/cardholders other than the HKID number. Ms Prudence CHAN added that only authorized staff members of Octopus companies were allowed access to the cardholders' personal data, which were stored in the computer system with safeguards against reproduction, downloading or emailing of the information. Independent experts had been engaged to advise Octopus companies on the security arrangements for storage and handling of personal data. Ms Prudence CHAN said that every year Octopus companies received about several scores of complaints which had all been settled when the cardholders were assured that they would be opted out from receiving marketing and promotional materials, and their personal data would no longer be passed to ORL's business partners for promotional and marketing purpose.

33. Mr LAU Kong-wah remarked that the public felt being cheated by Octopus companies in the incident, and it seemed that Ms Prudence CHAN still had something to hide in disclosing the details of the incident to the public. Mr LAU opined that it was unbelievable that Ms Prudence CHAN was unaware of the fact that Octopus companies had been sharing the cardholders' personal data with their business partners when she told the press earlier that Octopus companies had not done so. Mr LAU said that Ms Prudence CHAN was asked by the press only whether Octopus companies had provided the cardholders' personal data to their business partners, and she should know the answer without having to verify any information as she had been reporting to the OHL Board of Directors on the matter. Mr LAU opined that Ms Prudence CHAN, and even the Octopus Group, were facing a credibility crisis. Mr LAU asked why Ms Prudence CHAN had to tell a lie in answering questions from the press, and whether the Board of Directors had authorized her to do so. Mr LAU said that a Member had already suggested invoking the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to oblige relevant parties to provide information on the incident, and any attempt by Ms Prudence CHAN to evade Members' questions would not help the situation.

34. Ms Prudence CHAN responded that in view that the Octopus companies would be held responsible for any information disclosed which varied with the facts, the companies had taken time during the recent incident to verify the information of individual projects over the past years for disclosure. Ms Prudence CHAN reiterated that the lesson learned in the incident was that the Octopus Group needed to review its internal arrangements for retrieval of information. Ms Prudence CHAN stressed that when replying to the press's enquiry, Octopus companies had adopted a narrow definition of the sale of cardholders' personal data, which was that the personal data were sold to other companies which might use the data freely without any contractual restrictions. The definition was found unsuitable from hindsight or from the public's point of view.

35. Mr LAU Kong-wah said that he observed that Mr Philip HO, Consultant of OCL, had been sending notes to Ms Prudence CHAN when the latter replied to Members' questions. Dr LAM Tai-fai shared Mr LAU's observation and said that he was appalled when he saw that Ms Prudence CHAN was telling a lie in responding to questions from the press in early July, and later Ms Prudence CHAN apologized to the public for the wrong information given. All Octopus cardholders were worried that their personal data would fall into the wrong hands and misused. Since Ms Prudence CHAN's credibility was in doubt, Dr LAM asked Mr Philip HO whether Ms Prudence CHAN's replies to Members' questions represented the views and stance of the Octopus Group. Dr LAM asked whether the Octopus Group would refund the profits made through selling the cardholders' personal data to the cardholders concerned, apart from apologizing to the public.

36. Mr Philip HO responded that OCL staff attending the meeting, including Ms Prudence CHAN, were representing OCL and its related companies in responding to Members' questions. Mr Philip HO said that Ms Prudence CHAN had admitted that some of her comments given to the press were at variance with the facts. Ms Prudence CHAN reiterated that ORL had already stopped providing Octopus cardholders' personal data to third parties for promotional and marketing purposes. OHL was undertaking a review of the personal data handling arrangements and all relevant information would be disclosed to the public in the report of the review. Ms Prudence CHAN stressed that despite the income of \$44 million from the sharing of cardholders' personal data with the business partners, ORL and Octopus Connect Limited (OCT) had suffered a loss of \$33 million in the past years.

37. Mr LEE Wing-tat remarked that while the Octopus Card was an extremely successful stored value card and had a high reputation in the world, Ms Prudence CHAN had provided misleading and even false information regarding the transfer of cardholders' personal data to business partners in recent weeks. Mr LEE opined that Ms Prudence CHAN had lied in response to questions from the press two weeks before, and she should not give any comments if she did not possess the relevant information. Mr LEE queried why Ms Prudence CHAN did not resign in order to regain public confidence in the Octopus Group.

38. Ms Prudence CHAN admitted that the handling of the whole incident had not been satisfactory, but time had been spent on verifying all the information for disclosure to the public. The information now available was more comprehensive, and the information provided to the public two weeks ago might be less than accurate. On behalf of the corporation, she would like to apologize to the public on the incident. The immediate attention of the corporation was to assist the PCPD in the investigation of the incident, and to conduct a comprehensive review of the arrangements for handling Octopus cardholders' personal data as directed by HKMA and under the supervision of the special committee set up by the OHL Board of Directors.

39. The Chairman sought the view of PCPD on the practice of companies sharing their customers' personal data with business partners for promotional and marketing activities. The Chairman further asked whether Octopus companies, in providing the cardholders' personal data to their business partners, had contravened the PDPO.

40. PCPD responded that in his hearing of the "Octopus Rewards" case, he had explained to the parties concerned that his prime concern was whether the companies had complied with the PDPO in handling the personal data of their customers, and he had no objection in principle to "point to point" sale activities. PCPD said that whether the sharing of customers' personal data among companies was legal depended on whether the data subject concerned was informed of the arrangement when the personal data were collected by the companies. As a basic principle of privacy protection, the data subject providing his personal data should know the arrangements of the company concerned for handling his data, and whether or which third parties would have access to his personal data.

41. In response to the Chairman's enquiry, PCPD said that since 2006 he had received 21 complaints regarding OHL/its subsidiaries transferring the Octopus cardholders' personal data to other companies. No prima facie evidence could be established in some cases, whereas some cases had been settled through arbitration by his office. PCPD said that before he left his post on 31 July 2010, he would make public a preliminary report on the investigation of the "Octopus Rewards" case. PCPD stressed that given the limited resources of his office, he had to set priorities in dealing with complaints about breaches of PDPO.

42. The Chairman requested that OHL should provide the Panel with details of the information submitted to the respective Boards of Directors of OHL/its subsidiaries and the MTRCL on provision of Octopus cardholders' personal data to business partners.

(Post-meeting Note: Members were informed vide LC Paper No. CB(1)2720/09-10 on 10 August 2010 that OHL needed more time to prepare the information requested by the Panel. OHL's written response was circulated to members vide LC Paper NO. CB(1)2740/09-10 on 13 August 2010. Members were first informed that they might read the confidential Board of Directors papers at the law firm Bird & Bird, and later were informed that those papers might be read in the Legislative Council Building vide LC Papers Nos. CB(1)2751 and 2763/09-10 on 19 and 20 August 2010 respectively.)

43. Ms Starry LEE believed that the "Octopus" incident was only the tip of an iceberg. As pointed out by Mr CHAN Kin-por, the sharing of customers' personal data among business partners was common in the market and PCPD had revealed that two banks had been found to have transferred their customers' personal data to third parties. Given that companies of certain sectors possessed large volumes of customers' personal data, such as the banking and insurance sectors, Ms LEE enquired whether HKMA would revise the personal data privacy protection

guidelines for regulating the relevant sectors in handling customers' personal data, such as specifying the font size of the terms and conditions regarding the use of customers' personal data, and the requirement of acquiring the specific consent of the customers in providing their personal data to third parties.

44. PCPD clarified that as a result of his investigation, two banks had been found violating the PDPO in handling the personal data of account holders. In one case, a bank account holder was led to believe that a staff of an insurance company was representing the relevant bank in selling insurance products to him. Usually the application form for opening a new bank account would include a provision that the applicant agreed to provide his personal data to the business partners of the bank concerned. PCPD said that the two banks concerned had appealed to the Administrative Appeals Board for a judgment.

45. DCE/HKMA responded that in the absence of the full details of the bank cases handled by PCPD, he would not comment on individual cases. DCE/HKMA said that in the light of the public concern on the "Octopus" incident, HKMA was reviewing the arrangements of AIs in handling customers' personal data, and preliminary findings showed that the major banks had no arrangement of sharing their customers' data with unconnected third parties. HKMA would take into account the "Octopus" case and PCPD's investigation results in reviewing the guidelines for AIs regarding the handling of customers' personal data.

Destruction or return of Octopus cardholders' data

46. Mr WONG Ting-kwong remarked that while the Octopus card was a very successful commercial product, the company had acted in an immoral and dishonest manner in dealing with cardholders' personal data. Mr WONG enquired whether the profits made by selling the cardholders' personal data had been indicated in the relevant subsidiary companies' audited reports, and why the relevant Boards of Directors did not query the sale of cardholders' personal data for profit.

47. Ms Prudence CHAN responded that about 31% of the audited income of \$140 million of ORL and OCT since 2006 came from provision of cardholders' personal data to business partners, which amounted to about \$44 million. The two subsidiary companies, however, recorded a loss of about \$33 million during the same period. Ms Prudence CHAN pointed out that the mode of promotion/marketing operation was very common in the market. In hindsight, the way that the personal data had been handled could be improved.

48. Mr WONG Ting-kwong enquired about the arrangement for recovering the personal data provided to OHL/its subsidiaries' business partners. The Chairman shared Mr WONG's concern and enquired how OHL would ensure that the relevant personal data would be destroyed by the business partners or returned to OHL.

49. Ms Prudence CHAN responded that according to the agreement between ORL and their business partners on early termination of the data sharing contracts,

the business partners were to destroy or return the cardholders' personal data to ORL. The destruction and/or return of the personal data would be supervised and witnessed by a third party independent auditor.

"Opt-out" arrangement

50. Mr Andrew LEUNG opined that instead of asking Octopus cardholders to opt out from the arrangement for Octopus companies to transfer their personal data to their business partners, Octopus companies should stop immediately from selling the cardholders' personal data to other companies until and unless the cardholders concerned had "opted in" for the transfer of personal data. As such, unless an Octopus cardholder had specifically indicated his permission for a Octopus company to transfer his personal data to another company, the Octopus company should refrain from transferring these data.

51. PCPD said that he had suggested OHL to adopt the "opt in" arrangement in securing cardholders' consent to provide their personal data to third parties. PCPD pointed out that if the "opt out" arrangement needed three days to take effect, the personal data might have already been disseminated to many third parties within three days, given the modern information technology available. PCPD pointed out that during his hearing of the case, he noted that the agreements signed between Octopus companies and their business partners did not include provisions forbidding the latter from disseminating the cardholders' personal data to overseas companies.

52. Ms Prudence CHAN responded that ORL had already ceased providing Octopus cardholders' personal data to third parties for marketing purposes. All related marketing activities had stopped. So far ORL had not provided any cardholders' personal data to any overseas companies.

53. Mr KAM Nai-wai enquired about the procedures for cardholders to opt out from allowing OHL to transfer their personal data to third parties.

54. Ms Prudence CHAN responded that ORL had proactively reminded the 2.4 million Octopus Rewards members that they might write to the company or call the company's hotline if they wanted to opt out from allowing ORL to provide their personal data to its business partners. Arrangement was also being made to enable Octopus Rewards members to opt out from provision of their personal data to ORL's business partners by indicating their refusal on the relevant "Octopus Rewards" programme website.

55. In response to the Chairman's comment that the "opt out" arrangement was too cumbersome, and his enquiry why a cardholder withdrawing from the "Octopus Rewards" programme had to return his Octopus card to ORL, Ms Prudence CHAN responded that a cardholder might inform ORL in writing, through the telephone hotline or the Internet that he disagreed to allow ORL sharing his personal data with its business partners. A cardholder withdrawing from the "Octopus Rewards"

programme had to return the relevant Octopus card to ORL for removing the relevant record from the Octopus card and the back-end system.

56. In response to the Chairman's enquiry, PCPD said that in obtaining a customer's consent for transferring his personal data to third parties, a company should specify the third parties concerned, and the purpose of the use of the personal data by the third parties. Otherwise, the spirit of the PDPO would be violated.

Revision of terms and conditions for Octopus card services

57. Mr KAM Nai-wai enquired whether OHL would revise the terms and conditions regarding "personal data" in the agreements on Octopus card and related services, to the effect that Octopus companies would be prohibited from providing the cardholders' personal data to overseas companies.

58. Ms Prudence CHAN responded that the terms and conditions, together with the application forms, for acquisition of Octopus card and related services would be amended with a view to restricting the use of the cardholders' personal data. Ms Prudence CHAN undertook to provide details of the revised terms and conditions, and the revised application forms.

(Post-meeting Note: OHL's written response and copies of the current terms and conditions, together with the current application forms, were circulated to members vide LC Papers Nos. CB(1)2740 and 2751/09-10 on 13 and 19 August 2010 respectively.)

Review of privacy protection arrangements

59. Mr Paul CHAN asked whether the report of the special committee set up by the OHL Board of Directors to review the privacy protection arrangements of Octopus companies would be made public. Mr CHAN opined that in addition to reviewing the privacy protection arrangements, the special committee should, in order to address the public's concern on the incident, also look into the events leading to the sale of Octopus cardholders' personal data to third parties, the persons accountable for the arrangement, the loss and/or impact of the sale of personal data on the data subjects concerned, and the arrangements to deal with such losses and/or impact. Ms Emily LAU echoed Mr CHAN's concern and remarked that since the special committee comprised members of the OHL Board of Directors, the credibility of the report of the special committee was questionable.

60. Ms Prudence CHAN said that the special committee set up by the OHL Board of Directors for looking into the incident would review all the practices and procedures related to the protection of the Octopus cardholders' personal data, taking into account the international practices and procedures. The scope of review was subject to approval by HKMA. Ms Prudence CHAN added that the report of the special committee would be published and submitted to the HKMA.

61. DCE/HKMA said that one of the objectives of the review directed by the Monetary Authority under section 59(2) of the BO was to identify the role and responsibilities of OCL in the whole incident. If the review showed that any arrangement for transfer of Octopus cardholders' personal data was questionable under the PDPO, attempts would be made to identify the parties responsible. DCE/HKMA said that having regard to Members' views about possible loss suffered by Octopus cardholders arising from the incident, consideration would be given to seeing whether it was feasible to cover the area of concern in the review.

62. In response to the Chairman's and Mr Paul CHAN's enquiries, Ms Prudence CHAN explained that when OHL announced setting up a special committee comprising three non-executive directors to review the company's privacy protection arrangements, the intention was that the review was an independent one. When the Monetary Authority issued a notice to OCL under section 59(2) of the BO on 22 July 2010, requiring OCL to submit to the Monetary Authority a report prepared by external auditors to be appointed by OCL and approved by the Monetary Authority, OHL had decided to conduct a consolidated review by the special committee together with the external auditors, and submit the report of the review team to the Monetary Authority.

63. DCE/HKMA said that OCL was requested under section 59(2) of the BO to submit a report on the company's arrangements for handling the personal data of its customers, and the scope of the review was not intended to cover companies other than OCL. Given that OHL would conduct a consolidated review on its privacy protection policy and procedures including the sharing of customers' personal data with its business partners, HKMA would liaise with OCL regarding the coordination of the two reviews.

64. In view that the review of OHL's privacy protection arrangements would be undertaken by the directors of OHL, Ms Emily LAU enquired whether, under the circumstance, the HKMA and the Constitutional and Mainland Affairs Bureau were satisfied that the report produced by the review team would be credible to regain public confidence in OHL and salvage Hong Kong' reputation as an international financial centre. Ms LAU questioned why an independent committee was not appointed to investigate into the incident.

65. DCE/HKMA responded that the Monetary Authority had exercised his power under section 59(2) of the BO requiring OCL to review the privacy protection arrangements of the company and submit a report on the incident, which should be prepared by independent external auditors to be approved by the Monetary Authority. The terms of reference of the review were also subject to the approval of the Monetary Authority. The review would be conducted separately from the investigation being undertaken by PCPD. DCE/HKMA added that experience showed that the review reports prepared by independent external auditors were credible. DS(CMA)1 said that the PCPD was responsible for enforcing the PDPO and was investigating the incident. The Administration considered that the scope of PCPD's investigation was appropriate, and would continue to liaise with PCPD

regarding the investigation.

66. Mr Paul CHAN expressed concern about the credibility and independence of the special committee reviewing the privacy protection arrangements of the Octopus Group, as the committee consisted mainly of the directors of OHL. Mr CHAN asked whether independent third parties would be invited to join the special committee. Ms Emily LAU echoed Mr CHAN's concern. Ms Prudence CHAN responded that the special committee would consist of three non-executive independent directors of OHL, and the special committee would invite an independent external auditor to participate in the review.

Provision of information

67. Mr WONG Kwok-hing said that at the Legislative Council Complaints Division case conference held on 14 July 2010 dealing with complaints about OHL's sale of Octopus cardholders' personal data to third parties, OHL was requested to provide information about the details of the agreements between OHL and its business partners on sharing of cardholders' personal data, the profits made by OHL from selling the data, the number of business partners involved, the number of times the personal data had been used and the promotional/marketing activities involved. During his hearing of the incident, PCPD had also asked for similar information but OHL had yet to provide the information. Mr WONG asked whether and when OHL would provide the relevant information to the Panel and PCPD. Mr WONG said that he had informed the Chairman of the House Committee that he would propose at the Housing Committee meeting on 8 October 2010 to invoke the powers under the Legislative Council (Powers and Privileges) (Cap. 382) Ordinance to oblige the relevant parties to provide the Legislative Council with the information on the incident.

68. Ms Prudence CHAN responded that as the agreements signed between ORL and their business partners involved sensitive commercial information, ORL had to seek the business partners' consent in providing copies of the agreements to the Panel. At the request of the Chairman, Ms Prudence CHAN agreed to consult the business partners and provide the copy agreements to the Panel within two weeks. The Chairman said that OHL should give an explanation if it could not provide the requested information by the deadline.

(Post-meeting note: Members were informed vide LC Paper No. CB(1)2720/09-10 on 10 August 2010 that OHL needed more time to prepare the information requested by the Panel. OHL's written response was circulated to members vide LC Paper No. CB(1)2740/09-10 on 13 August 2010; and as the attachments were voluminous and in order to save paper, members were given copies of representative agreements between OHL/its subsidiaries and their business partners on provision of cardholders' personal data and were advised vide LC Paper No. CB(1)2751/09-10 on 19 August 2010 that the full set of documents would be forwarded to members on request.)

69. Mr WONG Kwok-hing said that the MTRCL, as the major shareholder of OHL, should be held responsible for the sale of Octopus cardholders' personal data to third parties. Mr WONG said that if MTRCL and OHL refused to refund to the Octopus cardholders concerned and provide the information requested, he would request holding a special meeting and inviting the senior management of MTRCL to be present to answer Members' queries. Mr WONG said that the information to be provided by OHL to the Panel should also be made available to the PCPD.

70. Mr Leonard TURK responded that despite MTRCL's holding of 57% of the shares of OHL, MTRCL only had 49% of the voting power in the OHL Board as OHL needed to operate independently in face of competition in the market. The management of OHL operated separately and independently. While MTRCL was aware of the general business activities of OHL/its subsidiaries, the sharing of customers' personal data among companies for marketing activities was common in the market. MTRCL had been advised that OCL had complied with the PDPO in using the cardholders' personal data. MTRCL was also aware of the public concern on Octopus companies' sharing of cardholders' personal data with its business partners, and OHL had already ceased the practice, and terminated the existing contracts prematurely with two business partners. MTRCL would pay close attention to the findings of PCPD's investigation, and the public's aspiration as to the existing legislation on protection of privacy and take appropriate action.

71. The Chairman said that OCL had been requested to submit a report to HKMA within 10 weeks, and to provide relevant information to the Panel within two weeks. When the information and the report were available, the Panel might consider whether another meeting should be held to follow-up the issue.

72. Mr James TO was of the view that the Legislative Council should investigate the "Octopus" incident, with a view to reviewing the relevant legislation on protection of personal data privacy and the use of personal data. Mr TO opined that OHL should consider donating the \$44 million amassed from selling the cardholders' personal data to other companies, if not returning the monies to the cardholders concerned. Mr WONG Kwok-hing shared Mr TO's view. Mr TO also expressed concern that tenants of some housing estates needed to use an Octopus card for admittance to their housing estates and residence. Mr TO requested that OHL should adopt PCPD's suggestion that cardholders should be specifically requested to indicate whether they agreed to provide their personal data to third parties.

73. In response to the Chairman's enquiry, PCPD said that the public hearing held on 26 July 2010 at the Office of the PC PD was only part of the investigation into the incident, and an interim report on the investigation was expected to be made public in end of July before he left the post.

74. Members thanked PCPD for his work on protection of the privacy of the community over the years.

II Any other business

75. There being no other business, the meeting ended at 1:30 pm.

Council Business Division 1
Legislative Council Secretariat
12 November 2010