

立法會

Legislative Council

LC Paper No. CB(2)1384/11-12
(These minutes have been seen by
the Administration)

Ref : CB2/BC/8/10

Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011

**Minutes of the third meeting
held on Wednesday, 7 December 2011, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Dr Hon Philip WONG Yu-hong, GBS (Chairman)
Hon Paul TSE Wai-chun, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon WONG Ting-kwong, BBS, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon IP Kwok-him, GBS, JP
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC

Members absent : Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan

Public Officers attending : Item I

Constitutional and Mainland Affairs Bureau

Miss Adeline WONG
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO
Deputy Secretary for Constitutional and Mainland Affairs

Mrs Philomena LEUNG
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Department of Justice

Ms Mabel CHEUNG
Senior Government Counsel

Clerk in attendance : Mr Thomas WONG
Chief Council Secretary (2) 2

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Miss Carrie WONG
Assistant Legal Adviser 4

Ms Catherina YU
Senior Council Secretary (2) 6

Miss Emma CHEUNG
Legislative Assistant (2) 2

Action

I. Meeting with the Administration

[LC Paper Nos. CB(2)500/11-12(01) and (02), CB(3)1032/10-11 and CB(2)237/11-12(02)]

Members noted the Administration's written response to members' concerns raised at the meeting of 8 November 2011 [LC Paper No. CB(2)500/11-12(01)] and the submission from the Privacy Commissioner for Personal Data ("PCPD") [LC Paper No. CB(2)500/11-12(02)], which were tabled at the meeting.

2. The Bills Committee deliberated (index of proceedings at **Annex.**)

Action

3. The Bills Committee commenced clause-by-clause examination of the Personal Data (Privacy) (Amendment) Bill 2011 ("the Bill") and requested the Administration to provide a written response to –

- (a) the views expressed in the deputations' submissions on individual clauses of the Bill; and
- (b) the views and concerns raised by members and the Legal Adviser to the Bills Committee on the following clauses of the Bill and sections of the existing Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") -

Long title

- (i) whether the long title of the Bill could be more concise;
- (ii) the Administration's considerations underpinning the drafting of the long title of an Ordinance, e.g. whether there were any policy considerations behind any change in the drafting;

Clause 3 (section 2 of PDPO)

- (iii) the need for changing the plural form of the word "data" to the collective singular in the Bill;
- (iv) in connection with clause 3(3) of the Bill, whether the term "rule of law" could be replaced by any alternative term to avoid confusion with its usual meaning;

Clause 4(2) (section 8(1)(g) of PDPO)

- (v) whether the proposed amendments to section 8(1)(g) of PDPO were appropriate, as they did not reflect the mutual assistance relationship between PCPD and its counterparts in jurisdictions outside Hong Kong, and whether the proposed amendments related to PCPD's powers or functions;
- (vi) the appropriateness of using the word "shall" in section 8(1)(g) of PDPO, which might give rise to an interpretation that PCPD had to provide assistance upon request from its counterparts outside Hong Kong and did not have any discretion to decide whether to accede to such requests;

Action

Clause 4(4) (new section 8(2A) of PDPO)

- (vii) the existing fee-charging policy for PCPD's services or activities and past examples on PCPD's fee-charging services or activities;
- (viii) given that it should be PCPD's priority to devote his office's resources to the general public rather than individual organizations, the relationship between PCPD's fee-charging power under the proposed new section 8(2A) of PDPO (clause 4(4) of the Bill) and his duty to promote awareness and understanding of, and compliance with, the provisions of PDPO, in particular the data protection principles under section 8(1)(c) of PDPO; and
- (ix) whether the proposed section 8(2A) of PDPO should be revised having regard to members' concerns and suggestions.

II. Any other business

Next meeting

4. Members noted that the next meeting would be held on 13 December 2011 at 2:30 pm.
5. There being no other business, the meeting ended at 10:25 am.

Council Business Division 2
Legislative Council Secretariat
13 April 2012

**Proceedings of the third meeting of the
Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011
on Wednesday, 7 December 2011, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000615 - 000729	Chairman	Opening remarks	
000730 - 001403	Admin Chairman	The Administration's briefing on its written response to the issues raised by members at the Bills Committee meeting of 8 November 2011 [LC Paper No. CB(2)500/11-12(01)].	
001404 - 002021	Chairman Admin Mr WONG Kwok-hing	<p>The Administration's undertaking to report to the Bills Committee after discussion with the stakeholders on its stance on the following issues raised by members and the Privacy Commissioner for Personal Data ("PCPD") about the Personal Data (Privacy) (Amendment) Bill 2011 ("the Bill") –</p> <p>(a) whether to amend or withdraw the Administration's proposed opt-out regime and the 30-day response period; and</p> <p>(b) the regulatory arrangements for the sale of personal data of data subjects by data users.</p> <p>Mr WONG Kwok-hing's disagreement to the proposed 30-day response period. His enquiry on why the Administration seemed to have taken a definitive stance on the proposal stated in paragraph 3 of the Administration's paper. The Administration's clarification that the proposed arrangement in paragraph 3 of the Administration's paper was a recap of the proposal in the Bill.</p>	
002022- 002236	Chairman Mr TAM Yiu-chung Admin	<p>Mr TAM Yiu-chung's view that a more stringent control should be imposed on the sale of personal data as it involved monetary gains. His suggestion that the Administration should consider adopting an opt-in regime for the sale of personal data to better protect the privacy of data subjects and an opt-out regime for the use of personal data in direct marketing.</p> <p>The Administration's undertaking to consider Mr TAM's suggestion in its discussion with stakeholders.</p>	

Time marker	Speaker	Subject	Action required
002237-002603	Chairman Mr Alan LEONG Admin	Mr Alan LEONG's support for the adoption of different regulatory regimes for the use of personal data in direct marketing and sale of personal data.	
002604-002940	Chairman Mr Vincent FANG Admin	Mr Vincent FANG's support for the provision of clear and detailed information to data subjects to facilitate their choice as to whether to allow the use of their personal data for direct marketing purposes and sale of their personal data. His concerns about the unauthorized transfer of personal data within the proposed 30-day response period and the difficulties in identifying the transferees.	
002941-003453	Chairman Mr WONG Kwok-hing SALA2 Admin	<p>Mr WONG Kwok-hing's enquiry on whether the examination of clauses involving the proposed 30-day response period and the sale of personal data should be conducted until after the Administration had completed discussion with the stakeholders and come up with a conclusive stance on such issues.</p> <p>The Administration's undertaking to draw members' attention to the clauses which would be affected by its proposals in the Bill during the clause-by-clause examination.</p>	
003454-003639	Chairman SALA2 Clerk	<p><u>Clause-by-clause examination</u> The Bill LC Paper No. CB(3)1032/10-11</p> <p>SALA2's remark that members might make reference to the submissions from the Law Society of Hong Kong [LC Paper No. CB(2)416/11-12(01)] and The Hong Kong Association of Banks [LC Paper No. CB(2)237/11-12(05)] on specific clauses of the Bill.</p> <p>The Administration's undertaking to provide a written response to submissions on specific clauses of the Bill from deputations attending the Bills Committee meeting on 26 November 2011.</p>	Admin (para. 3 of minute)
003640-004609	Admin Ms Emily LAU Mr Alan LEONG Mr WONG Kwok-hing	<p><u>Clause 1</u></p> <p>Members noted from the Administration that should the Bill be passed by the Legislative Council ("LegCo"), it was expected that several months would be required for the necessary preparatory work, and that the commencement date(s) would be specified by way of subsidiary legislation, which would be subject to LegCo's scrutiny. During the interim period, the</p>	

Time marker	Speaker	Subject	Action required
		<p>Administration would step up publicity and educational activities in collaboration with PCPD to enhance public understanding of the new regulatory requirements and facilitate their smooth implementation.</p> <p>The Administration's undertaking to report to the relevant Panel on its preparatory work on the new regulatory requirements before the commencement of the Bill.</p>	
004610 - 004804	<p>Chairman Ms Emily LAU Mr Paul TSE SALA2 Admin</p>	<p><u>Long title</u></p> <p>Ms Emily LAU's view that the long title of the Bill was too long and not easily understandable, and whether the drafting of the long title could be more concise.</p> <p>SALA2's view that the long title of a bill should reflect the contents of a bill. To fully understand the scope of a bill, members should study not only the clauses of the bill but also its Explanatory Memorandum and other relevant documents such as the Administration's LegCo Brief.</p> <p>Mr Alan LEONG's request for the Administration to provide a paper on its considerations underpinning the drafting of the long title of an Ordinance, e.g. whether there were any policy considerations behind any changes in the drafting.</p> <p>Ms Emily LAU's request for the LegCo Secretariat to provide a research paper on the length of long titles of the bills introduced into LegCo in recent years.</p>	<p>Admin (para. 3 of minute)</p> <p>Research Division</p>
004805 - 005211	<p>Mr Alan LEONG Ms Emily LAU Mr WONG Kwok-hing Admin</p>	<p>Mr WONG Kwok-hing's view that the length of the long title of the Bill was appropriate, as the Bill covered a wide range of issues.</p> <p>The Administration's briefing on Parts 2 and 3 of the Bill</p>	
005212 - 005930	<p>Chairman Ms Emily LAU Clerk Admin</p>	<p>Ms Emily LAU's request for a summary of views raised in deputations' submissions on specific clauses of the Bill to facilitate the work of the Bills Committee.</p>	Clerk
005931 - 010539	<p>Alan LEONG Admin Chairman SALA2</p>	<p><u>Clause 3</u> (section 2 of PDPO)</p> <p>Concerns of Mr Alan LEONG and SALA2 about the Administration's proposal of changing the plural form of the word "data" to the collective singular in the Bill.</p>	

Time marker	Speaker	Subject	Action required
		<p>The Administration's response that "data" was originally the plural form of "datum". Similar to the word "information", "data" as a general term had increasingly and idiomatically been used as a singular in modern English. The use of "data" as a singular in the Bill was in line with its usage in modern English.</p> <p>The Administration's undertaking to provide a written response to the concerns of Mr Alan LEONG.</p>	Admin (para. 3 of minute)
010540 - 011359	Admin Ms Emily LAU Mr Paul TSE SALA2	Ms Emily LAU's enquiry on why the Chinese rendition of "rule of law" in clause 3(3) of the Bill (section 2 of PDPO) was "法律規則". Her view that this Chinese rendition might cause confusion, as "rule of law" usually referred to "法治" in Chinese. Enquiry of Ms Emily LAU and Mr Paul TSE on whether the Chinese rendition of "rule of law" as "法律規則" was used in existing Ordinances. SALA2's enquiry on whether "rule of law" could be replaced by any alternative to avoid confusion with its usual meaning. The Administration's undertaking to provide a written response.	Admin (para. 3 of minute)
011401 - 012440	Chairman Mr Paul TSE Mr James TO Mr Alan LEONG Admin	<p><u>Clause 4(2)</u> (section 8(1)(g) of PDPO)</p> <p>In connection with the Administration's proposed amendment to section 8(1)(g) of PDPO (clause 4(2) of the Bill) under which PCPD "shall... provide assistance to any person in any place outside Hong Kong performing in that place any functions which, in the opinion of the Commissioner, are similar (whether in whole or in part) to any of the Commissioner's functions", Ms Emily LAU's request for clarification on whether the relationship between PCPD and its counterparts in jurisdictions outside Hong Kong was mutual rather than unilateral, i.e. PCPD could provide assistance to, and receive assistance from, its counterparts outside Hong Kong if necessary.</p> <p>Concerns of Mr Paul TSE and Mr James TO about the appropriateness of using "shall" in section 8(1)(g) of PDPO, which might give rise to an interpretation that PCPD had to provide assistance upon request from its counterparts in jurisdictions outside Hong Kong and did not have any discretion to decide whether to accede to such request.</p> <p>The Chairman's concurrence with the view of Mr James TO and Mr Alan LEONG that the Bill should "enable" or "empower" rather than</p>	

Time marker	Speaker	Subject	Action required
		<p>require PCPD to provide assistance if necessary and it should be ultimately up to PCPD to decide whether to provide assistance upon request.</p> <p>The Administration's clarification that under the proposed amendments to section 8(1)(g) of PDPO, PCPD and its counterparts outside Hong Kong would have a mutual assistance relationship. Views of the Chairman and Ms Emily LAU that such a relationship should be duly reflected in the proposed amendments, and whether the proposed amendments related to PCPD's powers or functions. The Administration's undertaking to consider whether to revise the proposed amendments.</p>	Admin (para. 3 of minute)
012441 - 013042	Chairman Ms Emily LAU Admin	<p>Ms Emily LAU's enquiry on whether PCPD's overseas duty visits needed the Administration's consent.</p> <p>The Administration's response that PCPD was independent of the Government, and PCPD's overseas duty visits were subject to the advice of the Personal Data (Privacy) Advisory Committee established under PDPO.</p>	
013043 - 013928	Chairman Admin Ms Emily LAU Mr James TO SALA2	<p><u>Clause 4(4)</u> (proposed new section 8(2A) of PDPO)</p> <p>In connection with the proposed section 8(2A) of PDPO which stated that PCPD "may impose reasonable charges for any promotional or educational activities or services carried out, or any promotional or educational publications or materials made available, by the Commissioner in the course of the performance of the Commissioner's functions", Ms Emily LAU considered that the proposed scope of fee charging by PCPD appeared to be too wide. Mr James TO's suggestion to revise the phrase "may impose reasonable charges" to "may reasonably impose charges".</p>	
013930- 015254	Chairman Ms Emily LAU Mr Paul TSE Dr Priscilla LEUNG Admin SALA2	<p>Enquiry of Ms Emily LAU, Mr Paul TSE and Dr Priscilla LEUNG about the existing fee-charging policy for PCPD's services or activities, and Mr Paul TSE's enquiry on relevant past examples.</p> <p>The Administration's response that –</p> <p>(a) under the proposed section 8(2A) of PDPO, the services or activities that had been provided by PCPD free of charge would remain free; and</p>	

Time marker	Speaker	Subject	Action required
		<p>(b) under PCPD's existing fee-charging policy, PCPD would charge fees for services or activities targeted at specific sectors or tailor-made for individual organizations. PCPD would explain its fee-charging policy to service recipients and the fees charged would be reasonable, having regard to the cost-recovery principle, the service recipients' affordability and the market rates for similar products and services.</p> <p>The Administration's undertaking to consider whether to revise the proposed section 8(2A), having regard to members' concerns and suggestions.</p> <p>SALA2's request for the Administration to clarify the relationship between PCPD's fee-charging power under the proposed section 8(2A) and his duty to promote awareness and understanding of, and compliance with, the provisions of PDPO, in particular the data protection principles under section 8(1)(c) of PDPO.</p> <p>SALA2's concern that it should be PCPD's priority to devote his office's resources to the general public rather than specific sectors or individual organizations and there might be problems with PCPD's use of public resources to provide services to specific private organizations, although the fees charged might be reasonable. Dr Priscilla LEUNG agreed.</p>	<p>Admin (para. 3 of minute)</p>
015255 – 015333	Chairman	Date of next meeting	