

立法會
Legislative Council

LC Paper No. CB(2)2826/11-12
(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 ninth meeting
held on Tuesday, 14 February 2012, at 10:45 am
in Conference Room 3 of the Legislative Council Complex

Members present : Dr Hon Philip WONG Yu-hong, GBS (Chairman)
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon WONG Kwok-hing, MH
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
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 Paul TSE Wai-chun, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon Vincent FANG Kang, SBS, JP
Hon WONG Ting-kwong, BBS, JP

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

Clause-by-clause examination of the Bill

[LC Paper Nos. CB(3)1032/10-11, CB(2)237/11-12(02) and
CB(2)898/11-12(01)]

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

2. The Bills Committee requested the Administration to consider amending the Chinese text of "contractual or other means", i.e. "合約手段

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或其他手段", in Data Protection Principles 2 and 4 of SCHEDULE 1, which might have a derogatory sense.

II. Any other business

Next meeting

3. Members noted that the next meeting would be held on 24 February 2012 at 10:45 am.

4. There being no other business, the meeting ended at 11:45 am.

Council Business Division 2
Legislative Council Secretariat
24 September 2012

**Proceedings of the ninth meeting of the
Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011
on Tuesday, 14 February 2012 at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

| Time marker | Speaker | Subject | Action required |
|---------------|------------------------------------|---|-----------------|
| 000457-000610 | Chairman | Opening remark | |
| 000611-000814 | Admin Chairman | <p>The Administration's response to members' view expressed at the meeting on 7 February 2012 on the provision of prescribed forms by the Privacy Commissioner for Personal Data ("PCPD") to facilitate aggrieved persons in presenting their case in the most effective manner [Clause 38 (section 66A of Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"))].</p> <p>Members noted that –</p> <p>(a) the Administration considered it necessary to provide that PCPD might prescribe forms; and</p> <p>(b) the Equal Opportunities Commission ("EOC") had considered providing prescribed forms to help the aggrieved persons who sought legal assistance from EOC. EOC was of the view that it would be more appropriate to provide prescribed forms after the setting up of the equal opportunity tribunal.</p> | |
| 000815-001546 | Admin Chairman SALA2 | <p><u>Clause-by-clause examination of the Bill</u> [LC Paper Nos. CB(3)1032/10-11 and CB(2)237/11-12(02)]</p> <p><u>Clause 38</u> (section 66B of PDPO)</p> <p>The Administration's briefing on its response to the view of the Hong Kong Bar Association ("HKBA") on the proposed new section 66B [LC Paper No. CB(2)898/11-12(01)].</p> | |
| 001547-002143 | Chairman Admin Mr Ronny TONG | <p><u>Clause 42</u> (section 73F under District Court Ordinance (Cap. 336))</p> <p>The Administration's briefing on the proposed new section 73F of the District Court Ordinance.</p> | |

| Time marker | Speaker | Subject | Action required |
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| | | <p>Mr Ronny TONG's enquiry on whether the words "maliciously" and "frivolously" in the proposed new section 73F(3)(a) were used in similar provisions of the High Court rules and whether such words had a equivalent meaning in such provisions. His concern about how the parties involved in the legal proceedings were aware of the meaning of "maliciously" or "frivolously" if there were different interpretations of such words in the High Court rules and the proposed new section 73F(3)(a).</p> <p>The Administration's response that reference was made to the wordings used in similar provisions such as sections 73B, 73C, 73D and 73E of the District Court Ordinance and "maliciously" and "frivolously" under the proposed new section 73F(3)(a) bore the same meaning as the aforesaid sections of the District Court Ordinance.</p> | |
| 002144-002701 | Chairman Admin SALA2 | <p><u>SCHEDULE 1 Data Protection Principle ("DPP") 1</u></p> <p>SALA2's enquiry and the Administration's response that according to past experience, there was higher frequency in the change of the incumbents handling the request than the change in job title and hence "the name or job title" rather than "the name and job title" was suggested in the proposed new section DPP1(3)(b)(ii)(B).</p> <p>The Administration's response that in case of any change in job title, the organization concerned should update its records.</p> | |
| 002702-004109 | Chairman Admin Mr Ronny TONG SALA2 | <p><u>SCHEDULE 1 DPP 2</u></p> <p>The Administration's response to Mr Ronny TONG's enquiry on the meaning of "合約手段或其他手段" in DPP2.</p> <p>Mr Ronny TONG's view that the Chinese text of "contractual or other means", i.e. "合約手段或其他手段", in DPP2 and DPP4 had a derogatory sense. His suggestion to amend the Chinese text to "合約規限或其他方法".</p> <p>SALA2's enquiry on the need for the proposed new DPP2(3), as the data processors who would process the data were in effect data users and data users were already required to comply with the respective requirements under PDPO.</p> | Admin (paragraph 2 of the minutes) |

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| | | <p>The Administration's response that section 2(12) of PDPO stipulated that <i>"a person is not a data user in relation to any personal data which the person holds, processes or uses solely on behalf of another person if, but only if, that first-mentioned person does not hold, process or use, as the case may be, those data for any of his own purposes"</i> and the PDPO bound data users rather than data processors. Under the proposed new DPP2(3), data users should take steps to ensure that data processors would not keep the personal data transferred to them longer than was necessary.</p> <p>SALA2's view that there might be practical difficulties for data users to enter into a contractual agreement with data processors with respect to the period of keeping the data unless they had comparable profile and bargaining powers with data processors. His concern that data users might not be able to comply with the proposed new DPP2(3).</p> <p>The Administration's response that data users might use means other than contractual means to prevent data processors from keeping the data longer than was necessary. Should data processors be able to convince data users that such means would fulfill the requirements, data users would be regarded as complying with the proposed new DPP2(3).</p> <p>The Administration's briefing on the views of Hong Kong Retail Management Association and Hong Kong Association of Banks ("HKAB") on SCHEDULE 1 DPP2 [LC Paper No. CB(2)569/11-12(02)].</p> <p>SALA2 sought the Administration's view on PCPD's comments on the drafting of DPP2(3) that "shall" instead of "must" should be used for the sake of consistency [LC Paper No. CB(2)569/11-12(01)].</p> <p>The Administration's response that it was the prevailing drafting convention to use "must" as opposed to "shall" in provisions.</p> | |
| 004110-005242 | Chairman Admin SALA2 | <p><u>SCHEDULE 1 DPP3</u></p> <p>The Administration's briefing on the proposed amendments to DPP3 and its response to HKAB's view on DPP3 [LC Paper No. CB(2)569/11-12(02)].</p> | |

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|---------------|----------------------------|---|-----------------|
| | | <p>SALA2 sought the Administration's view on PCPD's comments that the definition of "data processor" in DPP2(2) did not fully cover persons engaged in the activities under section 2(12) of PDPO and his suggested amendments to DPP2 [LC Paper No. CB(2)569/11-12(01)].</p> <p>The Administration's response that DPP2 and DPP4 pinpointed the processing of data by data processors and hence "data processor" was defined as a person who processed personal data under the proposed new DPP2(4).</p> | |
| 005243-005407 | Chairman Admin | <p><u>SCHEDULE 3 and SCHEDULE 5</u></p> <p>The Administration's briefing on the proposed amendments to SCHEDULE 3 and SCHEDULE 5.</p> | |
| 005408-005540 | Chairman Admin | <p><u>SCHEDULE - Administrative Appeals Board Ordinance (Cap. 442)</u></p> <p>The Administration's briefing on the proposed amendments to SCHEDULE under Administrative Appeals Board Ordinance.</p> | |
| 005541-005746 | Chairman SALA2 Admin | <p>Members noted the Administration's undertaking to provide a paper on its proposal on the use of personal data in direct marketing and the sale of personal data for members' consideration at the next meeting.</p> <p>Date of next meeting</p> | |