

立法會
Legislative Council

LC Paper No. CB(2)2828/11-12
(These minutes have been seen
by the Administration)

Ref : CB2/BC/8/10

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

Minutes of fourteenth meeting
held on Monday, 23 April 2012, at 2:30 pm
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 WONG Kwok-hing, MH
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC
- Members absent** : Hon Vincent FANG Kang, SBS, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon Samson TAM Wai-ho, JP
- Public Officers attending** : Constitutional and Mainland Affairs Bureau

Miss Adeline WONG
Under 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

Attendance by invitation : Office of the Privacy Commissioner for Personal Data, Hong Kong

Mr Allan CHIANG
Privacy Commissioner for Personal Data

Ms Brenda KWOK
Chief Legal Counsel

Ms Sandra LIU
Legal Counsel

Hong Kong Direct Marketing Association

Mr Dominic Powers
Director

The Hong Kong Federation of Insurers

Mr Harry WONG
Chairman of Task Force on Review of the Personal Data (Privacy) Ordinance

Hong Kong Call Centre Association

Mr Rayland CHAN Kin-nin
Executive Director

Consumer Council

Mr Simon CHUI
Head, Legal Affairs Division

Clerk in attendance : Ms Elyssa WONG
Chief Council Secretary (2) 5

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

Ms Sandy HAU
Legislative Assistant (2) 5

Action

I. Meeting with deputations and the Administration
[LC Paper Nos. CB(2)1788/11-12(01), CB(2)1788/11-12(03),
CB(2)1809/11-12(01) and CB(2)1809/11-12(02)]

Members noted the following papers issued to the Bills Committee/tabled at the meeting –

- (a) draft Committee Stage amendments (other than new Part VIA) proposed by the Administration [LC Paper No. CB(2)1788/11-12(01)];
 - (b) submission from The Law Society of Hong Kong [LC Paper No. CB(2)1788/11-12(03)];
 - (c) the Administration's response to submission from the Hong Kong Association of Banks [LC Paper No. CB(2)1809/11-12(01)]; and
 - (d) submission from The Hong Kong Association of Banks [LC Paper No. CB(2)1809/11-12(02)].
2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Bills Committee requested the Administration to provide a written response to the views raised in deputations' submissions on individual clauses of the Bill.

Action

II. Any other business

Next meeting

4. Members noted that the next meeting would be held on 2 May 2012 at 8:30 am.
5. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
24 September 2012

**Proceedings of the fourteenth meeting of the
Bills Committee on Personal Data (Privacy)(Amendment) Bill 2011
on Monday, 23 April 2012, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000000-000832	Chairman	Opening remark Meeting with deputations to receive views on the Personal Data (Privacy)(Amendment) Bill 2011 ("the Bill").	
000833-002304	Privacy Commissioner for Personal Data ("PCPD")	Presentation of views [LC Paper No. CB(2)1777/11-12(01)]	
002305-002646	Hong Kong Direct Marketing Association ("HKDMA")	HKDMA – (a) welcomed the Administration's proposal of replacing the expression "sale" in the Bill with the expression "provision for gain"; (b) expressed support for PCPD's suggestion of disclosing to data subjects the source from which the personal data were obtained should they so request; (c) strongly called for the acceptance of opting out or giving consent orally by data subjects under the legislation; and (d) considered it necessary to maintain a right balance between safeguarding personal data privacy and facilitating business operations of the direct marketing trade.	
002647-002856	Hong Kong Federation of Insurers ("HKFI")	HKFI's expression of support in principle for tighter regulation of the use of personal data by the direct marketing trade to facilitate better protection for personal data privacy. A proper balance should however be struck between safeguarding personal data privacy and business efficacy.	
002857-003154	Hong Kong Call Centre Association ("HKCCA")	HKCCA generally supported the Administration's latest proposed changes to the provisions regulating the use of personal data in direct marketing and sale of personal data.	
003155-003518	Consumer Council	Presentation of views [LC Paper No. CB(2)1788/11-12(02)]	

Time marker	Speaker	Subject	Action required
003519-004149	Mr James TO PCPD	PCPD's response to Mr James TO's enquiry on his suggestions to the proposed sections 35E and 35K as detailed in his submission [LC Paper No. CB(2)1777/11-12(01)].	
004150-004700	Ms Emily LAU HKFI	HKFI's response to Ms Emily LAU's enquiry that the insurance trade would make its best effort to comply with the regulations imposed by different government departments with a view to protecting the personal data of data subjects.	
004701-005714	Mr CHAN Kin-por HKDMA HKCCA PCPD Admin HKFI Chairman	<p>Mr CHAN Kin-por sought the views of the deputations on PCPD's suggestion of (a) obtaining written consent in the case of sale or transfer of the data subject's personal data to third parties; and (b) imposing a cut-off date for the grandfathering arrangement.</p> <p>(a) <u>Written consent from data subject for the sale or transfer of the data subject's personal data to third parties</u></p> <p>HKDMA's concern that additional costs would be incurred should data users be required to obtain written consent from data subjects. The additional cost would have a material impact on the direct marketers' business operation.</p> <p>(b) <u>Cut-off date for grandfathering arrangement</u></p> <p>HKDMA supported the grandfathering arrangement in general but considered a cut-off date unnecessary.</p> <p>HKCCA supported in principle the proposal to impose a cut-off date and was of the view that the Administration should be careful in setting the cut-off date.</p> <p>PCPD's explanation on his suggestion of the cut-off date.</p> <p>The Administration's explanation on the proposed commencement dates of the new legislative provisions.</p> <p>HKFI's explanation on the practice of the financial services industry including the insurance industry in collecting personal data according to the Personal Information Collection Statement. HKFI's view that the proposed changes in relation to the use of personal data in direct marketing would have little impact on the trade.</p>	

Time marker	Speaker	Subject	Action required
005715-010256	Ms Cyd HO PCPD Chairman	<p><u>Disclosure by PCPD to authorities outside Hong Kong</u></p> <p>PCPD's response to Ms Cyd HO's enquiry on the scope of cooperation between the Office of PCPD and its counterparts in other jurisdictions. PCPD's view that the Bill would be able to provide sufficient protection to the personal data exchanged during the cooperation.</p>	
010257-012236	Mr James TO PCPD HKCCA HKFI HKDMA	<p><u>Mechanism to provide information on transferee(s) to data subjects</u></p> <p>Mr James TO's expression of concern about the nuisance caused by unsolicited calls and the absence of a provision under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") for data subjects to trace the source of their personal data being transferred and used by direct marketers.</p> <p>PCPD shared Mr TO's concern and hoped that the Administration could reconsider his suggestion of conferring on individuals a right to be informed of the source of their personal data by direct marketers.</p> <p>HKCCA's explanation on the code of practice adopted by the trade which provided for an independent compliance audit by the Hong Kong Quality Assurance Agency.</p> <p>HKFI's explanation that systems were in place in the insurance industry to address Mr TO's concern such as audit trails to safeguard personal data of data subjects.</p> <p>HKDMA's remarks that –</p> <p>(a) most organizations in the direct marketing trade would ensure that their business process would comply with the legislation; and</p> <p>(b) data subjects would only need to make their opt-out requests to the organizations which had originally collected their data and their opt-out requests would be honored. The problems relating to the use of personal data laid with the very small number of bad actors in the industry.</p>	
012237-013246	Mr WONG Kwok-hing Admin	The Administration's response to Mr WONG Kwok-hing's enquiries on sections 58(6) and 66B that –	

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		<p><u>Section 58(6)</u></p> <p>(a) it did not intend to expand the definition of "crime" as proposed by the Hong Kong Association of Banks ("HKAB") for reasons stipulated in its response to HKAB's submission [LC Paper No. CB(2)1809/11-12(01)]; and</p> <p><u>Section 66B</u></p> <p>(b) there did not seem to be any rules in the Law Society of Hong Kong's Guide to Professional Conduct prohibiting solicitors employed by PCPD from providing legal advice or services to members of the public. For barristers employed by PCPD, they should apply to the Hong Kong Bar Council for permission to provide legal advice or services to the public for the purpose of section 66B. The existing arrangement would not affect the launch and operation of PCPD's legal assistance scheme.</p>	
013247-014137	<p>Ms Emily LAU PCPD Consumer Council Admin Chairman</p>	<p><u>Commencement dates of the new legislative provisions</u></p> <p>Ms Emily LAU sought the views of PCPD and Consumer Council on the commencement dates of the new legislative provisions in the Bill.</p> <p>PCPD's remarks that the Office of PCPD might take around nine months and six months after the passage of the Bill respectively to prepare the guidance notes in relation to the promotion of the new requirements relating to direct marketing and consultation with the relevant parties on the legal assistance scheme. Provisions unrelated to direct marketing and legal assistance should take effect as soon as practicable after the passage of the Bill.</p> <p>Consumer Council's remarks that it had no objections to the commencement of the new requirements in the Bill by phases but hoped that the provisions relating to direct marketing could come into force as soon as practicable.</p> <p>The Administration's response to Ms Emily LAU's enquiry that the commencement dates of certain provisions would be subject to the progress of the promotional activities and preparation of the guidance notes by PCPD. To allow flexibility, the Administration proposed not to specify a commencement date in the Bill. The Administration intended to brief the Panel</p>	

Time marker	Speaker	Subject	Action required
		<p>on Constitutional Affairs on the targeted commencement dates in the fourth quarter of 2012.</p> <p>The Administration was requested to advise the targeted commencement dates of the new requirements in the Bill on resumption of Second Reading Debate of the Bill.</p>	
014138-014811	<p>Mr WONG Ting-kwong Admin Mr CHAN Kin-por</p>	<p><u>Unsolicited calls</u></p> <p>Mr WONG Ting-kwong's concern about the nuisance caused by unsolicited calls and his suggestion that the Administration should take steps to regulate these calls. Mr CHAN Kin-por's concurrence with Mr WONG's suggestion.</p> <p>The Administration's response that –</p> <p>(a) the proposed regulatory requirements for the use of personal data in direct marketing under the Bill were more stringent than the existing ones under PDPO and thus enhanced the protection to data subjects;</p> <p>(b) under the Unsolicited Electronic Messages Ordinance (Cap. 593), members of the public who wished to decline unsolicited commercial electronic messages could send an unsubscribe request to the senders; and</p> <p>(c) having considered the possible impact of regulating person-to-person calls on the direct marketing trade, the Communications Authority and the Commerce and Economic Development Bureau considered it more suitable to encourage the direct marketing trade to follow the trade's code of practice.</p> <p><u>Provision and use of personal data in direct marketing</u></p> <p>Mr CHAN Kin-por's enquiry on how the Administration could enforce different requirements for the provision of personal data for gain or transfer of personal data and use of personal data in direct marketing as suggested by PCPD.</p> <p>The Administration's response that the revised proposal to allow data subjects to give either written or verbal consent in both the provision (whether for gain or not) and use of personal data in direct marketing would be easier for the direct marketing trade to understand and comply. The trade and PCPD would be further</p>	

Time marker	Speaker	Subject	Action required
		consulted on the matter.	
014812-015434	Chairman Admin Ms Emily LAU	Ms Emily LAU's request for the Administration to provide a written response to the views raised in the deputations' submissions.	Admin (paragraph 3 of the minutes)
015435-020107	Chairman PCPD Admin	<p><u>Enforcement notice</u></p> <p>PCPD's grave concern that the Administration's proposal of deleting the words "matters occasioning it" from the new section 50(1A)(c) would take away PCPD's power to address indirect factors such as inadequacy or absence of the data users' policy practice, or procedures in the enforcement notice.</p> <p>The Administration's explanation that a contravention had to be viewed in its entirety. Steps to remedy the contravention would not be confined to those that only directly deal with the act or omission that constituted the contravention, but also included those that dealt with the practices and circumstances leading to the contravention. Section 50(1A) did not contain any provision that qualified the steps which might be taken, and any steps that were directed at remedying the contravention would be covered.</p> <p>The Administration's undertaking to re-examine the drafting of section 50(1A)(c) having regard to PCPD's concern.</p>	Admin (paragraph 3 of the minutes)
020108-020146	Chairman	Date of next meeting	