

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

**List of follow-up actions for the Administration
(position as at 16 May 2012)**

| Date of meeting | Follow-up actions | Administration's response |
|------------------------|---|--|
| 8 November 2011 | <p>The Administration was requested to provide information on -</p> <p>(a) the arrangements adopted in overseas places in respect of the use of personal data in direct marketing and specifically whether an opt-in or opt-out regime was adopted; and</p> <p>(b) the mechanism under the Administration's proposed opt-out regime for facilitating data subjects to object to the use or transfer of their personal data for direct marketing purposes and sale of their personal data, identify the transferees of their personal data and the original source of data transfer.</p> | <p>The Administration's response was circulated to members vide LC Paper No. CB(2)500/11-12(01) on 6 December 2011 and discussed at the meeting on 7 December 2011.</p> |
| 26 November 2011 | <p>The Administration was requested to -</p> <p>(a) consider amending or withdrawing the proposal for the 30-day response period;</p> <p>(b) consider adopting an opt-in regime for the sale of personal data and an opt-out one for the use of personal data; and</p> <p>(c) devise a mechanism to request data users to provide information on</p> | <p>The Administration's response on (a) and (b) was circulated to members vide LC Paper No. CB(2)1169/11-12(01) on 23 February 2012 and discussed at the meeting on 24 February 2012. Its response on (c) was circulated to members vide LC Paper No. CB(2)1701/11-12(02) on 16 April 2012 and discussed</p> |

| Date of meeting | Follow-up actions | Administration's response |
|-----------------|--|---|
| | each and every transferee of data subjects' personal data upon data subjects' request. | at the meeting on 2 May 2012. |
| 7 December 2011 | <p>The Administration was requested to provide a written response to –</p> <p>(a) the views expressed in deputations' submissions on individual clauses of the Bill; and</p> <p>(b) views and concerns raised by members and the Legal Adviser to the Bills Committee on Personal Data (Privacy) Amendment Bill ("the Bill") on the following clauses -</p> <p><u>Long title</u></p> <p>(i) whether the drafting of the long title of the Bill could be more concise;</p> <p>(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;</p> <p><u>Section 2</u></p> <p>(i) the need for changing the plural form of the word "data" to the collective singular in the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO");</p> | <p>The Administration's response on (a) was circulated to members vide LC Paper No. CB(2)569/11-12(02) (English version issued on 13 December 2011; Chinese version issued on 4 January 2012) and discussed at the meeting on 13 December 2011.</p> <p>The Administration's response on issues relating to long title and section 2 was circulated to members vide LC Paper No. CB(2)761/11-12(01) on 6 January 2012 and discussed at the meetings on 24 February and 13 March 2012 respectively.</p> <p>The Administration's response on issues concerning section 8 was circulated to members vide LC Paper No. CB(2)1347/11-12(01) on 12</p> |

| Date of meeting | Follow-up actions | Administration's response |
|-----------------|--|--|
| | <p>(ii) in connection with section 2, whether "rule of law" could be replaced by any alternative to avoid confusion with its usual meaning;</p> <p><u>Section 8</u></p> <p>(i) whether the drafting of the proposed amendment to section 8(1)(g) was appropriate, as it did not duly reflect the mutual assistance relationship between Privacy Commissioner for Personal Data ("PCPD") and its counterparts in jurisdictions outside Hong Kong and it was more a power than function;</p> <p>(ii) the appropriateness of using the word "shall" in section 8(1)(g), which might give rise to an interpretation that PCPD had a duty to provide assistance upon request from its counterparts outside Hong Kong and did not have discretion to decide whether to accede to such requests;</p> <p><u>Section 8(2A)</u></p> <p>(i) the existing fee-charging mechanism for PCPD's services and products and past examples on PCPD's fee-charging services and products;</p> <p>(ii) given that it should be PCPD's top priority to devote its resources to the general public rather than individual organizations, the relationship between PCPD's fee-charging</p> | <p>March 2012 and discussed at the meeting on 13 March 2012.</p> |

| Date of meeting | Follow-up actions | Administration's response |
|-------------------------|--|---|
| | <p>power under the proposed new section 8(2A) and its 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); and</p> <p>(iii) whether the proposed new section 8(2A) should be revised having regard to members' concerns and suggestions and to reflect the more specific need for charges as outlined in PCPD's submission on its current fee charging arrangement.</p> | |
| <p>13 December 2011</p> | <p>The Administration was requested to -</p> <p><u>Section 11A</u></p> <p>(a) provide precedents, if any, for the proposed new section 11A on immunity concerning a corporation sole both as a person and a body corporate, the difference in drafting between section 11A and the similar immunity clause in the Ombudsman Ordinance (Cap. 397);</p> <p><u>Section 14(7)</u></p> <p>(b) follow up on the Legal Adviser's letter dated 6 January 2012 to the Administration;</p> <p><u>Section 14(9)(c)</u></p> <p>(c) consider replacing section 67(4)(c) with section 67(4) in section</p> | <p>The Administration's response on (b) and (l) was circulated to members vide LC Paper No. CB(2)908/11-12(01) on 30 January 2012 and discussed at the meetings on 13 and 26 March 2012 in conjunction with LC Paper Nos. CB(2)1347/11-12(01) and CB(2)1496/11-12(01)</p> <p>The Administration's response on (a) and (i) was circulated to members vide LC Paper No. CB(2)761/11-12(01) on 6 January 2012 and discussed at the meeting on 13 March 2012.</p> |

| Date of meeting | Follow-up actions | Administration's response |
|-----------------|---|--|
| | <p>14(9)(c), as section 67(4) should be applicable to the entire section 14(4) because a data user return should be in the specified form;</p> <p><u>Section 14A</u></p> <p>(d) clarify whether the information contained in the data user return under the proposed new section 14A(1) should include accompanying documents and notice of changes;</p> <p>(e) specify the provisions under "if the person is entitled or obliged under this or any other Ordinance" in section 14A(3);</p> <p>(f) consider the Law Society of Hong Kong's revision to the proposed new section 14A(6), which suggests that the knowing or reckless provision of "corrected" but still false or misleading information in the data user return in accordance with the proposed new section 14A(4) should be subject to the sanction under section 14A(6);</p> <p><u>Section 15</u></p> <p>(g) consider making corresponding amendments to section 15 (including sections 15(2)(a) and (b)) in view of the proposed new section 14A under which there might be information provided subsequent to the original data user return;</p> <p>(h) clarify whether "prescribed form" in section 15(3) of PDPO was different from "specified form" in section 67 of PDPO;</p> | <p>The Administration's response on (c) to (h) was circulated to members vide LC Paper No. CB(2)1347/11-12(01) on 12 March 2012 and discussed at the meeting on 13 March 2012.</p> <p>The Administration's response on (j) and (k) was circulated to members vide LC Paper No. CB(2)1496/11-12(01) on 23 March 2012 and discussed at the meeting on 26 March 2012.</p> |

| Date of meeting | Follow-up actions | Administration's response |
|-----------------------|--|---|
| | <p><u>Section 18</u></p> <p>(i) review the phrase "having the data user informing / supplying..." in the proposed new section 18(5);</p> <p><u>Section 19</u></p> <p>(j) consider whether to increase penalty for data users who were unable to comply with a data access request under the proposed new section 19(1);</p> <p>(k) in connection with the proposed new section 19(1)(b), clarify whether a person who did not hold any such data could still be regarded as a data user as defined and therefore be caught by the duty to inform the requestor that he/she did not hold the data; and</p> <p>(l) follow up on the Legal Adviser's letter dated 6 January 2012 to the Administration on the proposed sections 19(1) and (1A).</p> | |
| <p>3 January 2012</p> | <p>The Administration was requested to -</p> <p><u>Section 20</u></p> <p>(a) in connection with the proposed amendment to section 20(1)(c) of PDPO under which a data user "shall refuse to comply with a data access request in any other case, if compliance with the request is for the time being prohibited under this or any other Ordinance", specify the other Ordinance(s), if any;</p> | <p>The Administration's response on (d) was circulated to members vide LC Paper No. CB(2)908/11-12(01) on 30 January 2012 and discussed at the meeting on 13 March 2012 in conjunction with LC Paper No. CB(2)1347/11-12(01).</p> |

| Date of meeting | Follow-up actions | Administration's response |
|-----------------|--|--|
| | <p>(b) in connection with the proposed new section 20(3)(ea) under which "the data user is entitled under this or any other Ordinance not to disclose the personal data which is the subject of the request", specify the other Ordinance(s), if any;</p> <p>(c) provide the justifications for the proposed new section 20(5) and clarify the relevant provisions concerning discovery and inspection referred to therein and whether the High Court's inherent jurisdiction is unable to deal with the situations under section 20(5), identify the possible problems arising from the absence of section 20(5), and confirm whether the Magistrate Ordinance (Cap. 227) and a magistrate are not to be covered by the definitions of "relevant Ordinance" and "specified body" under the proposed new section 20(6); and</p> <p>(d) follow up on the Legal Adviser's letter dated 6 January 2012 to the Administration on the proposed new section 20(5).</p> <p><u>Section 22</u></p> <p>(e) in connection with the proposed transfer of the current section 64(2) of PDPO to the proposed new subsection (4) –</p> <p>(i) consider whether it is too harsh to impose across the board a criminal penalty on the supplying of false or misleading information in a material particular in a data correction request and whether the penalty is necessary as there is no corresponding offence when the data is first supplied;</p> | <p>The Administration's response on (a) to (c) and (e) to (j) was circulated to members vide LC Paper No. 1347/11-12(01) on 12 March 2012. The Administration's response on (a) to (c) was discussed at the meeting on 13 March 2012 and its response on (e) to (j) was discussed at the meeting on 26 March 2012.</p> |

| Date of meeting | Follow-up actions | Administration's response |
|-----------------|---|---------------------------|
| | <p>(ii) clarify whether the supplying of information in (i) has to be in writing;</p> <p>(iii) consider specifying PDPO under which the data correction request under the proposed new subsection (4) is made; and</p> <p>(iv) provide the precedents, if any, for the enforcement of section 64(2).</p> <p><u>Section 31</u></p> <p>(f) consider the Law Society of Hong Kong's suggestion to add "knowingly or recklessly" to the proposed new section 31(4) to demonstrate that there must be mens rea for the offence of supplying false or misleading information by a data user in a matching procedure request made under section 31(1) of PDPO;</p> <p><u>Section 32</u></p> <p>(g) in connection with the proposed new section 32(5), consider imposing a penalty of imprisonment for contravention of any conditions specified in a notice under section 32(1)(b)(i); and</p> <p><u>Section 46</u></p> <p>(h) in connection with the proposed new sections 46(7) to (9), provide information on or consider –</p> | |

| Date of meeting | Follow-up actions | Administration's response |
|-----------------------|--|---|
| | <ul style="list-style-type: none"> (i) the safeguards for personal data in cross-border commercial transactions; (ii) the scope of co-operation and relevant agreements between PCPD and the authorities in jurisdictions outside Hong Kong and safeguards for personal data exchanged during the co-operation; (i) whether section 46(8) under which an authority in a jurisdiction outside Hong Kong to which disclosure may be made is too broad; and (j) the policy justifications for sections 46(7) to (9), such as empowering PCPD to disclose matters to other authorities in jurisdictions outside Hong Kong in the absence of consent in writing by a data subject to whom the matter related. | |
| <p>9 January 2012</p> | <p>The Administration was requested to –</p> <p><u>Section 47</u></p> <p>(a) consider the need for section 47(2)(d) and expand section 47(2)(a) to include the serving of enforcement notice by PCPD as proposed in the new subsection (2A);</p> <p><u>Section 50</u></p> <p>(b) clarify how the enforcement notice could deal with a contravention</p> | <p>The Administration's response on (c) to (e) was circulated to members vide LC Paper No. CB(2)1347/11-12(01) on 12 March 2012 and discussed at the meeting on 26 March 2012. Its response on (a) and (b) was circulated to members vide LC Paper No. CB(2)1701/11-12(02) on 16 April 2012 and discussed at the meeting on 2 May 2012.</p> |

| Date of meeting | Follow-up actions | Administration's response |
|-----------------|---|--|
| | <p>which by its nature had no continuing effect or could not be rectified retrospectively or was not likely to be repeated;</p> <p><u>Section 50A</u></p> <p>(c) provide justifications for the penalties under the proposed new sections 50A(1) and 50A (3), and consider stepping up the penalty for offences under section 50A(3) to the same level as proposed in section 50A(1)(b);</p> <p><u>Section 50B</u></p> <p>(d) provide the precedents, if any, for sentencing imprisonment on conviction for the contravention of an enforcement notice by an organization; and</p> <p>(e) provide information on "any other person" in the proposed new section 50B(1).</p> | |
| 31 January 2012 | <p>The Administration was requested to –</p> <p><u>Section 59 and 59A</u></p> <p>(a) review the drafting of the proposed new section 59(2) in conjunction with the proposed new section 59A and consider whether the drafting was appropriate, as the scope of the exemption provided therein might be too wide;</p> | <p>The Administration's response was circulated to members vide LC Paper No. CB(2)1347/11-12(01) on 12 March 2012 and discussed at the meeting on 26 March 2012.</p> |

| Date of meeting | Follow-up actions | Administration's response |
|-----------------|--|---|
| | <p>(b) provide examples of scenarios where the proposed new section 59(2) would apply;</p> <p>(c) in connection with the proposed new section 59A, provide information on the code of practice of the Hong Kong Police Force and Customs and Excise Department on the transfer or disclosure of personal data in relation to a minor; and</p> <p>(d) in connection with the proposed new section 59A, consider whether the exemption should also apply to other professional bodies such as social workers in addition to Hong Kong Police Force or Customs and Excise Department.</p> <p><u>Provision of a defence</u></p> <p>(e) consider whether a defence for a person who was charged for contravention of any of the provisions of data protection principles should be provided in all the clauses in the Bill involving exemption from the provisions of data protection principles.</p> | |
| 7 February 2012 | <p>The Administration was requested to –</p> <p><u>Section 66</u></p> <p>In connection with the proposed new section 66(5), review the need for extending the civil jurisdiction which was within the civil jurisdiction of the Court of First Instance to the District Court and consider amending the proposed new section 66(5).</p> | <p>The Administration's response was circulated to members vide LC Paper No. CB(2)1701/11-12(02) on 16 April 2012 and discussed at the meeting on 2 May 2012.</p> |

| Date of meeting | Follow-up actions | Administration's response |
|------------------|--|---|
| 14 February 2012 | <p>The Administration was requested to –</p> <p><u>Schedule 1</u></p> <p>Consider amending the Chinese text of “contractual or other means” i.e. “合約手段或其他手段” in Data Protection Principles 2 and 4 which might have a derogatory sense.</p> | <p>The Administration's response was circulated to members vide LC Paper No. CB(2)1347/11-12(01) on 12 March 2012 and discussed at the meeting on 26 March 2012.</p> |
| 24 February 2012 | <p><u>Revised proposals for use of personal data in direct marketing and sale of personal data</u> [LC Paper No. CB(2)1169/11-12(01)].</p> <p>The Administration was requested to –</p> <p>(a) discuss with PCPD and consider providing a standard form to facilitate data users in the presentation of the information on the intended use of the data subjects' personal data in direct marketing or sale of such personal data in an easily readable and understandable manner;</p> <p>(b) having regard to the concern of The Hong Kong Federation of Insurers, consider allowing a data user who did not intend to use a data subject's personal data in direct marketing or sell it at the time of data collection but intended to do so subsequently to do so if a verbal confirmation of no objection was given by the data subject;</p> | <p>The Administration's response was circulated to members vide LC Paper No. CB(2)1701/11-12(03) on 16 April 2012 (English version issued on 16 April 2012; Chinese version issued on 18 April 2012) and discussed at the meeting on 17 April 2012.</p> |

| Date of meeting | Follow-up actions | Administration's response |
|----------------------|---|--|
| | <p>(c) consider specifying the meaning of “class of marketing subjects” and reviewing the definition of “marketing subject”;</p> <p>(d) consider advancing the effective date of the grandfathering arrangement; and</p> <p>(e) consider measures to address the likelihood that data subjects’ response to pre-recorded telephone messages would be taken as giving consent to the use of their personal data.</p> | |
| <p>13 March 2012</p> | <p><u>Administration's responses to issues raised by the Bills Committee at previous meetings</u> [LC Paper No. CB(2)1347/11-12(01)]</p> <p>The Administration was requested to –</p> <p><u>Sections 14A and 20</u></p> <p>(a) in connection with the provisions under "if the person is entitled or obliged under this or any other Ordinance" in new section 14A(3); the proposed amendment to section 20(1)(c) of PDPO under which a data user "shall refuse to comply with a data access request in any other case, if compliance with the request is for the time being prohibited under this or any other Ordinance"; and the proposed new section 20(3)(ea) under which "the data user is entitled under this or any other Ordinance not to disclose the personal data which is the subject of the request", consider whether to remove "any other</p> | <p>The Administration's response was circulated to members vide LC Paper No. CB(2)1496/11-12(01) on 23 March 2012 and discussed at the meeting on 26 March 2012.</p> |

| Date of meeting | Follow-up actions | Administration's response |
|----------------------|---|--|
| | <p>Ordinance" or list out the Ordinances which, in the Administration's view, should override PDPO in the Bill having regard to members' views and concern;</p> <p>(b) provide a few examples of provisions other than those with monetary implication which required certain information to be kept secret to facilitate members' consideration of the aforesaid sections; and</p> <p>(c) provide some cases where data users had refused to disclose the required information to PCPD because of their entitlement not to do so under other Ordinances.</p> | |
| <p>26 March 2012</p> | <p><u>Administration's responses to issues raised by the Bills Committee at previous meetings</u> [LC Paper No. CB(2)1347/11-12(01)]</p> <p>The Administration was requested to –</p> <p><u>Section 46</u></p> <p>(a) in connection with the proposed new sections 46(7) to (9) –</p> <p>(i) consider including a schedule in the Bill listing out the authorities in jurisdictions outside Hong Kong which had entered reciprocal agreements with PCPD in information sharing and the relevant agreements; and</p> | <p>The Administration's response on (a) was circulated to members vide LC Paper No. CB(2)1754/11-12(01) on 18 April 2012. Its response on (b), (c) and (e) was circulated to members vide LC Paper No. CB(2)1701/11-12(02) on 16 April 2012 and its response on (d) was circulated to members vide LC Paper No. CB(2)1854/11-12(01) on 27 April 2012. The responses were discussed at the meeting on 2 May 2012.</p> |

| Date of meeting | Follow-up actions | Administration's response |
|-----------------|---|---------------------------|
| | <p>(ii) consider publicizing information on cases where PCPD had provided information to authorities in jurisdictions outside Hong Kong under the reciprocal agreements.</p> <p><u>Section 63D</u></p> <p>(b) consider whether the drafting of the proposed new section 63D(1) was appropriate, as it did not clearly reflect that the proposed exemption would be subject to archive purpose as defined;</p> <p>(c) clarify whether only records of historical, research, educational or cultural interest were transferred to the Government Records Service for archive purpose and whether they had to be so specified to trigger the exemption; would there be other records not of those interests transferred to the Government Records Service and as such would not be able to enjoy the exemption;</p> <p>(d) provide written information on the meaning of "records"; and</p> <p><u>Administration's responses to issues raised by the Bills Committee at previous meetings</u> [LC Paper No. CB(2)1496/11-12(01)]</p> | |

| Date of meeting | Follow-up actions | Administration's response |
|----------------------|---|---|
| | <p><u>Section 59</u></p> <p>(e) in connection with the proposed new section 59(2), reconsider its scope with reference to similar provisions in overseas legislation as provided by the Administration, i.e. the inclusion of circumstances such as preventing or reducing a serious threat to the life of an individual or public safety in the overseas example.</p> | |
| <p>17 April 2012</p> | <p><u>Revised proposal on use of personal data in direct marketing</u> <u>[LC Paper No. CB(2)1701/11-12(03)]</u></p> <p>The Administration was requested to –</p> <p>(a) in connection with the proposal to allow data subjects to give either verbal or written consent in both the sale and use of personal data in direct marketing, consider adopting different safeguards for the sale and use of personal data in direct marketing;</p> <p>(b) consider requiring data users to alert data subjects that the telephone communication between data users and data subjects in relation to obtaining data subjects' verbal consent for the use of their personal data in direct marketing or the provision of their personal data to another person for use in direct marketing would be recorded;</p> <p>(c) consider including in the provision (i) a prescribed period within which data users should send written confirmation to data subjects confirming the date of receipt of the consent and the particulars of</p> | <p>The Administration's response was circulated to members vide LC Paper No. CB(2)1854/11-12(01) on 27 April 2012 and discussed at the meeting on 2 May 2012.</p> |

| Date of meeting | Follow-up actions | Administration's response |
|-----------------|--|--|
| | <p>the consent; and (ii) a cooling-off period to allow data subjects to revoke their consent if they so wish;</p> <p>(d) request PCPD to provide standard scripts for data users in obtaining verbal consent from data subjects for the use of their personal data in direct marketing or the provision of their personal data to another person for use in direct marketing;</p> <p>(e) consider improving the drafting of the proposed new section 35E(1)(b) to stipulate the kinds of personal data to be used and the classes of marketing subjects in relation to which the data would be used by making reference to the proposed new section 35C(2)(b); and</p> <p>(f) encourage the direct marketing trade to adopt good practices including presenting the contents of written confirmation in an easily readable manner, recording the complete telephone communication between data users and data subjects, etc.</p> | |
| 23 April 2012 | The Administration was requested to provide a written response to the views raised in deputations' submissions on individual clauses of the Bill. | The Administration's response was circulated to members vide LC Paper No. CB(2)1854/11-12(01) on 27 April 2012 and discussed at the meeting on 2 May 2012. |

| Date of meeting | Follow-up actions | Administration's response |
|-----------------|--|---|
| 2 May 2012 | <p><u>Committee Stage amendments proposed by the Administration</u> [LC Paper No. CB(2)1864/11-12(01)]</p> <p>The Administration was requested to –</p> <ul style="list-style-type: none">(a) re-consider the drafting of subsections (1) and (2) in proposed new section 35D, where the disapplication of proposed new section 35C was differently expressed;(b) consider adding the word "intended" before "use by a data user ..." in proposed new section 35D(2) to tally with provisions elsewhere; and(c) explain why in the proposed new section 35H the reference to sections 35C and 35G was necessary since only section 35E rather than those two sections actually concerned the giving of consent for the purpose of data protection principle 3. | <p>The Administration's verbal response was discussed at the meeting on 7 May 2012.</p> |