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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 15 May 2019

**Amendments to Dr Hon Priscilla LEUNG's motion on
"Keeping up with technological development and
enhancing the protection of people's privacy"**

Further to LC Paper No. CB(3) 571/18-19 issued on 2 May 2019, 3 Members (Hon Alvin YEUNG, Hon Charles Peter MOK and Dr Hon Elizabeth QUAT) have respectively given notice to move amendments to Dr Hon Priscilla LEUNG's motion. As directed by the President, the amendments will be printed in the terms in which they were handed in.

2. The President will order a joint debate on the above motion and the amendments. I set out below the relevant proceedings in which the President will:

- (a) call upon the motion mover to speak and move the motion;
- (b) propose the question on the motion;
- (c) call upon the Members who wish to move amendments to the motion to speak in the following order, but no amendment is to be moved at this stage:
 - (i) Hon Alvin YEUNG;
 - (ii) Hon Charles Peter MOK; and
 - (iii) Dr Hon Elizabeth QUAT;

- (d) call upon the public officer(s) to speak;
- (e) invite other Members to speak;
- (f) call upon the motion mover to speak on the amendments;
- (g) call upon the public officer(s) to speak again;
- (h) deal with the amendments in the order set out in paragraph (c) above, i.e. first invite the mover of the first amendment to move the amendment and forthwith propose and put to vote the question on the amendment, and thereafter proceed to deal with the remaining amendments; and
- (i) after all amendments have been dealt with, call upon the motion mover to reply, and then put to vote the question on the motion, or the motion as amended, as the case may be.

3. For Members' reference, the terms of the original motion and the marked-up version of the amendments are set out in the **Appendix**.

(Dora WAI)
for Clerk to the Legislative Council

Encl.

(Translation)

**Motion debate on
“Keeping up with technological development and
enhancing the protection of people’s privacy”**

1. Dr Hon Priscilla LEUNG’s original motion

That serious incidents relating to large-scale leakage of personal privacy and data have occurred many times in Hong Kong, for example the uncovering of the resale of the data of 2.4 million customers by the Octopus Card Limited to other companies for marketing use in 2009, the Registration and Electoral Office’s loss of a notebook computer containing the personal data of 3.78 million Geographical Constituencies electors across the territory in 2017, and the leakage of the personal data of 9.4 million passengers by the Cathay Pacific Airways in 2018; the Personal Data (Privacy) Ordinance came into force in 1996 and the Government only amended the Ordinance once in 2012, and given that the rapid technological development of the Internet, social media, big data, artificial intelligence, etc. has created privacy risks and that the General Data Protection Regulation (‘GDPR’) of the European Union (‘EU’) has come into force, the Personal Data (Privacy) Ordinance has appeared to be even more lagging behind and its personal data privacy protection is apparently inadequate; in this connection, this Council urges the Government to keep up with technological development and comprehensively review the policy on personal data privacy protection, so as to enhance the protection of people’s privacy; the relevant proposals include:

- (1) by drawing reference from EU’s GDPR and the relevant laws of other jurisdictions, amending the Personal Data (Privacy) Ordinance expeditiously and comprehensively, including requiring data users to notify the Privacy Commissioner for Personal Data (‘PCPD’) and data subjects of any data leakage incidents within a specified timeframe and raising the penalty to enhance the deterrent effect;
- (2) conferring on PCPD the power to exercise administrative penalties (such as fines);
- (3) requiring all government departments and public and private organizations to review their policies on processing personal data and security precautions, so as to avoid the recurrence of infringement of people’s personal data privacy; and

- (4) enhancing public promotion to raise the understanding and awareness of the people as well as of public and private organizations on protecting and respecting personal data privacy.

2. Motion as amended by Hon Alvin YEUNG

That *the legislation relating to the protection of Internet privacy is lagging behind in Hong Kong, and* serious incidents relating to large-scale leakage of personal privacy and data have *also* occurred many times in Hong Kong, for example the uncovering of the resale of the data of 2.4 million customers by the Octopus Card Limited to other companies for marketing use in 2009, the Registration and Electoral Office's loss of a notebook computer containing the personal data of 3.78 million Geographical Constituencies electors across the territory in 2017, and the leakage of the personal data of 9.4 million passengers by the Cathay Pacific Airways in 2018; the Personal Data (Privacy) Ordinance came into force in 1996 and the Government only amended the Ordinance once in 2012, and given that the rapid technological development of the Internet, social media, big data, artificial intelligence, etc. has created privacy risks and that the General Data Protection Regulation ('GDPR') of the European Union ('EU') has come into force, the Personal Data (Privacy) Ordinance has appeared to be even more lagging behind and its personal data privacy protection is apparently inadequate; *furthermore, as the Interception of Communications and Surveillance Ordinance does not cover instant messaging software widely used by members of the public, people's privacy may be under government surveillance without their consent;* in this connection, this Council urges the Government to keep up with technological development and comprehensively review the policy on personal data privacy protection, so as to enhance the protection of people's privacy; the relevant proposals include:

- (1) by drawing reference from EU's GDPR and the relevant laws of other jurisdictions, amending the Personal Data (Privacy) Ordinance expeditiously and comprehensively, including requiring data users to notify the Privacy Commissioner for Personal Data ('PCPD') and data subjects of any data leakage incidents within a specified timeframe and raising the penalty to enhance the deterrent effect;
- (2) *amending the Interception of Communications and Surveillance Ordinance to extend its ambit to cover personal data such as text, speech or visual image sent through instant messaging software, so that operations for intercepting the relevant information and processing of such information by law enforcement agencies are subject to regulation under the Ordinance, with a view to further protecting people's privacy and reducing the risks of leakage of personal data;*

- ~~(2)~~(3) conferring on PCPD the power to exercise administrative penalties (such as fines);
- ~~(3)~~(4) requiring all government departments and public and private organizations to review their policies on processing personal data and security precautions, so as to avoid the recurrence of infringement of people's personal data privacy; and
- ~~(4)~~(5) enhancing public promotion to raise the understanding and awareness of the people as well as of public and private organizations on protecting and respecting personal data privacy.

Note: Hon Alvin YEUNG's amendment is marked in *bold and italic type* or with deletion line.

3. Motion as amended by Hon Charles Peter MOK

That *given the rapid advances and changes in technology applications, there are greater chances of personal information and relevant data being collected and improperly used, and members of the public have increasing concern over personal privacy; serious incidents relating to large-scale leakage of personal privacy and data and incidents involving improper processing or use of people's personal data* have occurred many times in Hong Kong, for example the uncovering of the resale of the data of 2.4 million customers by the Octopus Card Limited to other companies for marketing use in 2009, the Registration and Electoral Office's loss of a notebook computer containing the personal data of 3.78 million Geographical Constituencies electors across the territory in 2017, and the leakage of the personal data of 9.4 million passengers by the Cathay Pacific Airways in 2018; the Personal Data (Privacy) Ordinance came into force in 1996 and the Government only amended the Ordinance once in 2012, and given that the rapid technological development of the Internet, social media, big data, artificial intelligence, etc. has created privacy risks, *including: excessive and covert collection of personal data, unexpected use of data, personal data being used for profiling by algorithms, low transparency in the data collection process, increasing risks of data retention and information security*, and that the General Data Protection Regulation ('GDPR') of the European Union ('EU') has come into force, the Personal Data (Privacy) Ordinance has appeared to be even more lagging behind and its personal data privacy protection is apparently inadequate, *hence, the Government needs to update the Personal Data (Privacy) Ordinance to enhance the accountability, transparency and fairness in the collection, processing and use of personal data, thereby striking a balance between privacy and free flow of information*; in this connection, this Council urges the Government to keep up with technological development and comprehensively review the policy on personal data privacy protection, *including assessing the*

implications brought by new technology and the act of collecting relevant user data on privacy and morality, so as to enhance the protection of people's privacy; the relevant proposals include:

- (1) by drawing reference from EU's GDPR and the relevant laws of other jurisdictions, amending the Personal Data (Privacy) Ordinance expeditiously and comprehensively, including:
 - (i) *reviewing the definition of personal data and whether there is a need to differentiate personal data that are sensitive from those that are not;*
 - (ii) *requiring data controllers to explain their privacy policy in the most direct and easy-to-understand way, and to obtain the freely given and explicit consent of data subjects;*
 - (iii) *granting data subjects the right to refuse the use of their personal data by data controllers for profiling by algorithms and for automated decision-making by artificial intelligence, and the right to require data controllers to explain the relevant principles; and*
 - (iv) *mandatorily* requiring data users to notify the Privacy Commissioner for Personal Data ('PCPD') and data subjects of any data leakage incidents within a specified timeframe ~~and raising the penalty to enhance the deterrent effect,~~ *as a replacement of voluntary notification;*
- (2) *having regard to the severity of data leakage incidents*, conferring on PCPD the power to ~~exercise~~ *impose* administrative penalties (such as fines) *on data controllers and processors and raise the penalty to enhance the deterrent effect;*
- (3) *studying whether there is a need to regulate acts such as 'automated individual decision-making' and collecting data for profiling;*
- ~~(3)~~(4) requiring all government departments and public and private organizations to review their policies on processing personal data and security precautions, *and introducing statutory requirement on privacy impact assessment and accreditation*, so as to avoid the recurrence of infringement of people's personal data privacy; and
- ~~(4)~~(5) enhancing public promotion to raise the understanding and awareness of the people as well as of public and private organizations on protecting and respecting personal data privacy.

Note: Hon Charles Peter MOK's amendment is marked in *bold and italic type* or with deletion line.

4. Motion as amended by Dr Hon Elizabeth QUAT

That *Hong Kong's existing legislation on the protection of personal privacy is incomprehensive, particularly there is no legislation to impose targeted regulation on Internet storage of personal privacy and data, and there is also no dedicated legislation for protecting children's Internet privacy, thus failing to deter lawbreakers from collecting, through Internet, children's privacy and data and invading their privacy, and even committing indecent conduct through such acts*; serious incidents relating to large-scale leakage of personal privacy and data have occurred many times in Hong Kong, for example the uncovering of the resale of the data of 2.4 million customers by the Octopus Card Limited to other companies for marketing use in 2009, the Registration and Electoral Office's loss of a notebook computer containing the personal data of 3.78 million Geographical Constituencies electors across the territory in 2017, and the leakage of the personal data of 9.4 million passengers by the Cathay Pacific Airways in 2018; the Personal Data (Privacy) Ordinance came into force in 1996 and the Government only amended the Ordinance once in 2012, and given that the rapid technological development of the Internet, social media, big data, artificial intelligence, etc. has created privacy risks and that the General Data Protection Regulation ('GDPR') of the European Union ('EU') has come into force, the Personal Data (Privacy) Ordinance has appeared to be even more lagging behind and its personal data privacy protection is apparently inadequate; in this connection, this Council urges the Government to keep up with technological development and comprehensively review the policy on personal data privacy protection, so as to enhance the protection of people's privacy; the relevant proposals include:

- (1) *by drawing reference from the various measures and laws on the protection of Internet privacy of other jurisdictions, including the safeguards and requirements on restricting information storage in Internet and the notification regime for incidents, enacting legislation on the protection of Internet privacy applicable to Hong Kong ;*
- (2) *by drawing reference from the laws of other jurisdictions, enacting dedicated legislation for protecting children's Internet privacy, including formulating requirements to restrict network operators' excessive collection and storage of children's privacy and data and prevent the invasion of children's privacy, so as to effectively protect children's personal privacy;*
- (1)(3) by drawing reference from EU's GDPR and the relevant laws of other jurisdictions, amending the Personal Data (Privacy) Ordinance expeditiously and comprehensively, including requiring data users to

notify the Privacy Commissioner for Personal Data ('PCPD') and data subjects of any data leakage incidents within a specified timeframe and raising the penalty *of non-compliance with the enforcement notice* to enhance the deterrent effect;

- (2)(4) *regarding serious incidents relating to leakage of personal privacy and data, studying the introduction of more effective mechanisms for awarding compensation, ~~conferring on~~ empowering PCPD the power to exercise administrative penalties (such as fines), etc., so as to protect the rights and interests of members of the public and prompt for greater protection of personal data by data users;*
- (5) *focusing on some enterprises' requirements for clients to provide non-service related personal data before using their services, conducting a review of the existing scope of permissible data collection by data users, including defining the meaning of sensitive personal data, and setting restrictions on the collection and storage of sensitive data, so as to enhance the protection of the people's personal data;*
- (3)(6) requiring all government departments and public and private organizations to review their policies on processing personal data and security precautions, so as to avoid the recurrence of infringement of people's personal data privacy; and
- (4)(7) enhancing public promotion to raise the understanding and awareness of the people as well as of public and private organizations on protecting and respecting personal data privacy.

Note: Dr Hon Elizabeth QUAT's amendment is marked in *bold and italic type* or with deletion line.