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16 October 2000

Mrs Percy Ma,
Clerk to the LegCo Panel on
Administration of Justice and Legal Services,
Legislative Council Building
8 Jackson Road,
Hong Kong.

Dear Mrs. Ma,

**Applicability of
the Personal Data (Privacy) Ordinance
to CPG offices in Hong Kong**

We refer to your letters dated 10 and 12 October 2000 to the Director of Administration requesting a progress report on the above subject.

To refresh Members' memory, we enclose herewith a copy of the paper issued to the Panel in May 2000. We subsequently also informed the Panel in June 2000 that :-

- (a) between January 1999 and June 2000, four meetings (January 1999, March 1999, May 1999 and May 2000) were held in Hong Kong and Beijing with the Hong Kong Macao Affairs Office ("HKMAO") of the State Council to discuss the applicability of the PDPO to the CPG offices in Hong Kong. The Administration was represented at each meeting by some or all

of the following departments: the Home Affairs Bureau, Constitutional Affairs Bureau, the Administration Wing of the Chief Secretary for Administration Office and the Department of Justice; and

- (b) during the meetings, we briefed the CPG officials the key provisions of the PDPO (including the six data protection principles) and how the provisions were interpreted and applied by the Privacy Commissioner for Personal Data. The Administration considered it necessary to carefully consider the implications of extending the application of the PDPO to the CPG offices in Hong Kong and, in line with our usual practice of consultation with parties affected by proposed legislation, discuss with the CPG to assess whether, and if so, how the operation of a particular CPG office would be affected by the PDPO.

Since then, the Administration had another meeting with HKMAO in Beijing in September. In addition, there have been exchanges of views between the two sides on other less formal occasions. During our recent discussions, we clarified and elaborated on the implications of extending the application of the PDPO to the CPG offices. We understand that they will have to consult further the individual authorities concerned.

Yours sincerely,

(NG Hon-wah)
for Secretary for Home Affairs

Applicability of the Personal Data (Privacy) Ordinance to offices set up by the Central People's Government in Hong Kong

Purpose

The purpose of this paper is to inform the LegCo Panel on Administration of Justice and Legal Service (“the Panel”) of the present position as regards the review of the applicability of the Personal Data (Privacy) Ordinance (“PDPO”) to offices set up by the Central People's Government in Hong Kong (“CPG offices in Hong Kong”).

Background

2. On 25 February 1999 the Administration informed the Panel of the result of the review of 17 Ordinances which binds the Government but are otherwise silent as to their applicability to the CPG offices in Hong Kong. The purpose of the review was to ascertain whether the Ordinances should be applicable to the CPG offices. The PDPO was one of the 17 Ordinances but as it was more complicated than the others, the Administration needed more time to examine it more carefully before making any recommendation.

Complexity of PDPO

3. The complexity of the PDPO was explained in the Administration’s paper issued in March 1999, which is attached at Annex for ease of reference.

4. The PDPO is administered by the Privacy Commissioner for Personal Data (“PC”). The PC carries out investigations into complaints about contraventions of the PDPO. The complexity of the PDPO is evidenced by the fact that since its commencement in December 1996, the PC’s decisions have been challenged on numerous occasions by way of appeal to the Administrative Appeals Board (24 cases) or judicial review (1 case). In three of the cases, the PC had to vary his original decisions in the light of the Board’s or court’s rulings. As a result, the PC had to modify his earlier interpretations or applications of particular provisions of the PDPO.

Discussions with the CPG

5. The Administration has been discussing with the CPG the applicability of the PDPO to the CPG offices in Hong Kong. We have explained to the CPG the key provisions of the PDPO and how they are being interpreted and applied by the PC. The discussions are still going on and, as such, the Administration is not in a position to disclose the details of the discussions.

6. We shall continue our discussions with the CPG and inform the Panel of the result of the review as soon as possible.

Home Affairs Bureau
May 2000

LegCo Panel on the Administration of Justice and Legal Services

**The applicability of the Personal Data (Privacy) Ordinance to the
“State” organs in Hong Kong**

At the 25 February meeting of the LegCo Panel on the Administration of Justice and Legal Services, members requested that on the review of the applicability of the Personal Data (Privacy) Ordinance to the “State” organs in the SAR, the Government should -

- (i) explain the reasons for commencing discussions with the Central People’s Government only a few weeks ago but not earlier, bearing in mind that the item was discussed by the Panel as early as September 1998;
- (ii) elaborate on the Administration’s advice that this Ordinance is more complicated, e.g. in what aspects; and
- (iii) advise the expected timing for completing the review.

2. This paper sets out the Administration’s response to the above points.

Discussions with the Central People's Government and timing for the completion of the review

3. The Government provided information on the Personal Data (Privacy) Ordinance (PDPO) to the Central People’s Government mid last year. Subsequently, the Administration further elaborated and explained to the Central People’s Government the major provisions of the Ordinance. We have already started discussing the applicability of the Ordinance with the Central People’s Government. When we have completed our discussions and worked out our recommendations, we will report back to the Panel on the Administration of Justice and Legal Services.

Complexity of the Personal Data (Privacy) Ordinance

4. Unlike other Ordinances which contain specific rules on what are or are not permitted, at the heart of the PDPO are six data protection principles phrased in broad terms, i.e. the six principles in Schedule 1 of the PDPO.

5. These principles leave considerable room for interpretation. For example, they contain expressions such as “fair in the circumstances of the case” (principle 1(2)), “all practicable steps shall be taken” (principles 1(3), 2(1), 4 and 5) and “personal data shall not be kept longer than is necessary” (principle 2(2)). Therefore, in order to determine how the Ordinance affects a particular data user and whether his existing practices comply with the Ordinance, it is necessary to consider questions such as the nature of the personal data he has to hold, for what purposes he has to collect and hold the personal data, how he collects and safeguards the data, what are the practical constraints to take into consideration, etc.

6. Apart from the six data protection principles, the exemption provisions in Part VIII of the PDPO are also phrased in broad terms. These exemption provisions seek to strike a balance between the privacy rights of the individual in relation to personal data and various other public interests. One has to consider questions similar to those mentioned in the preceding paragraph in determining whether the exemptions apply to particular types of personal data held by a particular data user.

7. In order to provide guidance on how to comply with the Ordinance in general and the data protection principles in particular, the Ordinance empowers the Privacy Commissioner for Personal Data to issue codes of practice. So far, the PC has issued two such codes -

- (a) *Code of Practice on the Identity Card Number and other Personal Identifiers*; and
- (b) *Code of Practice on Consumer Credit Data*.

8. The former Code has impact on all data users, who will have to consider what changes, if any, are necessary to their existing practices in order to comply with the Code.

9. The statutory protection of privacy in relation to personal data is relatively new in Hong Kong and given the complexity of the PDPO as explained above, it is understandable that it takes more time to assess whether - and if so, how - a particular organisation's operation will be affected by the Ordinance.

Home Affairs Bureau
March 1999