

立法會

Legislative Council

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

Review of applicability of the Personal Data (Privacy) Ordinance (PDPO) to "State" organs in the Hong Kong Special Administrative Region (HKSAR)

Purpose

This paper summarizes the progress of the review conducted by the Administration on the applicability of PDPO to "State" organs in HKSAR.

Background

2. The Adaptation of Laws (Interpretative Provisions) Bill was introduced into the Provisional Legislative Council on 25 February 1998. In the course of scrutinizing the Bill, concern was expressed by Members as to why certain Ordinances were binding on the Hong Kong Special Administrative Region Government (HKSARG) but not on relevant organs of the People's Republic of China. To address the issue, the Secretary for Justice undertook, in her speech delivered at the resumption of the Second Reading debate on the Bill on 7 April 1998, to conduct a review of the 17 Ordinances that were expressed to be binding on the HKSARG but were otherwise silent on their applicability to "State" organs in HKSAR. The matter was subsequently discussed at the meetings of the Panel on 15 September, 20 October and 2 November 1998, 25 February 1999 and 16 May 2000 respectively.

3. At the meeting on 20 October 1998, the Administration informed the Panel that it had completed a preliminary review of the 17 relevant Ordinances. The review concluded that, having regard to policy considerations, 15 out of the 17 Ordinances under review should be amended so that they would be applicable to the "State" organs and their personnel in HKSAR. One of the two remaining Ordinances had no relevance to the issue because it only concerned matters pertaining to registration of social workers. The last remaining Ordinance, namely, the PDPO, was more complicated than the others, and the Administration had to examine its applicability carefully before making any recommendations.

4. At the Panel meeting on 25 February 1999, the Administration advised that it had started discussion with Central People's Government (CPG) on the applicability of PDPO.

Progress of review

5. A summary of the progress of the review is in the **Appendix**.

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Appendix

Progress of review	Reference (LC Paper No.)
(a) In <u>March 1999</u> , the Administration explained the complexities involved in reviewing the applicability of PDPO (relevant extract of the paper is attached at <u>Annex</u>).	CB(2)1458/98-99(02)
(b) On <u>11 May 1999</u> , the Secretary for Home Affairs (SHA) advised that discussion with the CPG on PDPO was on-going. The Administration expected that it would take some time to complete the review.	CB(2)1970/98-99(01)
(c) On <u>9 November 1999 and 11 January 2000</u> , SHA advised that the matter was still under discussion with CPG.	CB(2)352/99-00(01)
(d) In <u>May 2000</u> , SHA reiterated the complexities in interpreting the application of particular provisions of PDPO, and advised that the Administration had explained to CPG the key provisions of PDPO and how they were being interpreted and applied by the Privacy Commissioner for Personal Data.	CB(2)1951/99-00(05)
(e) In <u>May 2000</u> , the Administration was requested to submit quarterly progress reports on the review of PDPO commencing from October 2000, and to provide information regarding the meetings held and to be held with CPG.	CB(2)2186/99-00(01)
(f) On <u>19 June 2000</u> , SHA advised that between January 1999 and June 2000, four meetings (January, March and May 1999 and May 2000) were held in Hong Kong and Beijing with the Hong Kong and Macau Affairs Office (HKMAO) of the State Council to discuss the applicability of PDPO to 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.	CB(2)2426/99-00(01)
(g) On <u>16 October 2000</u> , SHA advised that the Administration had another meeting with HKMAO in Beijing in September 2000 to clarify and elaborate on the implications of extending the application of PDPO to CPG offices.	CB(2)62/00-01(05)