

節錄自個人資料(私隱)條例 (第 486 章)

**Extract of the
Personal Data (Privacy) Ordinance (Cap. 486)**

第 2(1), 4, 37, 38, 39, 50, 51, 57, 58, 64(9)條及附表 1)

Sections 2(1), 4, 37, 38, 39, 50, 51, 57, 58, 64(9) and Schedule 1

第 486 章

個人資料(私隱)條例

本條例旨在在個人資料方面保障個人的私隱，並就附帶事宜及相關事宜訂定條文。

[第 II 部、第 71 條(以涉及附表 2 為限)及附表 2]	1996 年 8 月 1 日	1996 年第 343 號法律公告
其他條文，但第 30 及 33 條除外	1996 年 12 月 20 日	1996 年第 514 號法律公告
第 30 條	1997 年 8 月 1 日	1997 年第 409 號法律公告

第 I 部

導言

1. 簡稱及生效日期

- (1) 本條例可引稱為《個人資料(私隱)條例》。
- (2) 本條例自民政事務局局長以憲報公告指定的日期起實施。(由 1997 年第 362 號法律公告修訂)

2. 釋義

- (1) 在本條例中，除文意另有所指外——
- “文件”(document)除包括書面文件外，包括——
- (a) 包含視覺影像以外的資料的紀錄碟、紀錄帶或其他器件，而所包含的資料能夠在有或沒有其他設備的輔助下，從該紀錄碟、紀錄帶或器件重現；及
- (b) 包含視覺影像的膠卷、紀錄帶或其他器件，而所包含的影像能夠在有或沒有其他設備的輔助下，從該膠卷、紀錄帶或器件重現；

CHAPTER 486

PERSONAL DATA (PRIVACY)

An Ordinance to protect the privacy of individuals in relation to personal data, and to provide for matters incidental thereto or connected therewith.

[Part II, section 71 (as affects Schedule 2) and Schedule 2]	1 August 1996	L.N. 343 of 1996
The other provisions, excluding sections 30 and 33	20 December 1996	L.N. 514 of 1996
Section 30	1 August 1997	L.N. 409 of 1997

PART I

PRELIMINARY

1. Short title and commencement

- (1) This Ordinance may be cited as the Personal Data (Privacy) Ordinance.
- (2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice in the Gazette.

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires—
- “act”(作為)includes a deliberate omission;
- “adverse action”(不利行動), in relation to an individual, means any action that may adversely affect the individual's rights, benefits, privileges, obligations or interests (including legitimate expectations);
- “appointed day”(指定日) means the day appointed under section 1(2);
- “approved code of practice”(核准實務守則) means a code of practice approved under section 12;
- “code of practice”(實務守則) includes—

“不利行動”(adverse action), 就個人而言, 指可對該人的權利、利益、特權、責任或權益 (包括合法期望) 有不利影響的任何行動;

“不準確”(inaccurate), 就個人資料而言, 指資料是不正確的、有誤導性的、不完全的或過時的;

“切實可行”(practicable) 指合理地切實可行;

“有關人士”(relevant person), 就個人 (不論如何描述該名個人) 而言——

(a) 如該名個人是未成年人, 指對該未成年人負有作為父母親的責任的人;

(b) 如該名個人無能力處理其本身事務, 指由法庭委任以處理該等事務的人;

(c) 如屬其他情況, 指獲該名個人以書面授權代他提出查閱資料要求或改正資料要求或提出該兩項要求的人;

“有關資料使用者”(relevant data user)——

(a) 就一項視察而言, 指使用某個人資料系統的資料使用者, 而該系統是該項視察的對象;

(b) 就一項投訴而言, 指該項投訴所指明的資料使用者;

(c) 就——

(i) 由一項投訴引發的調查而言, 指該項投訴所指明的資料使用者;

(ii) 其他調查而言, 指屬該項調查的對象的資料使用者;

(d) 就執行通知而言, 指獲送達該通知的資料使用者;

“每日罰款”(daily penalty) 指就在定罪後該罪行持續的每一日所處的罰款;

“改正”(correction), 就個人資料而言, 指更正、刪除或填備;

“改正資料要求”(data correction request) 指根據第 22(1) 條提出的要求;

“作為”(act) 包括故意的不作為;

“投訴”(complaint) 指根據第 37 條作出的投訴;

“投訴人”(complainant) 指已作出投訴的個人或已代表一名個人作出投訴的有關人士;

(a) a standard;

(b) a specification; and

(c) any other documentary form of practical guidance;

“Commissioner”(專員) means the Privacy Commissioner for Personal Data established under section 5(1);

“Committee”(諮詢委員會) means the Personal Data (Privacy) Advisory Committee established under section 11(1);

“complainant”(投訴人) means the individual, or the relevant person on behalf of an individual, who has made a complaint;

“complaint”(投訴) means a complaint under section 37;

“correction”(改正), in relation to personal data, means rectification, erasure or completion;

“daily penalty”(每日罰款) means a penalty for each day on which the offence is continued after conviction therefor;

“data”(資料) means any representation of information (including an expression of opinion) in any document, and includes a personal identifier;

“data access request”(查閱資料要求) means a request under section 18;

“data correction request”(改正資料要求) means a request under section 22(1);

“data protection principle”(保障資料原則) means any of the data protection principles set out in Schedule 1;

“data subject”(資料當事人), in relation to personal data, means the individual who is the subject of the data;

“data user”(資料使用者), in relation to personal data, means a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data;

“data user return”(資料使用者申報表) means a data user return referred to in section 14(4);

“disclosing”(披露), in relation to personal data, includes disclosing information inferred from the data;

“document”(文件) includes, in addition to a document in writing——

(a) a disc, tape or other device in which data other than visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the disc, tape or other device; and

(b) a film, tape or other device in which visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the film, tape or other device;

“employment”(僱用) means employment under——

(a) a contract of service or of apprenticeship; or

(b) a contract personally to execute any work or labour,

and related expressions shall be construed accordingly;

- “使用”(use), 就個人資料而言, 包括披露或移轉該等資料;
- “披露”(disclosing), 就個人資料而言, 包括披露自資料推斷所得的資訊;
- “指明”(specified), 就格式而言, 指根據第 67 條指明;
- “指定日”(appointed day) 指根據第 1(2) 條指定的日子;
- “訂明人員”(prescribed officer) 指根據第 9(1) 條獲僱用或聘用的人;
- “相當可能損害”(would be likely to prejudice) 包括可能會損害;
- “保障資料原則”(data protection principle) 指在附表 1 列明的任何保障資料原則;
- “查閱資料要求”(data access request) 指根據第 18 條提出的要求;
- “紀錄簿”(log book), 就資料使用者而言, 指由資料使用者根據第 27(1) 條備存及維持的紀錄簿;
- “個人身分標識符”(personal identifier) 指——
- 由資料使用者為其作業而編配予一名個人; 及
 - 就該資料使用者而言, 能識辨該名個人的身分而不虞混淆, 的標識符, 但用以識辨該名個人的該人的姓名, 則不包括在內;
- “個人資料”(personal data) 指符合以下說明的任何資料——
- 直接或間接與一名在世的個人有關的;
 - 從該等資料直接或間接地確定有關的個人的身分是切實可行的; 及
 - 該等資料的存在形式令予以查閱及處理均是切實可行的;
- “個人資料系統”(personal data system) 指全部或部分由資料使用者用作收集、持有、處理或使用個人資料的任何系統 (不論該系統是否自動化的), 並包括組成該系統一部分的任何文件及設備;
- “核准實務守則”(approved code of practice) 指根據第 12 條核准的實務守則;
- “核對程序”(matching procedure) 指將為 1 個或 1 個以上的目的而取自 10 個或 10 個以上的資料當事人的個人資料與為其他目的而自該等資料當事人收集的個人資料比較的程序 (用人手方法的除外), 而——
- 所作比較 (不論是全部的還是部分的) 是為了產生和核實某些可 (即時或於其後任何時間) 用作對任何該等資料當事人採取不利行動的資料的; 或
 - 所作比較產生和核實某些資料, 而就該等資料而言可合理地相信將該等資料 (即時或於其後任何時間) 用作對任何該等資料當事人採取不利行動是切實可行的;
- “核對程序要求”(matching procedure request) 指根據第 31(1) 條提出的要求;

- “enforcement notice” (執行通知) means a notice under section 50(1);
- “financial regulator” (財經規管者) means any of—
- the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);
 - the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571); (*Replaced 5 of 2002 s. 407*)
 - a recognized clearing house, a recognized exchange company, a recognized exchange controller or a recognized investor compensation company within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); (*Replaced 5 of 2002 s. 407*)
 - a person authorized under Part III of the Securities and Futures Ordinance (Cap. 571) to provide automated trading services as defined in Schedule 5 to that Ordinance; (*Replaced 5 of 2002 s. 407*)
 - (*Repealed 5 of 2002 s. 407*)
 - the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap. 41);
 - the Registrar of Occupational Retirement Schemes appointed under section 5 of the Occupational Retirement Schemes Ordinance (Cap. 426);
 - the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); (*Added 4 of 1998 s. 14*)
 - a person specified in a notice under subsection (7) to be a regulator for the purposes of this definition;
- “inaccurate” (不準確), in relation to personal data, means the data is incorrect, misleading, incomplete or obsolete;
- “inspection” (視察) means an inspection under section 36;
- “investigation” (調查) means an investigation under section 38;
- “log book” (紀錄簿), in relation to a data user, means the log book kept and maintained by the data user under section 27(1);
- “matching procedure” (核對程序) means any procedure whereby personal data collected for 1 or more purposes in respect of 10 or more data subjects are compared (except by manual means) with personal data collected for any other purpose in respect of those data subjects where the comparison—
- is (whether in whole or in part) for the purpose of producing or verifying data that; or
 - produces or verifies data in respect of which it is reasonable to believe that it is practicable that the data, may be used (whether immediately or at any subsequent time) for the purpose of taking adverse action against any of those data subjects;

“財經規管者”(financial regulator)指任何以下人士或機構——

- (a) 根據《外匯基金條例》(第 66 章)第 5A 條委任的金融管理專員；
- (b) 《證券及期貨條例》(第 571 章)第 3(1)條提述的證券及期貨事務監察委員會；(由 2002 年第 5 號第 407 條代替)
- (c) 《證券及期貨條例》(第 571 章)附表 1 第 1 部第 1 條所指的認可結算所、認可交易所、認可控制人或認可投資者賠償公司；(由 2002 年第 5 號第 407 條代替)
- (d) 根據《證券及期貨條例》(第 571 章)第 III 部獲認可提供該條例附表 5 所界定的自動化交易服務的人；(由 2002 年第 5 號第 407 條代替)
- (e)-(ea) (由 2002 年第 5 號第 407 條廢除)
- (f) 根據《保險公司條例》(第 41 章)第 4 條委任的保險業監督；
- (g) 根據《職業退休計劃條例》(第 426 章)第 5 條委任的職業退休計劃註冊處處長；
- (ga) 由《強制性公積金計劃條例》(第 485 章)第 6 條設立的強制性公積金計劃管理局；(由 1998 年第 4 號第 14 條增補)
- (h) 屬根據第 (7) 款刊登的公告為本定義的目的所指明為規管者的人；

“第三者”(third party)，就個人資料而言，指除以下人士外的任何人——

- (a) 資料當事人；
- (b) 就資料當事人而屬有關人士的人；
- (c) 資料使用者；或
- (d) 獲資料使用者為以下事情以書面授權的人——
 - (i) 在資料使用者的直接控制下收集、持有、處理或使用有關的資料；或
 - (ii) 代資料使用者收集、持有、處理或使用有關的資料；

“執行通知”(enforcement notice)指第 50(1)條下的通知；

“專員”(Commissioner)指根據第 5(1)條設立的個人資料私隱專員；

“處理”(processing)，就個人資料而言，包括將資料修訂、擴增、刪去或重新排列(不論是否藉自動化方法或其他方法)；

“提出要求者”(requestor)，就——

- (a) 查閱資料要求或改正資料要求而言，指已提出該項要求的個人或代該名個人提出該項要求的有關人士；
- (b) 核對程序要求而言，指已提出該項要求的資料使用者；

“matching procedure request”(核對程序要求) means a request under section 31(1)；

“personal data”(個人資料) means any data—

- (a) relating directly or indirectly to a living individual；
- (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained；and
- (c) in a form in which access to or processing of the data is practicable；

“personal data system”(個人資料系統) means any system, whether or not automated, which is used, whether in whole or in part, by a data user for the collection, holding, processing or use of personal data, and includes any document and equipment forming part of the system；

“personal identifier”(個人身分標識符) means an identifier—

- (a) that is assigned to an individual by a data user for the purpose of the operations of the user；and
- (b) that uniquely identifies that individual in relation to the data user，

but does not include an individual's name used to identify that individual；

“practicable”(切實可行) means reasonably practicable；

“prescribed officer”(訂明人員) means a person employed or engaged under section 9(1)；

“processing”(處理)，in relation to personal data, includes amending, augmenting, deleting or rearranging the data, whether by automated means or otherwise；

“register”(登記冊) means the register of data users kept and maintained by the Commissioner under section 15(1)；

“relevant data user”(有關資料使用者)，in relation to—

- (a) an inspection, means the data user who uses the personal data system which is the subject of the inspection；
- (b) a complaint, means the data user specified in the complaint；
- (c) an investigation—
 - (i) in the case of an investigation initiated by a complaint, means the data user specified in the complaint；
 - (ii) in any other case, means the data user the subject of the investigation；
- (d) an enforcement notice, means the data user on whom the notice is served；

“relevant person”(有關人士)，in relation to an individual (howsoever the individual is described), means—

- (a) where the individual is a minor, a person who has parental responsibility for the minor；
- (b) where the individual is incapable of managing his own affairs, a person who has been appointed by a court to manage those affairs；

“登記冊”(register)指專員根據第 15(1) 條備存及維持的資料使用者登記冊；

“視察”(inspection)指根據第 36 條進行的視察；

“資料”(data)指在任何文件中資訊的任何陳述(包括意見表達)，並包括個人身分標識符；

“資料使用者”(data user)，就個人資料而言，指獨自或聯同其他人或與其他人共同控制該等資料的收集、持有、處理或使用的人；

“資料使用者申報表”(data user return)指第 14(4) 條所提述的資料使用者申報表；

“資料當事人”(data subject)，就個人資料而言，指屬該等資料的當事人的個人；

“僱用”(employment)指在以下合約下的僱用——

- (a) 僱傭合約或學徒訓練合約；或
- (b) 由個人親自進行某工作或勞動的合約，

而相關詞句均須據此解釋；

“實務守則”(code of practice)包括——

- (a) 標準；
- (b) 規格；及
- (c) 其他文件形式的實務性的指引；

“調查”(investigation)指根據第 38 條進行的調查；

“諮詢委員會”(Committee)指根據第 11(1) 條設立的個人資料(私隱)諮詢委員會。

(2) 為免生疑問，現聲明：“有關人士”的定義的(c)段不得解釋為——

- (a) 使只獲授權代表一名個人提出查閱資料要求的人有權代該名個人提出改正資料要求；
- (b) 使只獲授權代表一名個人提出改正資料要求的人有權代該名個人提出查閱資料要求。

(3) 凡根據本條例任何作為可經某人(不論如何描述該人)的訂明同意而作出，該同意——

- (a) 指該人自願給予的明示同意；
- (b) 不包括已藉向獲給予同意的人送達書面通知而予以撤回的任何同意(但不損害在該通知送達前的任何時間依據該同意所作出的所有作為)。

(4) 在不抵觸第 64(10) 條的條文下，現聲明：在本條例中的任何提述，凡其意思是指某資料使用者(不論如何描述該人)——

- (a) 已違反本條例下的規定；或
- (b) 正在違反本條例下的規定，

均——

(c) in any other case, a person authorized in writing by the individual to make a data access request, a data correction request, or both such requests, on behalf of the individual;

“requestor”(提出要求者)，in relation to——

- (a) a data access request or data correction request, means the individual, or the relevant person on behalf of an individual, who has made the request;
- (b) a matching procedure request, means the data user who has made the request;

“specified”(指明)，in relation to a form, means specified under section 67;

“third party”(第三者)，in relation to personal data, means any person other than——

- (a) the data subject;
- (b) a relevant person in the case of the data subject;
- (c) the data user; or
- (d) a person authorized in writing by the data user to collect, hold, process or use the data—
 - (i) under the direct control of the data user; or
 - (ii) on behalf of the data user;

“use”(使用)，in relation to personal data, includes disclose or transfer the data; “would be likely to prejudice”(相當可能損害) includes would prejudice.

(2) For the avoidance of doubt, it is hereby declared that paragraph (c) of the definition of “relevant person” shall not be construed——

- (a) to entitle a person who has only been authorized to make a data access request on behalf of an individual to make a data correction request on behalf of the individual;
- (b) to entitle a person who has only been authorized to make a data correction request on behalf of an individual to make a data access request on behalf of the individual.

(3) Where under this Ordinance an act may be done with the prescribed consent of a person (and howsoever the person is described), such consent——

- (a) means the express consent of the person given voluntarily;
- (b) does not include any consent which has been withdrawn by notice in writing served on the person to whom the consent has been given (but without prejudice to so much of that act that has been done pursuant to the consent at any time before the notice is so served).

(4) Subject to section 64(10), it is hereby declared that any reference in this Ordinance to the effect that a data user (howsoever described)——

- (a) has contravened a requirement under this Ordinance; or
- (b) is contravening a requirement under this Ordinance,

includes——

(12) 如某人純粹代另一人持有、處理或使用的任何個人資料，而該首述的人並非為其任何本身目的而持有、處理或使用(視屬何情況而定)該等資料，則(但亦只有在此情況下)該首述的人就該等個人資料而言不算是資料使用者。

(13) 為免生疑問，現聲明：就本條例而言，如一個人的行為已使他或可以使他根據不時生效的香港賽馬會賽事規例及董事局指示成為被吊銷資格的人或被暫時吊銷資格的人，則該等行為屬嚴重不當的行為。(由 1999 年第 34 號第 3 條修訂)

3. 適用範圍

- (1) 本條例對政府具約束力。
- (2) (* 不採用為香港特別行政區法律)

4. 保障資料原則

資料使用者不得作出違反任何保障資料原則的作為或從事違反任何該等原則的行為，但如該作為或行為(視屬何情況而定)是根據本條例規定須作出或進行或准許作出或進行的，則屬例外。

第 II 部

執行

5. 個人資料私隱專員職位的設立等

- (1) 為本條例的施行，現設立一名為“個人資料私隱專員”的職位。
- (2) 專員為永久延續的單一法團及——
 - (a) 須具有並可使用印章；及
 - (b) 須可起訴及可被起訴。
- (3) 行政長官須藉憲報公告委任一人為專員。(由 1999 年第 34 號第 3 條修訂)

* 見《全國人民代表大會常務委員會關於根據〈中華人民共和國香港特別行政區基本法〉第一百六十條處理香港原有法律的決定》。該決定刊載於第 I 冊，第 13/1 頁。

(12) A person is not a data user in relation to any personal data which the person holds, processes or uses solely on behalf of another person if, but only if, that first-mentioned person does not hold, process or use, as the case may be, those data for any of his own purposes.

(13) For the avoidance of doubt, it is hereby declared that, for the purposes of this Ordinance, any conduct by a person by virtue of which he has or could become a disqualified person or a suspended person under the Rules of Racing and Instructions by the Stewards of the Hong Kong Jockey Club, as in force from time to time, is seriously improper conduct. (Amended 34 of 1999 s. 3)

3. Application

- (1) This Ordinance binds the Government.
- (2) (*Not adopted as the Laws of the HKSAR)

4. Data protection principles

A data user shall not do an act, or engage in a practice, that contravenes a data protection principle unless the act or practice, as the case may be, is required or permitted under this Ordinance.

PART II

ADMINISTRATION

5. Establishment, etc. of Privacy Commissioner for Personal Data

- (1) For the purposes of this Ordinance, there is hereby established an office by the name of the Privacy Commissioner for Personal Data.
- (2) The Commissioner shall be a corporation sole with perpetual succession and—
 - (a) shall have and may use a seal; and
 - (b) shall be capable of suing and being sued.
- (3) The Chief Executive shall, by notice in the Gazette, appoint a person to be the Commissioner. (Amended 34 of 1999 s. 3)

* See Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, which is published in Volume I, p. 13/1.

- (a) 資料使用者所使用的任何個人資料系統；或
- (b) 屬於某資料使用者類別的資料使用者所使用的任何個人資料系統，
進行視察，目的在確定資訊以協助專員——
- (i) 在——
 - (A) (a) 段適用時，向有關的資料使用者；
 - (B) (b) 段適用時，向有關的資料使用者所屬於的一個類別的資料使用者，
作出建議；及
- (ii) 作出關於促進有關的資料使用者或有關的資料使用者所屬於的一個類別的資料使用者(視屬何情況而定)遵守本條例的條文(尤其是各保障資料原則)的建議。

37. 投訴

(1) 任何個人或代表個人的任何有關人士可就符合以下說明的作為或行為向專員作出投訴——

- (a) 在該項投訴中指明的；及
- (b) 是——
 - (i) 已經或正在(視屬何情況而定)由在該項投訴中指明的資料使用者作出或從事的；
 - (ii) 關乎該名個人的個人資料的，而該人是或(如在有關個案中該資料使用者倚賴在第 VIII 部下的豁免)可能是有關的資料當事人；及
 - (iii) 可能屬違反本條例(包括第 28(4) 條)下的規定的。

(2) 凡 2 名或 2 名以上的個人可就同一作為或行為各自作出一項投訴，則任何該等個人或代表他們的任何有關人士，可代表所有該等個人作出該項投訴，而本條例的條文(包括第(1)款)須據此解釋。

(3) 投訴——

- (a) 須用中文或英文以書面作出；或
- (b) 須採用專員所接受的其他形式而作出。

(4) 凡任何個人或代表個人的有關人士欲作出投訴並要求協助以擬訂該項投訴，專員及根據第 9(1)(a) 條僱用的每名訂明人員均有責任向他提供適當協助。

38. 由專員進行的調查

凡專員——

- (a) any personal data system used by a data user; or
- (b) any personal data system used by a data user belonging to a class of data users,

for the purposes of ascertaining information to assist the Commissioner in making recommendations—

- (i) to—
 - (A) where paragraph (a) is applicable, the relevant data user;
 - (B) where paragraph (b) is applicable, the class of data users to which the relevant data user belongs; and
- (ii) relating to the promotion of compliance with the provisions of this Ordinance, in particular the data protection principles, by the relevant data user, or the class of data users to which the relevant data user belongs, as the case may be.

37. Complaints

(1) An individual, or a relevant person on behalf of an individual, may make a complaint to the Commissioner about an act or practice—

- (a) specified in the complaint; and
- (b) that—
 - (i) has been done or engaged in, or is being done or engaged in, as the case may be, by a data user specified in the complaint;
 - (ii) relates to personal data of which the individual is or, in any case in which the data user is relying upon an exemption under Part VIII, may be, the data subject; and
 - (iii) may be a contravention of a requirement under this Ordinance (including section 28(4)).

(2) Where 2 or more individuals may each make a complaint about the same act or practice, then any of those individuals, or any relevant person on behalf of any of those individuals, may make such a complaint on behalf of all those individuals, and the provisions of this Ordinance (including subsection(1)) shall be construed accordingly.

(3) A complaint shall be—

- (a) in writing in the Chinese or English language; or
- (b) in such other form as the Commissioner may accept.

(4) It shall be the duty of the Commissioner and each prescribed officer who has been employed under section 9(1)(a) to provide appropriate assistance to an individual, or a relevant person on behalf of an individual, who wishes to make a complaint and requires assistance to formulate the complaint.

38. Investigations by Commissioner

Where the Commissioner—

- (a) 收到一項投訴；或
- (b) 有合理理由相信有符合以下說明的作為或行為——
- (i) 已經或正在(視屬何情況而定)由資料使用者作出或從事的；
 - (ii) 關乎個人資料的；及
 - (iii) 可能屬違反本條例下的規定的，
- 則——
- (i) 如(a)段適用，除第39條另有規定外，專員須就有關的資料使用者進行調查，以確定在有關的投訴中指明的作為或行為是否屬違反本條例下的規定；
 - (ii) 如(b)段適用，專員可就有關的資料使用者進行調查，以確定該段所描述的作為或行為是否屬違反本條例下的規定。

39. 對由投訴引發的調查的限制

(1) 即使由本條例賦予專員的權力有其概括性，在以下情況下，專員可拒絕進行或拒絕繼續進行由投訴引發的調查——

- (a) 投訴人(如投訴人是就某名個人而屬有關人士的有關人士，則指該名個人)在超過緊接專員收到該項投訴當日之前的2年的時間內，已實際知悉有在該投訴中指明的作為或行為，但如專員信納在該個案的所有情況下，進行或繼續進行(視屬何情況而定)該項調查是恰當的，則屬例外；
- (b) 該項投訴是匿名者作出的；
- (c) 投訴人的身分無法識辨或無法尋獲投訴人；
- (d) 就該項投訴所指明的作為或行為而言，以下所有條件均不獲符合——
 - (i) 在有人作出或從事有關作為或行為(視屬何情況而定)的任何時間——
 - (A) 投訴人(如投訴人是就某名個人而屬有關人士的有關人士，則指該名個人)是居於香港的；或

- (a) receives a complaint; or
- (b) has reasonable grounds to believe that an act or practice—
 - (i) has been done or engaged in, or is being done or engaged in, as the case may be, by a data user;
 - (ii) relates to personal data; and
 - (iii) may be a contravention of a requirement under this Ordinance,

then—

- (i) where paragraph (a) is applicable, the Commissioner shall, subject to section 39, carry out an investigation in relation to the relevant data user to ascertain whether the act or practice specified in the complaint is a contravention of a requirement under this Ordinance;
- (ii) where paragraph (b) is applicable, the Commissioner may carry out an investigation in relation to the relevant data user to ascertain whether the act or practice referred to in that paragraph is a contravention of a requirement under this Ordinance.

39. Restrictions on investigations initiated by complaints

(1) Notwithstanding the generality of the powers conferred on the Commissioner by this Ordinance, the Commissioner may refuse to carry out or continue an investigation initiated by a complaint if—

- (a) the complainant (or, if the complainant is a relevant person, the individual in respect of whom the complainant is such a person) has had actual knowledge of the act or practice specified in the complaint for more than 2 years immediately preceding the date on which the Commissioner received the complaint, unless the Commissioner is satisfied that in all the circumstances of the case it is proper to carry out or continue, as the case may be, the investigation;
- (b) the complaint is made anonymously;
- (c) the complainant cannot be identified or traced;
- (d) none of the following conditions is fulfilled in respect of the act or practice specified in the complaint—
 - (i) either—
 - (A) the complainant (or, if the complainant is a relevant person, the individual in respect of whom the complainant is such a person) was resident in Hong Kong; or

(B) 有關的資料使用者能夠在香港控制有關的個人資料的收集、持有、處理或使用或能夠從香港行使該項控制的；

(ii) 在有人作出或從事有關作為或行為(視屬何情況而定)的任何時間，投訴人(如投訴人是就某名個人而屬有關人士的有關人士，則指該名個人)是在香港的；

(iii) 專員認為有關的作為或行為(視屬何情況而定)可能損害投訴人(如投訴人是就某名個人而屬有關人士的有關人士，則指該名個人)強制執行在香港獲取或產生的權利或行使在香港獲取或產生的特權；或

(e) 專員信納有關的資料使用者在不少於緊接專員收到該項投訴當日之前的 2 年的期間內，不曾是資料使用者。

(2) 如專員在顧及有關個案的所有情況後，信納有以下情況，他可拒絕進行或拒絕繼續進行由投訴引發的調查——

(a) 該項投訴或一項在性質上大體與其相似的投訴已在先前引發一項調查，而專員在進行該項先前的調查後信納沒有違反本條例下的規定的情況；

(b) 在該項投訴中指明的作為或行為微不足道；

(c) 該項投訴屬瑣屑無聊或無理取鬧，或不是真誠作出的；或

(d) 因為任何其他理由，調查或進一步調查是不必要的。

(3) 凡專員根據本條拒絕進行或拒絕繼續進行一項由投訴引發的調查，他須於收到該項投訴後的 45 日內，在切實可行範圍內，盡快藉向投訴人送達一份附同第(4)款的文本的書面通知，告知該投訴人——

(a) 該項拒絕一事；及

(b) 拒絕的理由。

(4) 反對——

(a) 第(3)款下的通知所指明的拒絕的上訴，可向行政上訴委員會提出；及

(b) 上述拒絕的上訴，可由獲送達該項通知的投訴人提出；如投訴人是就某名個人而屬有關人士的有關人士，則可由該投訴人或該名個人提出。

(B) the relevant data user was able to control, in or from Hong Kong, the collection, holding, processing or use of the personal data concerned,

at any time the act or practice was done or engaged in, as the case may be;

(ii) the complainant (or, if the complainant is a relevant person, the individual in respect of whom the complainant is such a person) was in Hong Kong at any time the act or practice was done or engaged in, as the case may be;

(iii) in the opinion of the Commissioner, the act or practice done or engaged in, as the case may be, may prejudice the enforcement of any right, or the exercise of any privilege, acquired or accrued in Hong Kong by the complainant (or, if the complainant is a relevant person, the individual in respect of whom the complainant is such a person); or

(e) the Commissioner is satisfied that the relevant data user has not been a data user for a period of not less than 2 years immediately preceding the date on which the Commissioner received the complaint.

(2) The Commissioner may refuse to carry out or continue an investigation initiated by a complaint if he is of the opinion that, having regard to all the circumstances of the case—

(a) the complaint, or a complaint of a substantially similar nature, has previously initiated an investigation as a result of which the Commissioner was of the opinion that there had been no contravention of a requirement under this Ordinance;

(b) the act or practice specified in the complaint is trivial;

(c) the complaint is frivolous or vexatious or is not made in good faith; or

(d) any investigation or further investigation is for any other reason unnecessary.

(3) Where the Commissioner refuses under this section to carry out or continue an investigation initiated by a complaint, he shall, as soon as practicable but, in any case, not later than 45 days after receiving the complaint, by notice in writing served on the complainant accompanied by a copy of subsection (4), inform the complainant—

(a) of the refusal; and

(b) of the reasons for the refusal.

(4) An appeal may be made to the Administrative Appeals Board—

(a) against any refusal specified in a notice under subsection (3); and

(b) by the complainant on whom the notice was served (or, if the complainant is a relevant person, the individual in respect of whom the complainant is such a person, or either).

- (iii) 由該項調查引致的、專員認為適合作出的任何其他評論；及
- (b) 以他認為合適的方式發表該報告。
- (3) 除第 (4) 款另有規定外，根據第 (1) 或 (2) 款發表的報告的擬訂形式，須以防止可從報告中確定任何個人的身分為準。
- (4) 第 (3) 款不適用於屬以下人士的個人——
 - (a) 專員或訂明人員；
 - (b) 有關資料使用者。

49. 第 47 及 48 條不適用的情況

凡——

- (a) 專員已完成一項調查 (不論是否由投訴引發的調查)；
- (b) 調查的結果是：屬調查對象的作為或行為因為第 VIII 部下的豁免，而不屬違反本條例下的規定；及
- (c) 第 47 及 48 條如就該項調查而適用，便相當可能會損害受該項豁免所保障的利益，

則——

- (i) 為 47 及 48 條不得就該項調查而適用；而
- (ii) 專員須以他認為合適的方式及在他認為合適的時間——
 - (A) 將該項調查的結果及該項調查引致的、他認為合適的其他評論，告知有關資料使用者；
 - (B) (如該項調查是由投訴引發的) 告知有關的投訴人謂該項調查的結果是：專員信納屬調查對象的作為或行為不屬違反本條例下的規定 (或相似意思的字眼)。

50. 執行通知

- (1) 凡專員在完成一項調查後認為有關資料使用者——
 - (a) 正在違反本條例下的規定；或
 - (b) 已違反本條例下的規定，而違反情況令到違反行為將持續或重複發生是相當可能的，

- (iii) such other comments arising from the investigation as he thinks fit to make; and
- (b) in such manner as he thinks fit.
- (3) Subject to subsection (4), a report published under subsection (1) or (2) shall be so framed as to prevent the identity of any individual being ascertained from it.
- (4) Subsection (3) shall not apply to any individual who is—
 - (a) the Commissioner or a prescribed officer;
 - (b) the relevant data user.

49. Cases in which sections 47 and 48 shall not apply

Where—

- (a) the Commissioner has completed an investigation (and whether or not the investigation was initiated by a complaint);
- (b) the result of the investigation is that the act or practice the subject of the investigation is not a contravention of a requirement under this Ordinance because of an exemption under Part VIII; and
- (c) the interest protected by that exemption would be likely to be prejudiced if sections 47 and 48 applied in relation to the investigation,

then—

- (i) those sections shall not apply in relation to the investigation; and
- (ii) the Commissioner shall, in such manner and at such time as he thinks fit—
 - (A) inform the relevant data user of the result of the investigation and such other comments arising from the investigation as he thinks fit;
 - (B) if the investigation was initiated by a complaint, inform the complainant that the result of the investigation is that he is satisfied that the act or practice the subject of the investigation is not a contravention of a requirement under this Ordinance (or words to the like effect).

50. Enforcement notices

- (1) Where, following the completion of an investigation, the Commissioner is of the opinion that the relevant data user—
 - (a) is contravening a requirement under this Ordinance; or
 - (b) has contravened such a requirement in circumstances that make it likely that the contravention will continue or be repeated,

則專員可向有關資料使用者送達書面通知，所送達的通知須——

- (i) 述明專員持上述意見；
 - (ii) 指明專員是就哪一規定而持上述意見及他持該意見的理由；
 - (iii) 指示該資料使用者在該通知所指明的期間(該期間不得在第(7)款所指明的上訴限期前完結)內，採取該通知所指明的步驟，以糾正導致送達該通知的違反或事宜(視屬何情況而定)；及
 - (iv) 附同本條的文本一份。
- (2) 在決定是否送達執行通知時，專員須考慮該通知所關乎的違反或事宜，是否已對或是否相當可能會對屬該違反或事宜(視屬何情況而定)所關乎的個人資料的資料當事人的個人，做成損害或困擾。
- (3) 執行通知所指明的糾正該通知所關乎的違反或事宜的步驟——
- (a) 可在任何程度上藉提述核准實務守則的形式擬訂；
 - (b) 的擬訂形式，可令有關資料使用者可從不同的糾正有關的違反或事宜(視屬何情況而定)的方式中作出選擇。
- (4) 除第(5)款另有規定外，執行通知所指明的採取該通知所指明的步驟的限期不得在第(7)款所指明的上訴限期完結前屆滿，而如有該等上訴提出，在該上訴有決定或被撤回前不需採取該等步驟。
- (5) 如專員認為因為特殊情況，執行通知所指明的步驟因事態緊急而應即採取——
- (a) 他可在該通知中加入一項有該意思的陳述及他持該意見的理由；
 - (b) 凡專員如此加入該項陳述，第(4)款即不適用，但該通知不得規定須在該通知送達當日起計的7日期間屆滿前採取該等步驟。
- (6) 專員可藉送達有關資料使用者的書面通知，撤銷執行通知。
- (7) 有關資料使用者可在執行通知送達後14日內，向行政上訴委員會提出上訴反對該通知。
- (8) 凡專員——

then the Commissioner may serve on the relevant data user a notice in writing—

- (i) stating that he is of that opinion;
 - (ii) specifying the requirement as to which he is of that opinion and the reasons why he is of that opinion;
 - (iii) directing the data user to take such steps as are specified in the notice to remedy the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period specified in subsection (7) within which an appeal against the notice may be made) as is specified in the notice; and
 - (iv) accompanied by a copy of this section.
- (2) In deciding whether to serve an enforcement notice the Commissioner shall consider whether the contravention or matter to which the notice relates has caused or is likely to cause damage or distress to any individual who is the data subject of any personal data to which the contravention or matter, as the case may be, relates.
- (3) The steps specified in an enforcement notice to remedy any contravention or matter to which the notice relates may be framed—
- (a) to any extent by reference to any approved code of practice;
 - (b) so as to afford the relevant data user a choice between different ways of remedying the contravention or matter, as the case may be.
- (4) Subject to subsection (5), the period specified in an enforcement notice for taking the steps specified in it shall not expire before the end of the period specified in subsection (7) within which an appeal against the notice may be made and, if such an appeal is made, those steps need not be taken pending the determination or withdrawal of the appeal.
- (5) If the Commissioner is of the opinion that by reason of special circumstances the steps specified in an enforcement notice should be taken as a matter of urgency—
- (a) he may include a statement to that effect in the notice together with the reasons why he is of that opinion;
 - (b) where such a statement is so included, subsection (4) shall not apply but the notice shall not require those steps to be taken before the end of the period of 7 days beginning with the date on which the notice was served.
- (6) The Commissioner may cancel an enforcement notice by notice in writing served on the relevant data user.
- (7) An appeal may be made to the Administrative Appeals Board against an enforcement notice by the relevant data user not later than 14 days after the notice was served.
- (8) Where the Commissioner—

(a) 在調查完成前的任何時間就有關資料使用者持第 (1) 款所提述的意見；並

(b) 同時認為因為特殊情況，執行通知因事態緊急而應即送達有關資料使用者，

則即使該項調查未完成，他可如此送達該通知，而在該等情況下——

(i) 專員須在不損害須加入該通知任何其他事宜的原則下，在該通知中指明他持 (b) 段所提述的意見的理由；而

(ii) 本條例其他條文 (包括本條) 須據此解釋。

第 VIII 部

豁免

51. 釋義

凡任何個人資料憑藉本部獲豁免而不受本條例任何條文管限，則就該資料而言及在該項豁免範圍內，該條文既不對任何人賦予任何權利，亦不對其施加任何規定，而與該條文有關 (不論是直接有關或間接有關) 的本條例其他條文須據此解釋。

52. 家居用途

由個人持有並——

(a) 只與其私人事務、家庭事務或家居事務有關的個人資料；或

(b) 只是為消閒目的而如此持有的個人資料；

獲豁免而不受各保障資料原則、第 IV 和 V 部及第 36 和 38(b) 條的條文所管限。

53. 僱傭——職工策劃

包含與——

(a) 填補任何系列的現正出缺或可能會出缺的僱傭職位；或

(a) forms an opinion referred to in subsection (1) in respect of the relevant data user at any time before the completion of an investigation; and

(b) is also of the opinion that, by reason of special circumstances, an enforcement notice should be served on the relevant data user as a matter of urgency,

he may so serve such notice notwithstanding that the investigation has not been completed and, in any such case—

(i) the Commissioner shall, without prejudice to any other matters to be included in such notice, specify in the notice the reasons as to why he is of the opinion referred to in paragraph (b); and

(ii) the other provisions of this Ordinance (including this section) shall be construed accordingly.

PART VIII

EXEMPTIONS

51. Interpretation

Where any personal data are exempt from any provision of this Ordinance by virtue of this Part, then, in respect of those data and to the extent of that exemption, that provision neither confers any right nor imposes any requirement on any person, and the other provisions of this Ordinance which relate (whether directly or indirectly) to that provision shall be construed accordingly.

52. Domestic purposes

Personal data held by an individual and—

(a) concerned only with the management of his personal, family or household affairs; or

(b) so held only for recreational purposes,

are exempt from the provisions of the data protection principles, Parts IV and V and sections 36 and 38(b).

53. Employment—staff planning

Personal data which consist of information relevant to any staff planning proposal to—

(a) fill any series of positions of employment which are presently, or may become, unfilled; or

(C) 解僱或免除職位；或

(D) 授予任何合約、名銜(包括學術及專業資格)、獎學金、榮譽或其他利益，

而言，有關的資料當事人的合適程度、是否合乎資格或具資歷；

(ii) 與有關的資料當事人有關的任何合約、名銜(包括學術及專業資格)、獎學金、榮譽或利益應否予以延續、修改或撤銷；或

(iii) 應否為有關的資料當事人違反其僱用條款或委任以擔任職位的條款而對他採取紀律行動；

(b) 如在某程序中，針對該等決定提出上訴(不論是根據條例或其他依據提出)是不獲容許的，則不包括該等程序；

“完成”(completion)，就有關程序而言，指“有關程序”的定義(a)段所提述的有關決定的作出。

56. 個人評介

由資料使用者持有並包含符合以下說明的個人評介的個人資料——

(a) 由一名個人在其職業的正常過程以外作出的；及

(b) 與就現正出缺或可能會出缺的僱傭職位或其他職位的填補而言另一名個人的合適程度或其他條件有關的，

獲豁免，而——

(i) 在任何情況下，不受第 6 保障資料原則及第 18(1)(b) 條的條文所管限，但如 (a) 段所提述的個人已以書面告知該資料使用者他不反對該評介被 (b) 段所提述的個人閱覽(或用相似意思的字句)，則屬例外；或

(ii) 在該評介是在本條開始實施之日或以後作出的情況下，不受第 6 保障資料原則及第 18(1)(b) 條的條文所管限，直至 (b) 段所提述的個人已獲書面告知他已被接納或已被拒絕以填補該僱傭職位或其他職位(或用相似意思的字句)為止，

以先發生者為準。

57. 關於香港的保安等

(1) 凡個人資料是為保障關於香港的保安、防衛或國際關係的目的而由政府或代政府持有，則如第 6 保障資料原則及第 18(1)(b) 條的條文適用於該等資料，便相當可能會損害本款所述的任何事宜的話，該等資料獲豁免而不受該等條文所管限。

(C) removal from employment or office; or

(D) the awarding of contracts, awards (including academic and professional qualifications), scholarships, honours or other benefits;

(ii) whether any contract, award (including academic and professional qualifications), scholarship, honour or benefit relating to the data subject should be continued, modified or cancelled; or

(iii) whether any disciplinary action should be taken against the data subject for a breach of the terms of his employment or appointment to office;

(b) does not include any such process where no appeal, whether under an Ordinance or otherwise, may be made against any such determination.

56. Personal references

Personal data held by a data user which consist of a personal reference—

(a) given by an individual other than in the ordinary course of his occupation; and

(b) relevant to another individual's suitability or otherwise to fill any position of employment or office which is presently, or may become, unfilled,

are exempt from the provisions of data protection principle 6 and section 18(1)(b)—

(i) in any case, unless the individual referred to in paragraph (a) has informed the data user in writing that he has no objection to the reference being seen by the individual referred to in paragraph (b) (or words to the like effect); or

(ii) in the case of a reference given on or after the day on which this section comes into operation, until the individual referred to in paragraph (b) has been informed in writing that he has been accepted or rejected to fill that position or office (or words to the like effect),

whichever first occurs.

57. Security, etc. in respect of Hong Kong

(1) Personal data held by or on behalf of the Government for the purposes of safeguarding security, defence or international relations in respect of Hong Kong are exempt from the provisions of data protection principle 6 and section 18(1)(b) where the application of those provisions to the data would be likely to prejudice any of the matters referred to in this subsection.

(2) 凡——

- (a) 個人資料是為第(1)款所提述的目的而使用(不論該等資料是否為該等目的而持有);及
- (b) 第3保障資料原則的條文就該等使用而適用便相當可能會損害該款所提述的任何事宜,

該等資料獲豁免而不受第3保障資料原則的條文所管限,而在為任何人違反任何該等條文而針對他進行的法律程序中,如該人證明他當時有合理理由相信不如此使用該等資料便相當可能會損害任何該等事宜,即為免責辯護。

(3) 就任何個人資料是否需有第(1)款下的豁免或曾否在任何時間需有第(1)款下的豁免的問題,可由行政長官或政務司司長決定,而一份由行政長官或政務司司長簽署並證明需有或曾在任何時間需有該項豁免的證明書,即為該事實的證據。(由1997年第362號法律公告修訂;由1999年第34號第3條修訂)

(4) 就第(2)款而言,一份由行政長官或政務司司長簽署的證明個人資料是為或曾為第(1)款所提述的任何目的而使用的證明書,即為該事實的證據。(由1997年第362號法律公告修訂;由1999年第34號第3條修訂)

(5) 行政長官或政務司司長可在第(3)或(4)款所提述的證明書中,就該證明書所關乎的個人資料及為該證明書所指明的理由,指示專員不得進行視察或調查,而在此情況下,專員須遵從該項指示。(由1997年第362號法律公告修訂;由1999年第34號第3條修訂)

(6) 看來是第(3)或(4)款所提述的證明書的文件,須獲收取為證據,而在沒有相反證據的情況下,該文件須當作為該等證明書。

(7) 在本條中——

“保安”(security)包括防止或排拒無權進入香港及留在香港的人(包括按照《入境條例》(第115章)的條文被扣留的人)進入香港及留在香港;(由1997年第80號第103(1)條修訂)

“國際關係”(international relations)包括與任何國際組織的關係。

58. 罪行等

(1) 為——

- (a) 罪行的防止或偵測;

(2) Personal data are exempt from the provisions of data protection principle 3 in any case in which—

- (a) the use of the data is for any of the purposes referred to in subsection (1) (and whether or not the data are held for any of those purposes); and
- (b) the application of those provisions in relation to such use would be likely to prejudice any of the matters referred to in that subsection,

and in any proceedings against any person for a contravention of any of those provisions it shall be a defence to show that he had reasonable grounds for believing that failure to so use the data would have been likely to prejudice any of those matters.

(3) Any question whether an exemption under subsection (1) is or at any time was required in respect of any personal data may be determined by the Chief Executive or Chief Secretary for Administration; and a certificate signed by the Chief Executive or Chief Secretary for Administration certifying that the exemption is or at any time was so required shall be evidence of that fact. (Amended L.N. 362 of 1997; 34 of 1999 s. 3)

(4) For the purposes of subsection (2), a certificate signed by the Chief Executive or Chief Secretary for Administration certifying that personal data are or have been used for any purpose referred to in subsection (1) shall be evidence of that fact. (Amended L.N. 362 of 1997; 34 of 1999 s. 3)

(5) The Chief Executive or Chief Secretary for Administration may, in a certificate referred to in subsection (3) or (4), in respect of the personal data to which the certificate relates and for the reasons specified in that certificate, direct the Commissioner not to carry out an inspection or investigation and, in any such case, the Commissioner shall comply with the direction. (Amended L.N. 362 of 1997; 34 of 1999 s. 3)

(6) A document purporting to be a certificate referred to in subsection (3) or (4) shall be received in evidence and, in the absence of evidence to the contrary, shall be deemed to be such a certificate.

(7) In this section—

“international relations”(國際關係) includes relations with any international organization;

“security”(保安) includes the prevention or preclusion of persons (including persons detained in accordance with the provisions of the Immigration Ordinance (Cap. 115)) entering and remaining in Hong Kong who do not have the right to enter and remain in Hong Kong.

58. Crime, etc.

(1) Personal data held for the purposes of—

- (a) the prevention or detection of crime;

- (b) 犯罪者的拘捕、檢控或拘留；
- (c) 任何稅項的評定或收取；
- (d) 任何人所作的非法或嚴重不當的行為、或不誠實的行為或舞弊行為的防止、排除或糾正(包括懲處)；
- (e) 防止或排除因——
 - (i) 任何人輕率的業務經營手法或活動；或
 - (ii) 任何人所作的非法或嚴重不當的行為、或不誠實的行為或舞弊行為，

而引致的重大經濟損失；

- (f) 確定有關的資料當事人的品格或活動是否相當可能對以下事情有重大不利影響——

- (i) 由該資料使用者執行法定職能所關乎的事情；或
- (ii) 與本段憑藉第(3)款而適用的職能的執行有關的事情；或

- (g) 本段憑藉第(3)款而適用的職能的執行，

而持有的個人資料，在以下情況下獲豁免而不受第6保障資料原則及第18(1)(b)條的條文所管限——

- (i) 該等條文適用於該等資料便相當可能會損害本款所提述的任何事宜；或
- (ii) 該等條文適用於該等資料便相當可能會直接或間接識辨屬該等資料來源的人的身分。

- (2) 凡——

- (a) 個人資料是為第(1)款所提述的目的而使用(不論該等資料是否為該等目的而持有)；及

- (b) 第3保障資料原則的條文就該等使用而適用便相當可能會損害該款所提述的任何事宜，

則該等資料獲豁免而不受第3保障資料原則的條文所管限，而在為任何人違反任何該等條文而針對他進行的法律程序中，如該人證明他當時有合理理由相信不如此使用該資料便相當可能會損害任何該等事宜，即為免責辯護。

- (3) 第(1)款(f)(ii)及(g)段適用於財經規管者的以下職能——

- (a) 保障公眾免受因以下事情導致的財政損失的職能——
 - (i) 屬——

- (b) the apprehension, prosecution or detention of offenders;
- (c) the assessment or collection of any tax or duty;
- (d) the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;

- (e) the prevention or preclusion of significant financial loss arising from—

- (i) any imprudent business practices or activities of persons; or
- (ii) unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;

- (f) ascertaining whether the character or activities of the data subject are likely to have a significantly adverse impact on any thing—

- (i) to which the discharge of statutory functions by the data user relates; or

- (ii) which relates to the discharge of functions to which this paragraph applies by virtue of subsection (3); or

- (g) discharging functions to which this paragraph applies by virtue of subsection (3),

are exempt from the provisions of data protection principle 6 and section 18(1)(b) where the application of those provisions to the data would be likely to—

- (i) prejudice any of the matters referred to in this subsection; or
- (ii) directly or indirectly identify the person who is the source of the data.

- (2) Personal data are exempt from the provisions of data protection principle 3 in any case in which—

- (a) the use of the data is for any of the purposes referred to in subsection (1) (and whether or not the data are held for any of those purposes); and

- (b) the application of those provisions in relation to such use would be likely to prejudice any of the matters referred to in that subsection,

and in any proceedings against any person for a contravention of any of those provisions it shall be a defence to show that he had reasonable grounds for believing that failure to so use the data would have been likely to prejudice any of those matters.

- (3) Paragraphs (f)(ii) and (g) of subsection (1) apply to any functions of a financial regulator—

- (a) for protecting members of the public against financial loss arising from—

- (i) dishonesty, incompetence, malpractice or seriously improper conduct by persons—

- (A) 從事銀行、保險、投資或其他財經服務的提供；
- (B) 從事公司的管理；
- (BA) 從事已根據《強制性公積金計劃條例》(第 485 章) 註冊的公積金計劃的管理；(由 1998 年第 4 號第 14 條增補)
- (C) 從事《職業退休計劃條例》(第 426 章) 所指的職業退休計劃的管理；或
- (D) 公司股東，
的人的不誠實行為、不勝任、不良行為或嚴重不當的行為；或
- (ii) 已獲或未獲解除破產令的破產人的行為；
- (b) 維持或促進提供 (a)(i)(A) 段所提述的任何服務的任何體系的一般穩定性或有效運作的職能；或
- (c) 為本款的施行而在第 (4) 款下的公告中指明的職能。
- (4) 行政長官可為第 (3) 款的施行藉憲報公告指明財經規管者的職能。(由 1999 年第 34 號第 3 條修訂)
- (5) 現聲明——
- (a) 第(3)款的施行不得損害第 (1) 款 (a)、(b)、(c)、(d) 及 (f)(i) 段就財經規管者而施行的概括性；
- (b) 第(4)款下的公告是附屬法例。

59. 健康

與有關的資料當事人的身體健康或精神健康有關的個人資料，獲豁免而不受以下任何或所有條文所管限——

- (a) 第 6 保障資料原則及第 18(1)(b) 條的條文；
 - (b) 第 3 保障資料原則的條文，
- 但上述豁免僅在以下情況適用——
- (i) 該等條文適用於該等資料便相當可能會對該資料當事人的身體健康或精神健康造成嚴重損害；或
 - (ii) 該等條文適用於該等資料便相當可能會對任何其他個人的身體健康或精神健康造成嚴重損害。

60. 法律專業保密權

假如在法律上就某些資訊而享有法律專業保密權的聲稱是能夠成立的，包含該等資訊的個人資料獲豁免而不受第 6 保障資料原則及第 18(1)(b) 條的條文所管限。

- (A) concerned in the provision of banking, insurance, investment or other financial services;
- (B) concerned in the management of companies;
- (BA) concerned in the administration of provident fund schemes registered under the Mandatory Provident Fund Schemes Ordinance (Cap. 485); (Added 4 of 1998 s. 14)
- (C) concerned in the management of occupational retirement schemes within the meaning of the Occupational Retirement Schemes Ordinance (Cap. 426); or
- (D) who are shareholders in companies; or
- (ii) the conduct of discharged or undischarged bankrupts;
- (b) for maintaining or promoting the general stability or effective working of any of the systems which provide any of the services referred to in paragraph (a)(i)(A); or
- (c) specified for the purposes of this subsection in a notice under subsection (4).
- (4) For the purposes of subsection (3), the Chief Executive may, by notice in the Gazette, specify a function of a financial regulator. (Amended 34 of 1999 s. 3)
- (5) It is hereby declared that—
- (a) subsection (3) shall not operate to prejudice the generality of the operation of paragraphs (a), (b), (c), (d) and (f)(i) of subsection (1) in relation to a financial regulator;
- (b) a notice under subsection (4) is subsidiary legislation.

59. Health

Personal data relating to the physical or mental health of the data subject are exempt from the provisions of either or both of—

- (a) data protection principle 6 and section 18(1)(b);
 - (b) data protection principle 3,
- in any case in which the application of those provisions to the data would be likely to cause serious harm to the physical or mental health of—
- (i) the data subject; or
 - (ii) any other individual.

60. Legal professional privilege

Personal data are exempt from the provisions of data protection principle 6 and section 18(1)(b) if the data consist of information in respect of which a claim to legal professional privilege could be maintained in law.

(5) 任何資料使用者(包括在第 32(2) 條首述的資料使用者)違反第 30(2) 或 32(1)(b)(i) 條下的通知所指明的任何條件,即屬犯罪,一經定罪,可處第 3 級罰款。

(6) 任何人違反第 44(3) 或 46(1) 條,即屬犯罪,一經定罪,可處第 3 級罰款及監禁 6 個月。

(7) 除第 (8) 款另有規定外,任何有關資料使用者獲送達執行通知而違反該通知,即屬犯罪,一經定罪,可處第 5 級罰款及監禁 2 年,如屬持續罪行,可處每日罰款 \$1,000。

(8) 被控犯第 (7) 款所訂罪行的有關資料使用者,如證明他已盡所有應盡的努力以遵從有關的執行通知,即為免責辯護。

(9) 任何人——

(a) 無合法辯解而妨礙、阻撓或抗拒專員或任何其他人士執行其第 VII 部下的職能或行使其在第 VII 部下的權力;

(b) 無合法辯解而不遵從專員或任何其他人士根據該部所作出的任何合法規定;或

(c) 在專員或任何其他人士執行其第 VII 部下的職能或行使其第 VII 部下的權力時,向其作出他明知為虛假或不相信為真實的陳述或以其他方式在知情下誤導專員或該人,

即屬犯罪,一經定罪,可處第 3 級罰款及監禁 6 個月。

(10) 任何資料使用者無合理辯解而違反本條例下的任何規定(保障資料原則除外),而本條並無為其指明罰則,該資料使用者即屬犯罪,一經定罪,可處第 3 級罰款。

65. 僱主及主事人的法律責任

(1) 任何人在其受僱用中所作出的任何作為或所從事的任何行為,就本條例而言須視為亦是由其僱主所作出或從事的,不論其僱主是否知悉或批准他作出該作為或從事該行為。

(2) 任何作為另一人的代理人並獲該另一人授權(不論是明示或默示,亦不論是事前或事後授權)的人所作出的任何作為或所從事的任何行為,就本條例而言須視為亦是該另一人作出或從事的。

(3) 在根據本條例對任何人就其僱員被指稱作出的作為或從事的行為(視屬何情況而定)而提出的法律程序中,該人如證明他已採取切實可行的步驟,以防止該僱員

(5) A data user (including a data user first-mentioned in section 32(2)) who contravenes any condition specified in a notice under section 30(2) or 32(1)(b)(i) commits an offence and is liable on conviction to a fine at level 3.

(6) Any person who contravenes section 44(3) or 46(1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(7) Subject to subsection (8), any relevant data user who contravenes an enforcement notice served on the data user commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years and, in the case of a continuing offence, to a daily penalty of \$1,000.

(8) It shall be a defence for a relevant data user charged with an offence under subsection (7) to show that the data user exercised all due diligence to comply with the enforcement notice concerned.

(9) Any person who—

(a) without lawful excuse, obstructs, hinders or resists the Commissioner or any other person in the performance of his functions or the exercise of his powers under Part VII;

(b) without lawful excuse, fails to comply with any lawful requirement of the Commissioner or any other person under that Part; or

(c) makes a statement which he knows to be false or does not believe to be true, or otherwise knowingly misleads the Commissioner or any other person in the performance of his functions or the exercise of his powers under that Part,

commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(10) A data user who, without reasonable excuse, contravenes any requirement under this Ordinance (other than a contravention of a data protection principle) for which no other penalty is specified in this section commits an offence and is liable on conviction to a fine at level 3.

65. Liability of employers and principals

(1) Any act done or practice engaged in by a person in the course of his employment shall be treated for the purposes of this Ordinance as done or engaged in by his employer as well as by him, whether or not it was done or engaged in with the employer's knowledge or approval.

(2) Any act done or practice engaged in by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of this Ordinance as done or engaged in by that other person as well as by him.

(3) In proceedings brought under this Ordinance against any person in respect of an act or practice alleged to have been done or engaged in, as the

的事項、服務或設施而招致或相當可能招致的)；專員亦可就規例中指定的某些情況或某些個案而為相同的事項、服務或設施訂明不同的費用。

70. 規例——一般條文

(1) 民政事務局長可就以下所有或任何事項訂立規例—— (由 1997 年第 362 號法律公告修訂)

- (a) 在資料使用者紀錄簿內所須記入的詳情，包括第 27(2)(a)、(b) 及 (c) 條所提述的詳情；
 - (b) 訂明任何根據本條例須予訂明或可予訂明的事情。
- (2) 根據本條訂立的任何規例可——
- (a) 授權專員就一般情況或就某個案豁免任何人使其無須遵守有關規例；
 - (b) 就不同的情況訂定不同的條文，及為某個案或某類個案訂定條文；
 - (c) 限於只適用於其本身所訂明的情況。

(3) 根據本條訂立的任何規例，可就違反規例訂明罪行，並可規定就任何該等罪行可處不超過第 3 級的罰款及監禁不超過 2 年；如屬持續罪行，可處每日罰款不超過 \$1,000。

71. 附表 2、4 及 6 的修訂

行政長官會同行政會議可藉憲報公告修訂附表 2、4 及 6。

(由 1999 年第 34 號第 3 條修訂)

72-73. (已失時效而略去)

附表 1

[第 2(1) 及 (6) 條]

保障資料原則

1. 第 1 原則——收集個人資料的目的及方式

(1) 除非——

- (a) 個人資料是為了直接與將會使用該等資料的資料使用者的職能或活動有關的合法目的而收集；
- (b) 在符合 (c) 段的規定下，資料的收集對該目的是必需的或直接與該目的有關的；及

matter, service or facility to which such fee relates, and different fees may be so prescribed for the same matter, service or facility in order to provide for particular circumstances or particular cases specified in the regulations.

70. Regulations—general

(1) The Secretary for Home Affairs may make regulations for all or any of the following matters—

- (a) the particulars to be entered in the log book of a data user, including particulars referred to in section 27(2)(a), (b) and (c);
- (b) prescribing anything that is required or permitted to be prescribed under this Ordinance.

(2) Any regulations made under this section may—

- (a) empower the Commissioner to grant exemptions from the regulations, either generally or in a particular case;
- (b) make different provisions for different circumstances and provide for a particular case or class of case;
- (c) be made so as to apply only in such circumstances as are prescribed by the regulations.

(3) Any regulations made under this section may prescribe offences in respect of contraventions of the regulations, and may provide for the imposition in respect of any such offence of a fine not exceeding level 3 and of imprisonment for a period not exceeding 2 years and, in the case of a continuing offence, to a daily penalty not exceeding \$1,000.

71. Amendment of Schedules 2, 4 and 6

The Chief Executive in Council may, by notice in the Gazette, amend Schedule 2, 4 or 6.

(Amended 34 of 1999 s. 3)

72-73. (Omitted as spent)

SCHEDULE 1

[s. 2(1) & (6)]

DATA PROTECTION PRINCIPLES

1. Principle 1—purpose and manner of collection of personal data

(1) Personal data shall not be collected unless—

- (a) the data are collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;
- (b) subject to paragraph (c), the collection of the data is necessary for or directly related to that purpose; and

(c) 就該目的而言，資料屬足夠但不超乎適度，否則不得收集資料。

(2) 個人資料須以——

(a) 合法；及

(b) 在有關個案的所有情況下屬公平，的方法收集。

(3) 凡從或將會從某人收集個人資料，而該人是資料當事人，須採取所有切實可行的步驟，以確保——

(a) 他在收集該等資料之時或之前，以明確或暗喻方式而獲告知——

(i) 他有責任提供該等資料抑或是可自願提供該等資料；及

(ii) (如他有責任提供該等資料) 他若不提供該等資料便會承受的後果；及

(b) 他——

(i) 在該等資料被收集之時或之前，獲明確告知——

(A) 該等資料將會用於甚麼目的(須一般地或具體地說明該等目的)；及

(B) 該等資料可能移轉予甚麼類別的人；及

(ii) 在該等資料首次用於它們被收集的目的之時或之前，獲明確告知——

(A) 他要求查閱該等資料及要求改正該等資料的權利；

(B) 該等要求可向其提出的個人的姓名及地址，

但在以下情況屬例外：該等資料是為了在本條例第 VIII 部中指明為個人資料就其而獲豁免而不受第 6 保障資料原則的條文所管限的目的而收集，而遵守本款條文相當可能會損害該目的。

2. 第 2 原則——個人資料的準確性及保留期間

(1) 須採取所有切實可行的步驟，以——

(a) 確在顧及有關的個人資料被使用於或會被使用於的目的(包括任何直接有關的目的)下，該等個人資料是準確的；

(b) 若有合理理由相信有關的個人資料被使用於或會被使用於的目的(包括任何直接有關的目的)下，該等個人資料是不準確時，確保——

(i) 除非該等理由不再適用於該等資料(不論是藉着更正該等資料或其他方式)及在此之前，該等資料不得使用於該目的；或

(ii) 該等資料被刪除；

(c) 在有關個案的整體情況下知悉以下事項屬切實可行時——

(i) 在指定日當日或之後向第三者披露的個人資料，在顧及該等資料被使用於或會被使用於的目的(包括任何直接有關的目的)下，在要項上是不準確的；及

(ii) 該等資料在如此披露時是不準確的，

確保第三者——

(A) 獲告知該等資料是不準確的；及

(B) 獲提供所需詳情，以令他能在顧及該目的下更正該等資料。

(2) 個人資料的保存時間，不得超過將其保存以貫徹該等資料被使用於或會被使用於的目的(包括任何直接有關的目的)所需的時間。

3. 第 3 原則——個人資料的使用

如無有關的資料當事人的訂明同意，個人資料不得用於下列目的以外的目的——

(a) 在收集該等資料時會將其使用於的目的；或

(b) 直接與(a)段所提述的目的有關的目的。

(c) the data are adequate but not excessive in relation to that purpose.

(2) Personal data shall be collected by means which are—

(a) lawful; and

(b) fair in the circumstances of the case.

(3) Where the person from whom personal data are or are to be collected is the data subject, all practicable steps shall be taken to ensure that—

(a) he is explicitly or implicitly informed, on or before collecting the data, of—

(i) whether it is obligatory or voluntary for him to supply the data; and

(ii) where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data; and

(b) he is explicitly informed—

(i) on or before collecting the data, of—

(A) the purpose (in general or specific terms) for which the data are to be used; and

(B) the classes of persons to whom the data may be transferred; and

(ii) on or before first use of the data for the purpose for which they were collected, of—

(A) his rights to request access to and to request the correction of the data; and

(B) the name and address of the individual to whom any such request may be made,

unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data were collected and that purpose is specified in Part VIII of this Ordinance as a purpose in relation to which personal data are exempt from the provisions of data protection principle 6.

2. Principle 2—accuracy and duration of retention of personal data

(1) All practicable steps shall be taken to ensure that—

(a) personal data are accurate having regard to the purpose (including any directly related purpose) for which the personal data are or are to be used;

(b) where there are reasonable grounds for believing that personal data are inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used—

(i) the data are not used for that purpose unless and until those grounds cease to be applicable to the data, whether by the rectification of the data or otherwise; or

(ii) the data are erased;

(c) where it is practicable in all the circumstances of the case to know that—

(i) personal data disclosed on or after the appointed day to a third party are materially inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used by the third party; and

(ii) that data were inaccurate at the time of such disclosure,

that the third party—

(A) is informed that the data are inaccurate; and

(B) is provided with such particulars as will enable the third party to rectify the data having regard to that purpose.

(2) Personal data shall not be kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data are or are to be used.

3. Principle 3—use of personal data

Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than—

(a) the purpose for which the data were to be used at the time of the collection of the data; or

(b) a purpose directly related to the purpose referred to in paragraph (a).

4. 第 4 原則——個人資料的保安

須採取所有切實可行的步驟，以確保由資料使用者持有的個人資料(包括採用不能切實可行地予以查閱或處理的形式的資料)受保障而不受未獲准許的或意外的查閱、處理、刪除或其他使用所影響，尤其須考慮——

- (a) 該等資料的種類及如該等事情發生便能造成的損害；
- (b) 儲存該等資料的地點；
- (c) 儲存該等資料的設備所包含(不論是藉自動化方法或其他方法)的保安措施；
- (d) 為確保能查閱該等資料的人的良好操守、審慎態度及辦事能力而採取的措施；及
- (e) 為確保在保安良好的情況下傳送該等資料而採取的措施。

5. 第 5 原則——資訊須在一般情況下可提供

須採取所有切實可行的步驟，以確保任何人——

- (a) 能確定資料使用者在個人資料方面的政策及實務；
- (b) 能獲告知資料使用者所持有的個人資料的種類；
- (c) 能獲告知資料使用者持有的個人資料是為或將會為甚麼主要目的而使用的。

6. 第 6 原則——查閱個人資料

資料當事人有權——

- (a) 確定資料使用者是否持有他屬其資料當事人的個人資料；
- (b) 要求——
 - (i) 在合理時間內查閱；
 - (ii) 在支付並非超乎適度的費用(如有的話)下查閱；
 - (iii) 以合理方式查閱；及
 - (iv) 查閱採用清楚易明的形式的，個人資料；
- (c) 在(b)段所提述的要求被拒絕時獲提供理由；
- (d) 反對(c)段所提述的拒絕；
- (e) 要求改正個人資料；
- (f) 在(e)段所提述的要求被拒絕時獲提供理由；及
- (g) 反對(f)段所提述的拒絕。

附表 2

[第 5(7)、10(2)(c)
及 71 條]

專員的財務事宜等

1. 專員的資源等

(1) 專員的資源計有——

(a) 以下一切款項——

- (i) 經立法會撥作委員會用途並由政府付予專員的款項；及 (由 1999 年第 34 號第 3 條修訂)

4. Principle 4—security of personal data

All practicable steps shall be taken to ensure that personal data (including data in a form in which access to or processing of the data is not practicable) held by a data user are protected against unauthorized or accidental access, processing, erasure or other use having particular regard to—

- (a) the kind of data and the harm that could result if any of those things should occur;
- (b) the physical location where the data are stored;
- (c) any security measures incorporated (whether by automated means or otherwise) into any equipment in which the data are stored;
- (d) any measures taken for ensuring the integrity, prudence and competence of persons having access to the data; and
- (e) any measures taken for ensuring the secure transmission of the data.

5. Principle 5—information to be generally available

All practicable steps shall be taken to ensure that a person can—

- (a) ascertain a data user's policies and practices in relation to personal data;
- (b) be informed of the kind of personal data held by a data user;
- (c) be informed of the main purposes for which personal data held by a data user are or are to be used.

6. Principle 6—access to personal data

A data subject shall be entitled to—

- (a) ascertain whether a data user holds personal data of which he is the data subject;
- (b) request access to personal data—
 - (i) within a reasonable time;
 - (ii) at a fee, if any, that is not excessive;
 - (iii) in a reasonable manner; and
 - (iv) in a form that is intelligible;
- (c) be given reasons if a request referred to in paragraph (b) is refused;
- (d) object to a refusal referred to in paragraph (c);
- (e) request the correction of personal data;
- (f) be given reasons if a request referred to in paragraph (e) is refused; and
- (g) object to a refusal referred to in paragraph (f).

SCHEDULE 2

[ss.5(7), 10(2)(c)
& 71]

FINANCES, ETC. OF COMMISSIONER

1. Resources of Commissioner

(1) The resources of the Commissioner shall consist of—

(a) all money—

- (i) paid by the Government to the Commissioner and appropriated for that purpose by the Legislative Council; and