

**Submission of the Privacy Commissioner for Personal Data
to the Public Accounts Committee
for the public hearing on the Director of Audit's Report No. 53
on 17 December 2009**

Introduction

1. The Privacy Commissioner for Personal Data (“the Privacy Commissioner”) has prepared a Work Report which is being presented to the Committee together with this Submission. The Committee is invited to refer to the Work Report for details of work done by the Privacy Commissioner, especially in the past five years.

2. The Office of the Privacy Commissioner for Personal Data (“PCPD”) is the statutory body responsible for the protection of personal data privacy of all living individuals in Hong Kong. Apart from an administrative staff of thirteen, there were, up to 31 March 2009, only 29 permanent establishment to handle complaints, investigation and enforcement, compliance works, data matching, organizing promotional and educational activities, reviewing the Ordinance, critically examining proposed bills that may impact on data privacy, conducting appeal court hearing, liaising with overseas counterparts, etc.

3. In its daily work, the PCPD has to respond timely to any data privacy issues which may arise, and take appropriate action. Due to its limited resources, the PCPD very often has to make impromptu deployment of its officers to meet the social demands of the moment. In 1996 when the PCPD was set up, it was not recognized that most social mischiefs would have some relation to personal data and that personal data would in the 21st century be everywhere. Thus, there is much more work the PCPD has to do than previously anticipated and much of such work is beyond the control or planning of the PCPD.

4. The Privacy Commissioner thanks the Director of Audit and acknowledges that there is room for improvement for the PCPD in various aspects of its operation.

5. Audit in its value-for-money Audit Report has given the PCPD many valuable suggestions and recommendations that will assist the latter in its work in the future.

6. This Submission summarizes the Audit's recommendations and what the PCPD has done and will do in implementing the recommendations.

Recommendation in paragraph 2.8 – Need for a Structured Strategic Planning

7. Audit recommended that the PCPD should consider implementing a structured strategic planning process.

8. As a matter of fact, the substance of a formal annual business plan and timetable for the annual conduct of strategic planning can be found in the yearly reports made by the PCPD to its Controlling Officer. In view of the Audit's recommendations, the PCPD will in the future create a separate document under the name of Annual Business Plan whose contents will basically be those in its yearly reports to the CMAB.

9. The PCPD will also set up a formal strategic planning group to drive the strategic planning process. In the past, the Privacy Commissioner had had the benefit of being able to frequently consult his top personnel on all strategic planning processes. It had not set up a formal group before due to the very small number of persons who give an input to the Privacy Commissioner. Working informally means that he can call on any member of the staff to assist on the "need to" basis without having to make that person a permanent member of a formal group. The strategic planning group can be formed without any effort anytime, probably in the beginning of 2010.

10. In response to Audit's recommendation, the PCPD will document its long-term strategic plans. Since taking office in 2005, after some familiarization and having tackled some unforeseen incidents, the current Privacy Commissioner started making some long term plans. Even though such plans are not specifically documented in any single set of papers, they are nonetheless clearly evident and included the following :

- (a) The relocation of the office premises in 2006 which meant that for the following five years the PCPD can always be found next to the Wanchai market.
- (b) The ambitious project of making a comprehensive review of the Personal Data (Privacy) Ordinance under which the Privacy Commissioner performs his functions with the ultimate purpose of engineering a privacy law reform. The Government has now considered that the reform is necessary and will carry out same in the near future, with the active co-operation of the PCPD.
- (c) The creation of a Compliance Division to handle all privacy issues without waiting for a complainant to appear, because in a lot of situations, the data subjects concerned might not or could not know that they were involved. The creation of the new Division denotes a new approach adopted by the Privacy Commissioner in the performance of his statutory functions.
- (d) The efforts to bring into operation Part IV of the Ordinance on Data Users Returns and Register of Data Users, a task which the Privacy Commissioner considers should no longer be postponed.
- (e) The arrangements for the carrying out of a Privacy Compliance Audit of the Immigration Department's SMART ID card data within its personal data systems.
- (f) The PCPD's substantial participation in the Government's Food and Health Bureau's eHealth Record Sharing Programme from the perspective of a privacy regulator. This project will keep the PCPD occupied for some five years to come.

- (g) An innovative concept of providing targeted industries, such as hoteliers and estate agents, privacy awareness and training having regard to their need to handle personal data in their work and the importance to the Hong Kong public that they do handle such data in compliance with the Ordinance.
- (h) A clear policy has been set by the current Privacy Commissioner to increase the transparency of the work of the PCPD by much greater interaction with the public, the media and other stakeholders. Many more press statements were issued. Compare the average number of 6 press releases in each of the four years before he took office to 42 statements issued in 2008-09, there is an increase of seven times.
- (i) The current Privacy Commissioner pursues a consistent policy of providing more detailed information to the public, particularly those who have a serious interest in the PCPD's application of the privacy law to actual events. Various ways and means are used. In all the 7½ years before he took office only one investigation report had been published. In the past 4½ years, nine reports have been published. He has arranged for more case notes to be uploaded onto the PCPD's website. He has also directed the publication of the only reference book of its kind on the Privacy Commissioner's perspectives of the Data Protection Principles.
- (j) The Privacy Commissioner's purpose and efforts to maintain and initiate greater participation in regional and global personal data protection activities. As a result, Hong Kong is increasingly recognized as having a strong and competent regulatory authority among its overseas counterparts even though it is only a city.

11. All of the above strategic plans (there are others which are not mentioned) have a long term, not to say permanent, effect on the performance of the PCPD's functions. Every individual Privacy Commissioner comes on the scene with his personal visions and missions. When he departs he may leave a new model for the ongoing development of the organization.

12. By the nature and the size of the PCPD's set-up, the Privacy Commissioner may not readily see the need to set down static strategic plans for himself to follow. Sometimes events that happened can lead to certain decisions and actions which in turn change the working pattern of the organization. Take for instance, when in 2008 the Privacy Commissioner had to invoke the inspection power for the first time (even when he had no funding). It was subsequently accepted by the Government that Inspections should be one of the standard items of work to be undertaken by the PCPD in the future.

Recommendation in paragraph 2.14 – Formal Meeting Rules for the Advisory Committee

13. Audit recommended that a set of formal rules governing the Advisory Committee meeting be compiled.

14. The Privacy Commissioner convened a meeting of the Advisory Committee on 24 September 2009 and it was agreed at that meeting that formal meeting procedures be formulated in relation to the frequency of meetings, formation of a quorum, duty of confidentiality, declaration of interest and time within which draft minutes should be circulated for members' comments.

15. The PCPD is in the course of drafting the formal meeting rules, which will be tabled at the next meeting of the Advisory Committee for deliberation. It is expected that formal meeting rules of the Advisory Committee will be in place by February 2010.

Recommendation in paragraph 3.24 – Matters relating to Complaint Handling

16. Audit recommended that the PCPD should:

- (1) conduct post-implementation reviews of the streamlined planning procedures;
- (2) make increased efforts to clear long outstanding complaint cases;

- (3) carry out risk assessment to manage the risks arising from the non-compliance with the 45-day requirement of serving the refusal notice to complaints;
- (4) ensure that the CMAB and the Advisory Committee are involved in the risk assessment exercise;
- (5) ensure that the issue of non-compliance with the 45-day requirement be included as a standing item in the agenda of the Advisory Committee meetings and the CMAB's progress review meetings with the PCPD until the issue is satisfactorily resolved; and
- (6) provide the Advisory Committee and the CMAB with statistics similar to Figure 6 in the Audit Report on a regular basis.

17. A post-implementation review of the existing streamlined planning procedures will be conducted in March 2010.

18. By temporarily re-deploying its resources and re-arranging its priority of attention, the PCPD has reduced the number of long outstanding cases from 33 as at June 2009 to 30 as at 2 December 2009, and the average age of the long outstanding cases has been reduced from 426 days as at June 2009 to 297 days as at 2 December 2009. Without a permanent increase in manpower, the PCPD cannot see how such efforts and improvement can continue.

19. It should be noted that the number of long outstanding cases represents 3.3% of the total number of cases processed by the PCPD in 2008-09. As can be seen from paragraph 3.12 of the Audit Report, the PCPD exceeded the target of 90% in closing complaint cases within 180 days. The actual performance achieved is 96% of the target.

20. As recommended by Audit, the PCPD shall carry out a thorough risk assessment with a view to identifying, assessing and formulating measures to manage the risks arising from the non-compliance with the 45-day requirement of serving the refusal notice to complainants. It will ensure that CMAB and the Advisory Committee are involved in such an exercise.

21. The PCPD will also ensure that the issue of non-compliance with the 45-day requirement forms a standing item in the agenda of the Advisory Committee meetings and the CMAB's progress review meetings until the issue is satisfactorily resolved. Statistics shall be provided to the CMAB and the Advisory Committee as recommended by Audit.

22. Whether the PCPD can shorten the time spent on processing complaint cases will depend on a number of imponderables but it shall, with additional resources, endeavour to deploy the personnel in the Operations and the Compliance Divisions with greater fluidity.

23. Every decision by the Privacy Commissioner not to mount a full investigation can be subject to some critical examination by the Administrative Appeals Board and/or the Court. This will also increase the workload unavoidably. Moreover, the PCPD is facing a quandary every day in the efficient mobilization of its limited resources as to whether priority should be given to the compliance with the 45-day requirement under s.39 of the Ordinance or processing of investigations as speedily as possible.

24. While Audit noted that the PCPD received 824 complaints in the year 2008-2009, the PCPD has already received 728 complaints for the first 8 months of the year 2009-2010. At that rate the total number of complaints for 2009-2010 will reach 1,100, representing an increase of 33% over the previous year. This increase in number is aggravated by the 173 unfinished complaint cases brought forward from 2008-09. The solution of the problems mentioned in the Audit Report does not lie in just asking the officers to work harder and longer hours. The PCPD will continue to examine its methods of operation with a view to attaining greater efficiency in its performance.

25. Over the past five years, the Operations Division has been suffering from high personnel turnover rates which ranged from 29% to 67%:

Year	Officers Departed / Transferred Out	Turnover Rates
2004	4	33%
2005	4	31%
2006	7	50%
2007	4	29%
2008	8	67%

26. Over the past five years, the number of the more experienced officers, i.e. Personal Data Officers in the Operations Division has reduced and alternative support was provided by junior officers as Assistant Personal Data Officers since 2006. The table below shows the changes.

Year	Number of Officers Handling Complaints			
	SPDO	PDO	APDO	Total
2004	3	9	0	12
2005	3	10	0	13
2006	3	6	5	14
2007	3	6	5	14
2008	3	5	4	12

Note : SPDO = Senior Personal Data Officer
 PDO = Personal Data Officer
 APDO = Assistant Personal Data Officer

27. It can be seen that although the total numbers of officers in the Operations Division in 2004 and 2008 are the same, the number of PDOs has been reduced by 44% from 9 to 5. This has been due to the introduction of more APDOs, who are less experienced and are paid less, to replace the 3 PDOs departing to suit the budget. Simply put, the manpower in the Operations Division has been in a downward trend.

Recommendations in paragraphs 4.12, 4.30, 4.35 & 4.38 – Matters relating to Promotional Activities

28. Audit recommended that the PCPD should:
- (1) compile a Promotional Events Manual setting out the budgetary control requirements;
 - (2) strengthen the Administration Division's role in the budget control process;
 - (3) set guidelines on various types of expenditure items (venue and foods, engagement of artists and entertainment company, backdrops and properties and cash prizes);
 - (4) state the expenditure-sharing requirement in the Promotional Events Manual; and
 - (5) make continued efforts to ensure that the “moderate and conservative” principle is met in organizing international seminars in future.

29. The PCPD compiled a Promotional Events Manual (Annex 1) on 21 September 2009. The role of the Administration Division in the budget control process, the guidelines and the expenditure-sharing requirement have been expressly provided for in the Promotional Events Manual.

30. The PCPD is pleased that Audit recognised in paragraph 4.38 of the Audit Report that the PCPD has met the “moderate and conservative” principle in organising the 3-day 31st APPA Forum at the cost of \$24,900. The PCPD will continue with such efforts.

Recommendation in paragraph 5.5 – Expenditure on Overseas Duty Trips in General

31. Audit recommended that the PCPD should make continued efforts to economise on expenditure on overseas duty trips in future.

32. The PCPD is pleased with Audit's observations that there has been a downward trend of expenditure on overseas duty trips starting from 2005-06, and that such expenditure decreased from \$535,700 in 2004-05 to \$144,000 in 2008-09 (a historical low). As recommended by Audit, the PCPD shall make continued efforts to economise.

Recommendation in paragraph 5.13 – Free Accommodation and Correct Calculation of Overseas Subsistence Allowance

33. Audit recommended that the PCPD should in future give timely and due consideration to the option of free accommodation on duty trips and document any justification for not taking it. The PCPD should also ensure that correct rate is used in calculating the 40% OSA in future.

34. Where free accommodation is available, the PCPD shall, when circumstances permit, give timely and due consideration to avail itself of same. The PCPD issued a finance circular on 24 August 2009 (Annex 2) specifically requiring that any refusal to take up sponsored accommodation has to be documented.

35. To ensure that the correct overseas allowance rate is applied in each case, the attention of the staff has been drawn to the finance circular which is subject to changes by the Government without notification to the PCPD.

Recommendation in paragraph 5.21 – Time-off entitlement

36. Audit recommended that the PCPD should re-circulate periodically the directive on time-off issued in September 2009.

37. The Privacy Commissioner directed the Administration and Finance Manager on 3 September 2009 (Annex 3) that the Privacy Commissioner shall not be granted any time-off for whatever reason in the future.

Recommendation in paragraph 5.26 – “Moderate and Conservative” Principle in Overseas Duty Trips

38. Audit recommended that the PCPD should continue to apply the “moderate and conservative” principle in future overseas duty trips.

39. The PCPD is pleased that Audit recognised the Privacy Commissioner’s efforts to minimize expenditures in his Singapore trip in February 2009 by traveling economy class when he was entitled to travel business class and by redeeming his frequent flyer’s points instead of paying cash. The PCPD shall continue to apply the “moderate and conservative” principle in making decisions on future overseas duty trips.

Recommendations in paragraph 6.14 –Hospitality Expenditure, etc.

40. Audit recommended that the PCPD should:

- (1) continue his efforts to economise hospitality expenditure in future;
- (2) review the appropriateness of the two farewell dinners for the former Commissioners;
- (3) set guidelines on gift giving; and
- (4) document the business purpose and enforce per-person financial limit for hospitality meals and, where such limit is exceeded, document the justifications.

41. The PCPD is pleased with Audit’s observation made in paragraph 6.4 of the Audit Report that the hospitality expenditure incurred in 2008-09 at \$16,800 is the lowest in eight years (note : in fact this is a historical low). The PCPD shall, as recommended by Audit, continue its efforts in that regard.

42. The PCPD is pleased that Audit noted with approval in paragraph 6.13 of its Report that the Privacy Commissioner abolished the “Staff Welfare Fund” since 2005-06 to achieve economy.

43. The PCPD issued a finance circular on 18 September 2009 (Annex 4) directing that no expenses incurred for meals to bid welcome or farewell to any member of the PCPD shall be paid out of the PCPD's fund. In fact, there have been a farewell lunch for the outgoing Deputy Privacy Commissioner and a welcome lunch for the incoming Deputy Privacy Commissioner both in 2009 and quite correctly the public fund was not touched.

44. Guidelines on gift-giving are now included in Part III(4) of the Promotional Events Manual (See Annex 1).

Recommendations in paragraph 7.11 – Office Accommodation

45. Audit recommended that the PCPD should:

- (1) before renewing, or taking up new, leases for office accommodation in future, conduct a thorough assessment of its accommodation needs with reference to the government accommodation standards;
- (2) document the justifications if there are compelling reasons for exceeding the government standards;
- (3) before entering into a new lease for additional space to accommodate anticipated additional posts, ensure that funding for creation of the posts is available; and
- (4) consider whether or not to renew the lease for the area in Rooms 1302-3 on the 13th floor of the PCPD's existing office building.

46. The PCPD shall, as recommended by Audit, conduct a thorough assessment needs upon renewing or taking up new lease and document any justifications for exceeding the government standards.

47. The PCPD has duly considered the costs and benefits of whether or not to renew the lease for Rooms 1302-03 and has decided to continue the lease until 31 January 2011 when the lease for the main part of the PCPD's office premises shall expire. (Annex 5)

Recommendations in paragraphs 7.27 and 7.35 – Use of Office Car

48. Audit recommended that the PCPD should remind his staff to properly complete the office vehicle log books and to ensure that the office car is used in accordance with the existing guidelines. It was further recommended that the PCPD should continue to exercise strict control over the use of taxi for duty journeys and remind his staff to use the office car whenever it is available.

49. Since the matter was brought to the PCPD's notice, the vehicle log books are being properly completed. Staff have been reminded through circular issued to use the office car instead of taxi on duty journeys whenever the office car is available.

Recommendation in paragraph 7.45 – Completion of Staff Performance Appraisal

50. Audit recommended that the PCPD should take measures to ensure the timely completion of staff performance appraisals.

51. The PCPD shall endeavor to have staff performance appraisals completed in good time as recommended by Audit.

Recommendation in paragraph 8.5 – Performance Indicators

52. Audit recommended that the PCPD be consulted on development of additional performance indicators.

53. The PCPD is currently working closely with the CMAB on the development of the following new output and performance indicators:-

- (1) Output indicators on average time taken to complete (i) a simple complaint case and (ii) a complicated complaint case.
- (2) Performance indicators on numbers of (i) cases resolved through mediation, (ii) enforcement notices, (iii) warnings, (iv) referrals to prosecution and (v) recommendations given.

- (3) Performance indicators on numbers of codes of practice / guidelines / guidance notes issued.
- (4) Performance indicators on promotional and educational activities.

Conclusion

54. To conclude, the Privacy Commissioner respects and appreciates all the suggestions and recommendations made by the Director of Audit and shall endeavour to implement them.

Roderick B WOO
Privacy Commissioner for Personal Data
14 December 2009

Office of the Privacy Commissioner for Personal Data

Promotional Events Manual

I. General principle

In carrying out promotional and educational activities in performance of the functions of the PCPD under the Personal Data (Privacy) Ordinance, the responsible officer shall comply with this Manual and all other relevant guidelines and directions which may from time to time be issued and updated by the PCPD. In planning for the expenditure items for these activities, the responsible officer shall take all reasonably practicable steps to ensure that the “moderate and conservative” principle is adopted.

II. Submission of annual plan and budget control

A. Submission of promotion plans

Promotional and educational plans for specific activities and functions to be held each year shall be submitted half-yearly to the Commissioner for approval with brief descriptions of the proposed activities such as the purposes and targeted audience or participants. The Commissioner may approve such plans subject to such modifications / amendments as he sees fit. No activity or function shall be held without the specific approval of the Commissioner.

B. Budget planning and submission

Before launching any promotional or educational project, a comprehensive budget (“the Event Budget”) shall be prepared by CCD, giving details on (i) the nature of the project; (ii) the targeted recipients; (iii) the project timetable; and (iv) expenditure items. The budget shall be submitted in good time for the Commissioner’s approval *via* the Administration Division. The Administration Division shall advise on the availability of funds and give confirmation that the estimated budget does not exceed the annual vote for

promotional and educational activities. It may also advise on the financial impact of incurring any of the expenditure items as it sees fit. No contractual commitment shall be made on any expenditure item unless the Event Budget has been approved by the Commissioner. The Commissioner may approve, disapprove, modify or give suggestions for revision of the Event Budget.

In situation when the approved Event Budget is likely to be exceeded, a revised budget with supporting justifications shall be submitted to the Commissioner for approval *via* the Administration Division. A similar confirmation aforesaid shall be given by the Administration Division.

C. Joint promotional activities

When promotional / educational activities are held jointly with external party / parties, the reasons and objectives for entering into such joint-activities with third parties shall be stated in the Event Budget and a view shall be given by CCD as to whether cost sharing arrangement is practicable and viable in the circumstances of the case.

When cost sharing arrangement is found to be practicable and viable, the negotiation and agreement reached for expenditure sharing arrangement should be documented. In negotiating for cost sharing arrangement, due consideration should also be given to the possible contribution of resources, such as manpower and venue from the participating party / parties with a view to reducing the expenditure and costs.

D. Expenditure report

CCD shall prepare a monthly expenditure report for each project with update expenditure status clearly stated. The report shall be submitted to the Commissioner and copied to the Administration Division for information.

When the Administration Division notices any irregularities or a likelihood that the expenditure to be incurred will exceed the approved budget, it shall forthwith bring the matter to the attention of the Commissioner.

E. Payment in accordance with approved budget

The Administration Division shall process each payment request submitted by CCD in respect of items related to each promotional and educational event in accordance with the approved Event Budget, original or as revised. No payment for any item which exceeds the approved Event Budget shall be paid out unless justification in writing has been submitted by the responsible officer and approved by the Commissioner.

III. Guidelines in relation to specific expenditure items

1. Venue and foods

In planning for venue and catering for each promotional or educational event, it shall be proportional and appropriate having regard to (i) the nature / theme of the event, (ii) the estimated number of attendees; (iii) the proximity of the venue to the attendees. The “moderate and conservative” principle shall be followed in choosing the low or medium-cost option for venue and catering.

Expenditure items for activities carried out for the Data Protection Officers’ Club (“DPOC”) shall first be paid out from the subscription fees paid by the DPOC members, which fees shall be kept and maintained in a separate account by the Administration Division and shall be so recorded. Administration Division shall furnish CCD at beginning of each financial year a statement of account of the subscription fees accrued and unspent and CCD shall plan the DPOC activities with reference to such statement of account. Should subsidy for executing any of the events of the DPOC is required from the funds of the PCPD, CCD shall obtain approval from the Commissioner *via* the Administration Division with stated reasons. The Administration Division shall confirm whether such subsidy can be properly met from the funds of the PCPD.

Practicable steps shall be taken to avoid the creation of the perception of extravagance in the eyes of the public. Catering shall be moderate and shall not exceed the budget of \$300 per person for lunch or \$400 for dinner, unless justification in writing is submitted to and approved by the Commissioner.

The choice of venue and catering shall as far as practicable be stated in the Event Budget with confirmation that the above guidelines have been followed, otherwise separate minutes shall be prepared and submitted for the Commissioner's approval. The minutes, once approved, shall be copied to the Administration Division for information.

2. Souvenirs and other promotional items (“souvenirs”)

In considering the choice and nature of the souvenirs for each promotional or educational event, due regard shall be given to the (i) nature / theme of the event; (ii) the targeted recipient; (iii) the utility of the souvenirs consistent with the purpose of the event; and (iv) fund available. Insofar as it is practicable to do so, priority shall be given to the unused souvenirs in stock for purpose of economy.

The amount of souvenirs shall in any event not exceed \$300 per item unless justification in writing is submitted to and approved by the Commissioner.

The choice of souvenirs shall as far as practicable be stated in the Event Budget with confirmation that the above guidelines have been followed, otherwise separate minutes shall be prepared and submitted for the Commissioner's approval. The minutes, once approved, shall be copied to the Administration Division for information.

3. Backdrops / properties

In considering the choice, size and scale of the backdrops and properties for each promotional or educational event, due regard shall be given to (i) the nature / theme of the event, (ii) the targeted attendees; (iii) the number of guests officiating the event, such that the backdrops and properties shall be proportionate, moderate and conservative without diminishing the promotional effect intended for the event.

The choice of backdrops and properties shall as far as practicable be stated in the Event Budget with confirmation that the above guidelines have been followed, otherwise separate minutes shall be prepared and submitted for the Commissioner's approval. The minutes, once approved, shall be copied to the Administration Division for information.

4. Gift-giving and prizes (including cash prizes)

In deciding whether any gift or prize shall be given to any person or for any event, the first issue to consider is whether gift giving or the prize award is necessary or effective for attaining the purpose of the event or otherwise in accordance with social protocol and practice. The amount of the gift or prize shall be moderate and proportional to the function in question.

In deciding the choice of gift and prize, due regard shall be given to the (i) nature / theme of the event; (ii) the targeted recipient; (iii) the effectiveness for promoting the event. The nature of the gift should avoid creating the perception that the officers of the PCPD would benefit from the same, for instance, the giving of food and wine for consumption on the spot. Any gift giving should also comply with the law, in particular, the Prevention of Bribery Ordinance. In this regard, the giving of cash prizes should as far as practicable be avoided unless clear justification exists.

Any gift or prize that exceeds the sum of \$500 shall be submitted by the responsible officer to the Commissioner for approval and copied to the Administration Division for information.

The choice of gift or prize shall as far as practicable be stated in the Event Budget with confirmation that the above guidelines have been followed, otherwise separate minutes shall be prepared and submitted for the Commissioner's approval. The minutes, once approved, shall be copied to the Administration Division for information.

5. The engagement of artists and service of entertainment companies

While the appearance of artists and the service of entertainment companies are likely to be effective publicity tools that may increase the media coverage and attract more public attention to any promotional and educational event, these are sensitive expenditures and should only be used when clear justification exists.

The proposal to engage artists and the service of entertainment companies shall as far as practicable be stated in the Event Budget with confirmation that the above guidelines have been followed, otherwise separate minutes shall be prepared and submitted for the Commissioner's approval. The minute, once approved, shall be copied to the Administration Division for information.

IV. Compliance with other guidelines and policies of the PCPD

Except for the specific items covered by this Manual to which the rules herein shall apply, the procurement policy and procedures of the PCPD shall be followed when expenses are to be incurred. There should also be due compliance with such other guidelines and policies and practices as may from time to time issued by the PCPD

Effective Date

This Manual shall take effect on **21 September 2009**.



Roderick B WOO

The Privacy Commissioner for Personal Data

Office of the Privacy Commissioner for Personal Data
[Version : September 2009]



24 August 2009

Finance Circular No. 02/09
Provisions for Duty Passage and Overseas Subsistence Allowance

This Circular sets out the policies and practices governing the provisions for duty passages and the grant of overseas subsistence allowance and other reimbursable expenses for overseas duty visits. This circular supercedes the previous Finance Circular No. 01/09 and takes immediate effect.

Approval of duty visit

2. Privacy Commissioner's approval is required for all applications of duty visits. In considering applications, the approving authority should be satisfied that both the frequency of duty visits and the number of officers participating are necessarily kept to the minimum.

Provisions for duty passages

3. The following arrangements will apply:

<u>Officer's rank</u>	<u>Class of air travel</u>
<input type="checkbox"/> D4 to D6	business class on all occasions, however officers are encouraged to travel on economy class for short flights within 4 hours of flying time.
<input type="checkbox"/> D3 or below	economy class, may be upgraded to business class if flying time exceeds 9 hours as per scheduled flight time of air carriers.

4. An officer **should not** vary his official duty passage arrangements for personal reasons. 'Staying ahead' or 'staying behind' of an official trip is not allowed.

5. If the duty visit involves modes of transport other than air passage (such as train), the officer's entitlement to the class of transport may be commensurate with the air passage provided by the PCPD. Airport transfer, provided not within town of duty visit, is provided by the PCPD.

Air ticket

6. The PCPD would make air ticket reservation on the officer's behalf. The first call for air ticket should have recourse to mileage redemption available in all the accumulated mileage accounts in the Office where, if necessary, assignment of award tickets to a third party is possible.

7. To ensure prudent use of public funds, wherever circumstances permit, air ticket should be bought in strict accordance with the prevalent financial rules where exercise of economy and cost effectiveness is seen. The travelling officer should refrain from participating in the procurement process.

Hotel accommodation

8. The PCPD would make hotel reservation on the officer's behalf. To ensure prudent use of public funds, wherever circumstances permit, accommodation should cost equal to or less than 60% of the rates (the "rates") set out in *Appendix 1* and be settled direct on behalf of the officer by the PCPD. The travelling officer should refrain from participating in the procurement process.

9. Sanction is required from the Privacy Commissioner for hotel accommodation cost exceeding 60% of the rates with sufficient justification. Additional expenses are otherwise to be met by the officer.

10. Where hotel accommodation is sponsored, the PCPD should record the relevant document for reference. Refusal of such offer should be fully accounted for.

11. An officer can choose to be put up by a friend, a relative or another officer, or simply lives in his/her own accommodation, if any, during overseas.

Overseas subsistence allowance

12. An officer who is on overseas duty visit or training may be granted a daily

subsistence allowance at **40%** of the rates.

13. The allowance is intended to cover the cost of meals, laundry charges, casual entertainment, gratuities, travelling expenses within towns and all minor incidental out-of-pocket expenses. Necessary expenses incurred by staff on airport transfer, visa application and so on are not covered by this allowance but will be reimbursed to staff when incurred.

14. For the avoidance of doubt, the subsistence allowance is payable from the night following arrival in the first place of duty up to and including the night before departure from the last place of duty. A daily subsistence allowance may be granted to an officer whose departing flight from his last place of duty is at 19:00 or later, according to the published schedule on his air ticket.

15. Under the circumstances where the organizers of conference give subsistence allowance to an officer, the actual allowance payable will be abated by the amount so sponsored.

16. For one-day duty visits performed to nearby cities outside Hong Kong, the Privacy Commissioner can approve reimbursement of reasonable meals and other out-of-pocket expenses such as communication and in-town travelling expenses incurred during one-day duty visits outside Hong Kong. Such expenses should be incurred on a need basis as a result of an officer's performance of duty outside Hong Kong and are of a reasonable amount, having regard to the itinerary of the duty visits, the respective standard rate of subsistence allowance for the place of duty and any other justifiable circumstances.

17. The allowance does not apply to officers on study leave or training outside Hong Kong. However, the Privacy Commissioner can approve reimbursement on actual expenses under the rationale in Para 16.

Mileage management

18. An officer may earn flight mileage from duty travel.

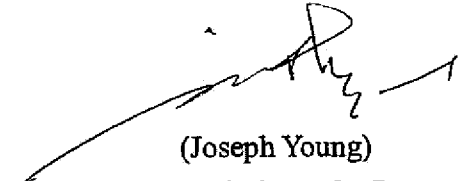
19. While officers have no obligation to earn flight mileage from airlines, if and when mileage are earned to an officer's mileage account, the officer should report in the prescribed declaration form (*Appendix 2*) to the Finance Unit to facilitate future

planning of possible flight awards for subsequent duty travel.

20. The first call on flight awards must be for subsequent duty travel of the officer or other officers (*para 6*). If the accrued mileage is not to be used *three months* before the expiry date of the mileage points, the Privacy Commissioner may permit the officer to use the mileage privately.

Enquiries

21. Enquiries on the content of this Circular should be made to FO.



(Joseph Young)
for Privacy Commissioner for Personal Data

Distributions

All staff

Notice Board

Note: For environmental reason, Appendices are not included for the purpose of the Public Hearing.


檔號
File No. 頁次
Page

L/M

A&FM

Time off

I hereby direct that, with immediate effect, any person holding (including in an acting capacity) the Office of the Privacy Commissioner for Personal Data shall not be granted time off for whatever reason.

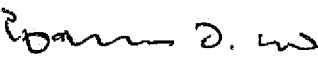

(Roderick B Woo)
PC
3 September 2009

M.2

A&FM

Time off

To avoid any doubt, I hereby confirm that the L/M today shall only apply to the Privacy Commissioner for Personal Data and anyone who may from time to time be acting as the Privacy Commissioner for Personal Data.


(Roderick B Woo)
PC
3 September 2009



Our Ref: PCPD(A) 7/155/25/1

Date: 18 September 2009

Finance Circular No. 03/09
Policy on Entertainment Expenses

This circular supercedes the previous Finance Circular No. 01/07 and takes immediate effect.

Definition of entertainment expenses

2. Officers may undertake entertainment with outside parties in the course of duty.
3. Entertainment bills may be charged to the vote when they are: -
 - directly related to the discharge of an officer's duties or a necessary part of making or maintaining contacts in his official capacity; and
 - in the public interest.
4. For the avoidance of doubt, no expenses incurred for meals to bid welcome or farewell to any member of the PCPD (including the Commissioner) shall be paid out of PCPD's fund.
5. Entertainment arising from the presence of other Government officers and their wives may be reimbursed when the Privacy Commissioner or the officer acting as host: -
 - considers it in the public interest that the principal guests should meet such officers; or
 - considers it necessary to invite them to assist in entertaining the principal guests.
6. Entertainment given in connection with opening ceremonies and similar functions may be debited to the entertainment vote provided that no special provision has been made under another subhead vote.

7. When official entertainment is combined with private entertainment only that proportion of the expenditure that is attributable to the presence of the host and hostess and of their official guests may be charged to vote.

Standards pertaining to entertainment

8. The status of the quests and the standard of entertainment appropriate to the occasion must be taken into account when deciding the place and scale of entertainment. Normally the following budgets, inclusive of tips, have to be adhered to: -

- luncheon up to \$300 per head; and
- dinner up to \$400 per head.

9. The prescribed ratio of participating guest and officers is 1 to 3.

Claim mechanism

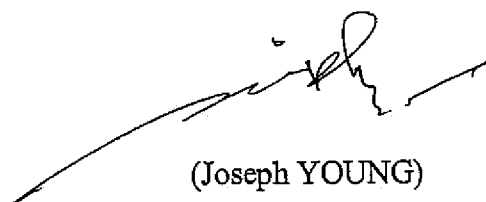
10. The Privacy Commissioner or the Deputy Privacy Commissioner must personally authorize expenditure from the entertainment vote.

11. Expenditure on official entertainment should be fully supported by receipts wherever possible.

12. Vouchers must accompany with sufficient supporting information to ascertain whether the provisions of this guideline is being complied with, such as the list of guests and the purpose of the function.

Enquiries

13. Any enquiries about this circular could be addressed to A&FM or FO.



(Joseph YOUNG)

Administration and Finance Manager

Distribution

EC

Notice Board

**The Commissioner's Note on the decision on
whether or not to surrender to the Landlord
that portion of PCPD's office premises comprising
Units 1302-3 on 13th floor of 248 Queen's Road East ("QRE")
on or before 6 January 2010**

1. PCPD has rented the office premises comprising the 12th floor and Unit 1301 on 13th floor of 248 QRE ("the first premises") and Units 1302-3 on the 13th floor of 248 QRE ("the second premises").
2. The lease for the first premises ("the first lease") is for a term of 5 years expiring on 31 January 2011.
3. The lease for the second premises ("the second lease") will expire on 5 January 2010. PCPD has the option of renewing it for one year. The original intention was to enable both leases to expire in January 2011.
4. The Director of Audit in his audit report issued on 25 November 2009 recommended that PCPD should consider whether or not to renew the second lease, having regard to the costs and benefits of the options. The Director said that, "it is advisable to consider not only the monetary benefits and costs, but also non-monetary aspects such as the disruptions that may be caused to the PCPD's operations in re-accommodating the staff affected."
5. The options available to the PCPD are to :-
 - (a) Renewing the second lease;
 - (b) Surrender the second lease and relocate the staff in the second premises to the first premises; or
 - (c) Instead of renewing the second lease on its own, ask the landlord to grant a new lease of both the first and the second premises to commence on 6 January 2010 for a term of 5 years with a rent review provision for the last two years.

6. For the second premises, the landlord is asking a new rental of \$24.72 per sq. ft. lettable or \$40,677 per month (representing a rise of 0.94%) for a term of 1 year and 27 days so that the expiry date of the new lease will coincide with the expiry date of the first lease, i.e. 31 January 2011. The total rent for the duration of the new tenancy is \$523,552.35 excluding rates, management fees and air-conditioning charges.

7. In deciding whether to retain the second premises or not, I have considered the following factors :-
 - (a) The present utilization of the second premises to accommodate the newly created eight posts which had been approved by CMAB;
 - (b) PCPD's future long term projects which shall require additional staff who have to be accommodated. One project which may materialize very shortly is the PIA work on the eHealth Record programmes. This will likely involve the engagement of 5 to 6 additional staff for some 5 years. The project may commence in the early part of 2010. An existing PCA with ImmD is on-going and might require continuing work beyond 2009.
 - (c) Recruitment of extra personnel for the launch of DURS which may begin as early as mid-2010 and involve the engagement of some 3 to 5 additional staff members.
 - (d) Recruitment of an undefinable number of temporary staff over time, and have a temporary IT advisor, two temporary PDOs, one temporary legal counsel and an additional trainer in CC Division which CMAB has suggested that we may consider paying out of our reserve fund.
 - (e) The unlikely opportunity of leasing an office premises adjoining the second premises if we now give up the second premises.
 - (f) The disruption that may be caused to staff in relocating them to the first premises.
 - (g) The cost of refitting the first premises in order to accommodate the staff who are now in the second premises.
 - (h) The cost of reinstating the second premises prior to surrendering same. (Note : of course, this item may ultimately have to be spent when PCPD moves out at a future date.)

8. I have given careful consideration to the feasibility of seeking a single lease for both the first and the second premises at this stage and have asked for an indication from the landlord as to whether it is willing to do this and, if so, upon what terms and conditions. The landlord has not indicated such willingness. In any case, the rent to be quoted by the landlord for the new tenancy would most likely be based on current market rent which is about \$25 per sq. ft. instead of the \$19.5 which PCPD is paying under the first lease. This means a rise of 25% and cannot be considered beneficial to PCPD.
9. Taking all the factors in para. 7 into account, I have come to the conclusion that accepting a new lease for the second premises to expire on 31 January 2011 is the right decision since there are quite a few imponderables at this moment.
10. In my consideration of this matter, I have relied on the facts contained in the attached summary of payments (prepared by the Administration & Finance Division) under the first lease and the payments calculated as payable if the landlord's current offer of a new lease in respect of the second premises is accepted.



Roderick B Woo
Privacy Commissioner for Personal Data

27 November 2009

Summary on Payment to Sunlight In Respect of 12/F & Units 1301 - 1303
(updated as at Oct 2008)

Particulars		12/F & Unit 1301 建築面積Gross area 15,640 (11,146 + 4,494) sq.ft	Units 1302 - 1303 (Gross area 1,937) sq.ft	
1	Monthly Rent	Lease Term	1 Feb 2006 - 31 Jan 2011 (60 mths)	5 Jan 2007 - 31 Jan 2011 (48 mths)
		First Period & Monthly Rent	1 Feb 2006 - 31 Jan 2009 (36 mths)	5 Jan 2007 - 4 Jan 2010 (36 mths)
			\$169,165/mth	\$40,300/mth
		Rent Review Period	1 Feb 2009 - 31 Jan 2011 (24 mths)	5 Jan 2010 - 31 Jan 2011 (12 mths 27 days)
			\$253,792.5/mth	Subject to market rent
Rent Free Periods	6 mths (1 Feb 2006 - 31 Mar 2006) & (1 Feb 2007 - 31 Mar 2007) & (1 Jan 2009 - 28 Feb 2009)	Nil		
2	Monthly Charge on Management Fee / sq.ft. gross	1 Feb 2006 - 31 Jul 2006	\$41,602.4 (\$2.66/sq.ft.gross)	Nil
		1 Aug 2006 - 31 Aug 2007	\$42,853.6 (\$2.74/sq.ft.gross) (+3%)	\$5,307.4 (\$2.74/sq.ft.gross)
		1 Sep 2007 - 31 Aug 2008	\$44,104.8 (\$2.82/sq.ft.gross) (+ 2.92%)	\$5,462.4 (\$2.82/sq.ft.gross) (+2.92%)
		(w.e.f. 1 Sep 2008)	\$45,356 (\$2.9/sq.ft.gross) (+ 2.84%)	\$5,617.3 (\$2.9/sq.ft.gross) (+ 2.84%)
3	Monthly Charge on Air-Conditioning/ sq.ft. gross	1 Feb 2006 - 31 Jul 2006	\$25,962.4 (\$1.66/sq.ft.gross)	Nil
		1 Aug 2006 - 31 Aug 2007	\$26,744.4 (\$1.71/sq.ft.gross) (+2.92%)	\$3,312.3 (\$1.71/sq.ft.gross)
		1 Sep 2007 - 31 Aug 2008	27,526.4 (\$1.76/sq.ft.gross) (+2.92%)	\$3,409.2 (\$1.76/sq.ft.gross) (+2.92%)
		(w.e.f. 1 Sep 2008)	\$28,308.4 (\$1.81/sq.ft.gross) (+2.84%)	\$3,506 (\$1.81/sq.ft.gross) (+2.84%)
4	Monthly Extra Chilled Water supply Charge* / sq.ft.gross	6 Mar 2006 - 31 Jul 2006	\$2,207.11	Nil
		1 Aug 2006 - 31 Aug 2007	\$3,194 [\$2,273.4 (+3%) + \$780 + \$140.6]	\$562.70
		1 Sep 2007 - 31 Aug 2008	\$ 3,289.9 (+3%)	\$579.6 (+3%)
		(w.e.f. 1 Sep 2008)	\$3,289.9 (+0%)	\$579.6 (+0%)

* (i) Annual Licence fee of \$8,000 should be paid for additional installation of FanCoil Unit for server room.

(ii) Records on installation of additional FanCoil units:

6 Mar 2006 (Additional FanCoil units 600cfm & 1000cfm at 12/F and 600cfm at Unit 1301) - costs \$2,207.11/mth

3 May 2006 (Two additional FanCoil units 600cfm at 12/F) - costs \$780/mth

22 Dec 2006 (FanCoil unit 600cfm upgraded to 800cfm) - costs \$140.6/mth

25 Jan 2007 (FanCoil unit 600cfm for CPCO's room) - cost \$562.7/mth

12/F

Gross Area	11,146 sq.ft <i>1035.497 sq. meter</i>
Lettable Area	9,275 sq.ft <i>861.676 sq. meter</i>
Saleable Area	7,823 sq.ft <i>726.78 sq. meter</i>

1301

Gross Area	4,494 sq.ft <i>417.506 sq. meter</i>
Lettable Area	3,740 sq.ft <i>347.457 sq. meter</i>
Saleable Area	3,240 sq.ft <i>301.006 sq. meter</i>

1302-1303

Gross Area	1,937 sq.ft <i>179.953 sq. meter</i>
Lettable Area	1,611 sq.ft <i>149.667 sq. meter</i>
Saleable Area	1,361 sq.ft <i>126.441 sq. meter</i>

Refer to L/M(1) in PCPD(A)5/115 pt.7 M.7