

**Bills Committee on
Personal Data (Privacy) (Amendment) Bill 2011**

**Committee Stage Amendments
(other than new Part VIA)**

A marked-up copy of the relevant provisions of the Personal Data (Privacy) Ordinance (“PDPO”) (other than new Part VIA) showing the Committee Stage Amendments (“CSAs”) which the Administration proposes to introduce, is at Annex. The amendments proposed in the Personal Data (Privacy) (Amendment) Bill 2011 (“the Bill”) are shown in underline/strike through mode and the amendments proposed in the CSAs to be introduced are shown in shaded underline/strike through mode.

**Constitutional and Mainland Affairs Bureau
Department of Justice
April 2012**

Proposed Revised Provisions of the Personal Data (Privacy) Ordinance
(other than new Part VIA)

(amendments proposed in the Bill are shown in underline/strike through mode;
amendments proposed in the CSAs to be introduced are shown in
shaded underline/strike through mode)

1. Short Title and Commencement (*amendment to commencement clause of Bill*)

(1) This Ordinance may be cited as the Personal Data (Privacy) (Amendment) Ordinance 2011.

(2) Subject to subsection (3), this Ordinance comes into operation on 1 October 2012.

(3) ~~This Ordinance~~ Sections 20, 21, 37(2), 38 and 42¹ comes into operation on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice published in the Gazette.

¹ Section 20 of the Bill repeals section 34 of the PDPO (on use of personal data in direct marketing). Section 21 of the Bill adds the new Part VIA to the PDPO (on use of personal data in direct marketing and provision of personal data for use in direct marketing). Sections 37(2), 38 and 42 of the Bill add new sections 66(5), 66A and 66B to the PDPO and new section 73F to the District Court Ordinance (relating to the legal assistance scheme).

2. Interpretation (*amendment to existing provision*)

"data user return" (資料使用者申報表) means a ~~data user return referred to in~~ submitted to the Commissioner under section 14(4) and, if applicable, corrected under section 14A(5);
"change notice" (變更通知) means a notice served on the Commissioner under section 14(8) and, if applicable, corrected under section 14A(5);

8. Functions and powers of Commissioner (*amendments to existing provision*)

- (1) The Commissioner shall-
- (a) monitor and supervise compliance with the provisions of this Ordinance;
 - (b) promote and assist bodies representing data users to prepare, for the purposes of section 12, codes of practice for guidance in complying with the provisions of this Ordinance, in particular the data protection principles;
 - (c) promote awareness and understanding of, and compliance with, the provisions of this Ordinance, in particular the data protection principles;
 - (d) examine any proposed legislation (including subsidiary legislation) that the Commissioner considers may affect the privacy of individuals in relation to personal data and report the results of the examination to the person proposing the legislation;
 - (e) carry out inspections, including inspections of any personal data systems used by data users which are departments of the Government or statutory corporations;
 - (f) for the better performance of his other functions, undertake research into, and monitor developments in, the processing of data and ~~information~~^{computer} technology in order to take account of any likely adverse effects such developments may have on the privacy of individuals in relation to personal data;
 - (g) liaise and co-operate with ~~and provide assistance to~~ any person in any place outside Hong Kong-
 - (i) performing in that place any functions which, in the opinion of the Commissioner, are similar (whether in whole or in part) to any of the Commissioner's functions under this Ordinance; and
 - (ii) in respect of matters of mutual interest concerning the privacy of individuals in relation to personal data; and
 - (h) perform such other functions as are imposed on him under this Ordinance or any other enactment.

14. Data user returns (*amendments to existing provision*)

(1) Subject to subsection (2), the Commissioner may, by notice in the Gazette, specify a class of data users to which this section shall apply.

(2) The Commissioner shall, before specifying a class of data users in a notice under subsection (1), consult with-

- (a) such bodies representative of data users belonging to that class; and
- (b) such other interested persons,

as he thinks fit.

(3) This section shall not apply to a data user except a data user belonging to a class of data users specified in a notice under subsection (1) which is in force.

(4) A data user shall submit to the Commissioner a ~~data user~~ return-

- (a) in the specified form;
- (b) containing the prescribed information required by the return in relation to the data user;
- (c) in the case of-
 - (i) a data user which belongs to the class of data users concerned on the day on which the notice under subsection (1) specifying that class commences, not earlier than 3 months before, and not later than, each anniversary of that day;
 - (ii) a data user which first belongs to the class of data users concerned on a day after the day on which the notice under subsection (1) specifying that class commences, not earlier than 3 months before, and not later than, each anniversary of that first-mentioned day; and
- (d) accompanied by the prescribed fee.

(5) The Commissioner shall cause a notice to be published not less than once during every period of 6 months-

- (a) in-
 - (i) the Gazette; and
 - (ii) not less than 1 Chinese language newspaper (and in the Chinese language) and not less than 1 English language newspaper (and in the English language), each of which shall be a newspaper circulating generally in Hong Kong; and
- (b) subject to subsection (6), specifying the places at which and the hours during which data user returns are available to be obtained by data users for the purposes of this section.

(6) The Commissioner shall not exercise his power under subsection (5)(b) to specify places which are Government offices unless and until he has the approval in writing of the Secretary for Constitutional and Mainland Affairs to do so. (Amended L.N. 130 of 2007)

(7) The Commissioner shall cause data user returns to be available to be obtained by data users-

- (a) free of charge; and
- (b) at the places and during the hours specified in the last notice published under subsection (5).

(8) Where any prescribed information contained in a data user return submitted under subsection (4) to the Commissioner by a data user changes subsequent to the submission, then the data user shall serve a notice in writing on the Commissioner specifying such change-

- (a) if, but only if-
 - (i) such information is specified in the return as information to which this

- subsection applies; and
- (ii) the return contains, or has annexed to it-
 - (A) a copy of this subsection; or
 - (B) a statement summarizing the requirement imposed by this subsection on the data user; and
- (b) not later than 30 days after such change.
- (9) It is hereby declared that-
 - (a) a notice under subsection (1) is subsidiary legislation; and
 - (b) where a data user belongs to 2 or more classes of data users specified in 2 or more notices under subsection (1) which are in force, then, for the purposes of this section, that data user shall be deemed to belong only to that class of data users specified in the first of those notices to be published in the Gazette; and
 - ~~(c) subsection (43) shall not operate to prejudice the generality of section 67(4)(c).~~
- ~~(10) In this section and section 15, "prescribed information" (訂明資訊) means any information specified in Schedule 3.~~
- (11) A data user who, in purported compliance with subsection (4) or (8), knowingly or recklessly in a data user return submitted to, or change notice served on, the Commissioner supplies any information which is false or misleading in a material particular, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

14A. Verification of data user returns (*amendments to newly added provision*)

(1) For the purpose of verifying the accuracy of information in a data user return or change notice submitted under section 14, the Commissioner may, by written notice served on, ~~require~~ any of the persons specified in subsection (2), reasonably require the person—

(a) to provide any document, record, information or thing specified in the written notice; and

(b) to respond in writing to any question specified in the written notice.

(2) The persons are—

(a) the data user; and

(b) any other person whom the Commissioner has reasonable grounds to believe may be able to assist in verifying any information in the data user return or change notice.

(3) A person on whom a notice is served under subsection (1) may refuse to provide any document, record, information or thing, or any response to any question, specified in the notice, if the person is entitled or obliged under ~~this or~~ any other Ordinance to do so.

(4) If, having regard to any document, record, information or thing, or any response to any question, provided under subsection (1), the Commissioner ~~considers~~ has reasonable grounds to believe that any information in a data user return or change notice is inaccurate, the Commissioner may, by written notice, require the data user to correct the information in the data user return or change notice.

(5) Subject to subsection (3), a person on whom a notice is served under subsection (1) or (4) must comply with the requirement within ~~the such reasonable~~ period as is specified in the notice.

(5A) A person who contravenes subsection (5) commits an offence and is liable on conviction to a fine at level 3.

(6) A person who, in purported compliance with a notice under subsection (1), knowingly or recklessly provides any document, record, information or thing, or any response to any question, which is false or misleading in a material particular, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

15. Register of data users (*amendments to existing provision*)

(1) The Commissioner ~~shall use -~~
~~(a) data user returns submitted to him under section 14(4); and~~
~~(b) any notices served on him under section 14(8),~~
to ~~must~~ keep and maintain a register of data users ~~which who~~ have submitted ~~such data user~~ returns, using information in those returns and in any change notices.

(2) The register shall-

(a) be in the form of a database; and

(b) contain, in respect of each data user who has submitted a data user return ~~under section 14(4),~~ such particulars of the information supplied in that return ~~and any change notice~~ as the Commissioner thinks fit.

(3) The Commissioner may, by notice in writing served on a data user, require the data user to submit a notice in the ~~prescribed~~ specified form containing such prescribed information in relation to the data user as the Commissioner may reasonably require in order to keep and maintain the register in so far as it relates to that data user, and the data user shall so submit the second-mentioned notice within such period (being a period of not less than 30 days after service of the first-mentioned notice) and in such manner as the Commissioner requires in the first-mentioned notice.

(4) Where any prescribed information submitted to the Commissioner under subsection (3) by a data user changes subsequent to the submission, then the data user shall serve a notice in writing on the Commissioner specifying such change-

(a) if, but only if-

(i) such information is specified in the notice concerned under that subsection as information to which this subsection applies; and

(ii) the notice referred to in subparagraph (i) contains, or has annexed to it-

(A) a copy of this subsection; or

(B) a statement summarizing the requirement imposed by this subsection on the data user; and

(b) not later than 30 days after such change.

(4A) A data user who, in purported compliance with subsection (3) or (4), knowingly or recklessly in a notice submitted to or served on the Commissioner supplies any information which is false or misleading in a material particular, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(5) If the Commissioner is satisfied that a person has ceased to be a data user, he may delete from the register any particulars contained therein relating to that person in that person's capacity as a data user.

(6) A person who has ceased to be a data user may, by notice in the specified form served on the Commissioner, request the Commissioner to delete from the register the particulars contained therein relating to that person in that person's capacity as a data user, and the Commissioner shall, not later than 3 months after the date on which he receives that notice, comply with that request unless it has been withdrawn by that person.

(7) A person who, in a notice served on the Commissioner under subsection (6), supplies any information which is false or misleading in a material particular for the purpose of having the particulars contained in the register relating to that person in that person's capacity as a data user deleted from the register, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

18. Data access request (*amendments to existing provision*)

- (1) An individual, or a relevant person on behalf of an individual, may make a request-
 - (a) to be informed by a data user whether the data user holds personal data of which the individual is the data subject;
 - (b) if the data user holds such data, to be supplied by the data user with a copy of such data.

(2) A data access request under both paragraphs of subsection (1) shall be treated as being a single request, and the provisions of this Ordinance shall be construed accordingly.

(3) A data access request under paragraph (a) of subsection (1) may, in the absence of evidence to the contrary, be treated as being a data access request under both paragraphs of that subsection, and the provisions of this Ordinance (including subsection (2)) shall be construed accordingly.

- (4) A data user who, in relation to personal data-
 - (a) does not hold the data; but
 - (b) controls the use of the data in such a way as to prohibit the data user who does hold the data from complying (whether in whole or in part) with a data access request which relates to the data,

shall be deemed to hold ~~those~~the data, and the provisions of this Ordinance (including this section) shall be construed accordingly.

(5) A person commits an offence if the person, in a data access request, supplies any information which is false or misleading in a material particular for the purposes of having the data user—

- (a) informing the person whether the data user holds any personal data which is the subject of the request; and
- (b) if applicable, supplying a copy of the data.

(6) A person who commits an offence under subsection (5) is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

20. Circumstances in which data user shall or may refuse to comply with data access request (*amendments to existing provision*)

- (1) A data user shall refuse to comply with a data access request-
 - (a) if the data user is not supplied with such information as the data user may reasonably require-
 - (i) in order to satisfy the data user as to the identity of the requestor;
 - (ii) where the requestor purports to be a relevant person, in order to satisfy the data user-
 - (A) as to the identity of the individual in relation to whom the requestor purports to be such a person; and
 - (B) that the requestor is such a person in relation to that individual;
 - (b) subject to subsection (2), if the data user cannot comply with the request without disclosing personal data of which any other individual is the data subject unless the data user is satisfied that the other individual has consented to the disclosure of the data to the requestor; or
 - (c) in any other case, if compliance with the request is for the time being prohibited under this or any other Ordinance.
- (2) Subsection (1)(b) shall not operate-
 - (a) so that the reference in that subsection to personal data of which any other individual is the data subject includes a reference to information identifying that individual as the source of the personal data to which the data access request concerned relates unless that information names or otherwise explicitly identifies that individual;
 - (b) so as to excuse a data user from complying with the data access request concerned to the extent that the request may be complied with without disclosing the identity of the other individual, whether by the omission of names, or other identifying particulars, or otherwise.
- (3) A data user may refuse to comply with a data access request if-
 - (a) the request is not in writing in the Chinese or English language;
 - (b) the data user is not supplied with such information as the data user may reasonably require to locate the personal data to which the request relates;
 - (c) the request follows 2 or more similar requests made by-
 - (i) the individual who is the data subject in respect of the personal data to which the request relates;
 - (ii) one or more relevant persons on behalf of that individual; or
 - (iii) any combination of that individual and those relevant persons,and it is unreasonable in all the circumstances for the data user to comply with the request;
 - (d) subject to subsection (4), any other data user controls the use of the data in such a way as to prohibit the first-mentioned data user from complying (whether in whole or in part) with the request;
 - (e) the form in which the request shall be made has been specified under section 67 and the request is not made in that form; ~~or~~
 - (ea) the data user is entitled under this or any other Ordinance not to disclose the personal data which is the subject of comply with the request; or
 - (f) in any other case, compliance with the request may for the time being be refused under this Ordinance, whether by virtue of an exemption under Part VIII or otherwise.

(4) Subsection (3)(d) shall not operate so as to excuse a data user from complying with the data access request concerned-

- (a) in so far as the request relates to section 18(1)(a), to any extent;
- (b) in so far as the request relates to section 18(1)(b), to any extent that the data user can comply with the request without contravening the prohibition concerned.

(5) Despite any provision in any relevant Ordinance or its subsidiary legislation in relation to discovery and inspection, in any proceedings under this Ordinance, a specified body—

- (a) may, for the purpose of deciding on the issue as to whether a data user is required or entitled to refuse to comply with a data access request under this section or deciding on any question related to that issue, require the personal data which is the subject of the request to be made available for its inspection; and
- (b) must not require the personal data to be disclosed to any party to the proceedings, whether by discovery or otherwise, unless it has decided that the data user must comply with the request.

(6) In subsection (5)—

proceedings under this Ordinance (根據本條例進行的法律程序) has the same meaning given by section 13(4);

relevant Ordinance (有關條例) means—

- (a) the High Court Ordinance (Cap. 4);
- (b) the District Court Ordinance (Cap. 336); or
- (c) the Administrative Appeals Board Ordinance (Cap. 442);

specified body (指明當局) has the same meaning given by section 13(4).

45. Protection of witnesses, etc. (amendments to existing provision)

(1) Every person shall have the same privileges in relation to the giving of information, the answering of questions, and the production of documents and things, for the purposes of an investigation, as witnesses have in civil proceedings in the High Court but any enactment² or rule of law which authorizes or requires the withholding of any document or thing, or the refusal to answer any question, on the ground that the disclosure of the document or thing or the answering of the question, as the case may be, would be injurious to the public interest, shall not apply in respect of any investigation.

(2) Except on the trial of any person for perjury in respect of his sworn testimony, or for an offence under this Ordinance, no statement made or answer given by that or any other person in the course of any investigation shall be admissible in evidence against any person, before any magistrate or in any court or at any inquiry or in any other proceedings, and no evidence in respect of an investigation shall be given against any person.

(3) Where the giving of any information or the answering of any question or the production of any document or thing would involve the disclosure, without the consent of the Chief Executive, of the deliberations of the Executive Council, the Commissioner shall not require the information or answer to be given or, as the case may be, the document or thing to be produced.

² With the introduction of the definition of “rule of law” (which does not include “enactment”) in section 2 of the PDPO by section 3(3) of the Bill, “enactment” should be added here.

46. Commissioner, etc. to maintain secrecy (*amendments to existing provision*)

(1) Subject to subsections (2), (3), ~~and (7) and (8)~~ ~~and (3)~~, the Commissioner and every prescribed officer shall maintain secrecy in respect of all matters that come to their actual knowledge in the performance of their functions and the exercise of their powers under this Part.

(2) Subsection (1) shall not operate so as to prevent the Commissioner or any prescribed officer from-

(a) subject to subsection (8), disclosing any matter if the disclosure is necessary for the proper performance of the Commissioner's functions or the proper exercise of the Commissioner's powers under this Ordinance;

(~~b~~a) disclosing in the course of proceedings-

(i) for an offence under this Ordinance; and

(ii) before any court or magistrate, any matter relevant to those proceedings;

(~~c~~b) reporting evidence of any crime to such authority as he considers appropriate;

(~~d~~e) disclosing to a person any matter referred to in subsection (1) which, in the opinion of the Commissioner or prescribed officer, may be ground for a complaint by that person.

(3) Subject to subsection (4), the Commissioner may disclose in any report made by him under this Ordinance any matter that in his opinion ought to be disclosed in order to establish grounds for his findings and recommendations other than a matter the disclosure of which in his opinion would involve the disclosure of personal data that ~~is~~are exempt from data protection principle 6 by virtue of an exemption under Part VIII.

(4) If a report is made by the Commissioner on an inspection or investigation, and the report contains personal data, the Commissioner must not publish the report~~The Commissioner shall not publish a report under this Ordinance after completing an inspection or investigation unless-~~

(a) a copy of the report in the form in which it is to be published has been supplied to the relevant data user;

(b) that copy is accompanied by a notice in writing inviting the data user to advise the Commissioner, in writing and not later than 28 days after being served with the copy, whether-

(i) in the opinion of the data user there is any matter in the copy the disclosure of which would involve the disclosure of personal data that ~~is~~are exempt from the provisions of data protection principle 6 by virtue of an exemption under Part VIII; and

(ii) the data user objects to the disclosure of the matter; and

(c) either-

(i) the period referred to in paragraph (b) has expired without the Commissioner receiving any such advice; or

(ii) such advice is received by the Commissioner and-

(A) the Commissioner deletes from the report the matter the subject of the advice; or

(B) the Commissioner decides not to delete that matter from the report and-

(I) the period referred to in subsection (6) expires without the data user making an appeal under that subsection against that decision; or

(II) such an appeal is unsuccessful or withdrawn.

(5) Where the Commissioner makes a decision referred to in subsection (4)(c)(ii)(B), he shall serve on the relevant data user who gave the advice concerned a notice in writing-

- (a) stating his decision;
- (b) informing the data user that he may appeal under subsection (6) against that decision; and
- (c) accompanied by a copy of this section.

(6) An appeal may be made to the Administrative Appeals Board against a decision of the Commissioner referred to in subsection (4)(c)(ii)(B) by the relevant data user not later than 14 days after the notice under subsection (5) stating that decision has been served on the data user.

~~(7) The Commissioner may, for the purpose of enabling or assisting an authority of a place outside Hong Kong to perform a relevant function of that authority, disclose matters to that authority, if—~~

- ~~(a) that authority has undertaken to be bound by the secrecy requirements imposed by the Commissioner; and~~
- ~~(b) in the opinion of the Commissioner, there is in force in that place any law which is substantially similar to, or serves the same purposes as, this Ordinance.~~

~~(8) The Commissioner may, for the proper performance of the Commissioner's functions or the proper exercise of the Commissioner's powers under this Ordinance, disclose matters to an authority of a place outside Hong Kong that performs a relevant function, if—~~

- ~~(a) that authority has undertaken to be bound by the secrecy requirements imposed by the Commissioner; and~~
- ~~(b) any of the conditions specified in subsection (9) is satisfied.~~

~~(8A) In subsections (7) and (8)—~~

~~**relevant function** (有關職能), in relation to an authority of a place outside Hong Kong, means a function relating to investigation into a suspected contravention, and enforcement, of legal or regulatory requirements in that place concerning the protection of privacy of individuals in relation to personal data.~~

~~(7) The Commissioner may disclose matters to an authority of a place outside Hong Kong if—~~

- ~~(a) that authority has undertaken to be bound by the secrecy requirements imposed by the Commissioner;~~
- ~~(b) any of the conditions specified in subsection (9) is satisfied; and~~
- ~~(c) in the opinion of the Commissioner the disclosure will enable or assist the authority to perform a relevant function of the authority.~~

~~(8) In subsection (7)—~~

~~**relevant function** (有關職能), in relation to an authority of a place outside Hong Kong, means any function which in the opinion of the Commissioner is similar (whether in whole or in part) to any of the Commissioner's functions under this Ordinance.~~

~~(9) The conditions are—~~

- ~~(a) in the opinion of the Commissioner, there is in force in that place any law which is substantially similar to, or serves the same purposes as, this Ordinance;~~
- ~~(b) the data subject to whom the matter relates has consented in writing to the disclosure;~~
- ~~(c) the Commissioner has reasonable grounds for believing that, in all the circumstances of the case—~~
 - ~~(i) the disclosure is for the avoidance or mitigation of adverse action against the data subject;~~

- (ii) it is not practicable to obtain the consent in writing of the data subject to that disclosure; and
- (iii) if it was practicable to obtain such consent, the data subject would give it;
- (d) the personal data to which the matters relate is exempt from the provisions of data protection principle 3 because of an exemption under Part VIII; or
- (e) the Commissioner has taken all reasonable precautions and exercised all due diligence to ensure that the personal data to which the matters relate will not, in that place, be collected, held, processed or used in any manner which, if that place were Hong Kong, would be a contravention of a requirement under this Ordinance.

(10) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

50B. Offences relating to failure to comply with requirements of Commissioner etc.
(amendments to newly added provision)

(1) A person commits an offence if the person—

- (a) without lawful excuse, obstructs, hinders or resists the Commissioner or ~~any other person~~ a prescribed officer in performing the functions or exercising the powers of the Commissioner or ~~that other person~~ the officer under this Part;
- (b) without lawful excuse, fails to comply with any lawful requirement of the Commissioner or ~~any other person~~ a prescribed officer under this Part; or
- (c) in the course of the performance or exercise by the Commissioner or ~~any other person~~ a prescribed officer of functions or powers under this Part—
 - (i) makes to the Commissioner or ~~that other person~~ the officer a statement which the person knows to be false or does not believe to be true; or
 - (ii) otherwise knowingly misleads the Commissioner or ~~that other person~~ the officer.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

59A. Care and guardianship of minors (*amendments to newly added provision*)

(1) Personal data in relation to a minor transferred or disclosed by the Hong Kong Police Force or Customs and Excise Department to a relevant person of a the minor is exempt from the provisions of data protection principle 3 if—

- (a) the purpose of the transfer or disclosure is to facilitate the relevant person to exercise proper care and guardianship of the minor;
- (b) the transfer or disclosure is in the interest of the minor; and
- (c) the application of those provisions in relation to such transfer or disclosure would be likely to prejudice the exercise of proper care and guardianship of the minor by the relevant person or the interest of the minor.

(2) In any proceedings against a person for a contravention of any of the provisions of data protection principle 3 it is a defence for the person to show that the person had reasonable grounds for believing that failure to so transfer or disclose the data would have been likely to prejudice any of the matters referred to in subsection (1)(c).

60A. Self incrimination (*amendments to newly added provision*)

(1) If, as a result of complying with a request under a provision of data protection principle 6 or section 18(1)(b) in relation to any personal data, a data user might be incriminated in any proceedings for any offence other than an offence under this Ordinance, the data is exempt from that provision or section.

(2) Information disclosed by a data user in compliance with a request under a provision of data protection principle 6 or section 18(1)(b) is not admissible against the data user in any proceedings for an offence under this Ordinance.

60B. Legal proceedings etc. (*amendments to newly added provision*)

Personal data is exempt from the provisions of data protection principle 3 if the use of the data is—

- (a) required or authorized by or under any enactment, by any rule of law or by an order of a court in Hong Kong;
- (b) required in connection with any legal proceedings in Hong Kong; or
- (c) required for establishing, exercising or defending legal rights in Hong Kong.

63B. Due diligence exercise (*amendments to newly added provision*)

(1) Personal data transferred or disclosed by a data user for the purpose of a due diligence exercise to be conducted in connection with a proposed business transaction that involves—

- (a) a transfer of the business or property of, or any shares in, the data user;
- (b) a change in the shareholdings of the data user; or
- (c) an amalgamation of the data user with another body.

is exempt from the provisions of data protection principle 3 if each of the conditions specified in subsection (2) is satisfied.

(2) The conditions are—

- (a) the personal data transferred or disclosed is not more than necessary for the purpose of the due diligence exercise;
- (b) goods, facilities or services which are the same as or similar to those provided by the data user to the data subject are to be provided to the data subject, on completion of the proposed business transaction, by a party to the transaction or a new body formed as a result of the transaction;
- (c) it is not practicable to obtain the prescribed consent of the data subject for the transfer or disclosure.

(3) Subsection (1) does not apply if the primary purpose of the proposed business transaction is the ~~sale, provision for gain,~~ transfer or disclosure of the personal data.

(4) If a data user transfers or discloses personal data to a person for the purpose of a due diligence exercise to be conducted in connection with a proposed business transaction described in subsection (1), the person—

- (a) must only use the data for that purpose; and
- (b) must, as soon as practicable after the completion of the due diligence exercise—
 - (i) return the personal data to the data user; and
 - (ii) destroy any record of the personal data that is kept by the person.

(5) A person who contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(6) In this section—

due diligence exercise (盡職審查), in relation to a proposed business transaction, means the examination of the subject matter of the transaction to enable a party to decide whether to proceed with the transaction;

sellprovision for gain (售賣為得益而提供), in relation to personal data, means provision of the data in return for money or other property, irrespective of whether—

- (a) the return is contingent on any condition; or
- (b) the person who provides the data retains possession of the data ~~has the same meaning given by section 35A.~~

63C. Emergency situations (*amendments to newly added provisions*)

(1) Personal data is exempt from the provisions of data protection principle 1(3) and data protection principle 3 if the application of those provisions to the data would be likely to prejudice any of the following matters—

- (a) identifying an individual who is reasonably suspected to be, or is, involved in a life-threatening situation;
- (b) informing the individual's immediate family members or relevant persons of the individual's involvement in the life-threatening situation;
- (c) the carrying out of emergency rescue operations or provision of emergency relief services.

~~(2) In any proceedings against a person for a contravention of any of the provisions of data protection principle 1(3) or data protection principle 3, it is a defence for the person to show that the person had reasonable grounds for believing that the application of that provision to the personal data would have been likely to prejudice any of the matters specified in subsection (1)(a), (b) or (c).~~

(3) In this section—

immediate family member (家人), in relation to a person, means another person who is related to the person by blood, marriage, adoption or affinity.

63D. Transfer of records to Government Records Service (*amendments to newly added provision*)

(1) Personal data contained in records of historical, research, educational or cultural interest that are transferred to the Government Records Service for archive purposes is exempt from the provisions of data protection principle 3, when the records are used for archive purposes.

(2) In this section—
archive (檔案保存), in relation to a record—

- (a) includes appraising the record to decide whether it is to be retained; but
- (b) does not include accessing the record from the repository in which it is retained for purposes unrelated to the management or preservation of the record.

35R64. **Offences for Disclosure of disclosing personal data obtained without consent from data users** (*section moved from s.35R in Part VIA*)

- (1) A person commits an offence if the person discloses any personal data of a data subject which was obtained from a data user without the data user's consent, with an intent—
- (a) to obtain gain in money or other property, whether for the benefit of the person or another person; or
 - (b) to cause loss in money or other property to the data subject.
- (2) A person commits an offence if—
- (a) the person discloses any personal data of a data subject which was obtained from a data user without the data user's consent; and
 - (b) the disclosure causes psychological harm to the data subject.
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine of \$1,000,000 and to imprisonment for 5 years.
- (4) In any proceedings for an offence under subsection (1) or (2), it is a defence for the person charged to prove that—
- (a) the person reasonably believed that the disclosure was necessary for the purpose of preventing or detecting crime;
 - (b) the disclosure was required or authorized by or under any enactment, by any rule of law or by an order of a court;
 - (c) the person reasonably believed that the data user had consented to the disclosure; or
 - (d) the person—
 - (i) disclosed the personal data for the purpose of a news activity as defined by section 61(3) or a directly related activity; and
 - (ii) had reasonable grounds to believe that the publishing or broadcasting of the personal data was in the public interest.

64A. Miscellaneous Offences for contravention of requirements under Ordinance
(amendments to newly added provision)

(1) A data user who, without reasonable excuse, contravenes any requirement under this Ordinance commits an offence and is liable on conviction to a fine at level 3.

(2) Subsection (1) does not apply in relation to—

(a) a contravention of a data protection principle;

(b) a contravention that constitutes an offence under section 14(11), 14A(5A) or (6), 15(4A) or (7), 18(5), 22(4), 31(4), 32(5), 35B(6), 35C(4), 35D(6), 35H(6), 35J(4), 35K(3), 35L(3), 35N(6), 35O(4), 35P(6), 35R(1) or (2), 44(10), 46(10), 50A(1) or (3), 50B(1), ~~or 63B(4)~~ or 64(1) or (2); or

(c) a contravention of any requirement under Part VIA section 35B(1), 35H(1) or 35N(1).

64AB. Time limit for laying of information etc. *(newly added provision renumbered)*

(1) Despite section 26 of the Magistrates Ordinance (Cap. 227), a complaint or information in respect of an offence under this Ordinance may be made to or laid before a magistrate within 2 years from the date of commission of the offence.

(2) Subsection (1) does not apply in relation to the making of any complaint or laying of any information in respect of an offence under this Ordinance which was committed before the commencement date of section 36 of the Personal Data (Privacy) (Amendment) Ordinance 2011 (_____ of 2011).