

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

Responses to Submissions by Deputations

This paper provides responses to the views raised in the submissions from Hong Kong Association of Banks (“HKAB”), Hong Kong Retail Management Association (“HKRMA”), Law Society of Hong Kong (“Law Society”) and the Office of the Privacy Commissioner for Personal Data (“Office of the PCPD”) on certain clauses of the Personal Data (Privacy) (Amendment) Bill 2011, as requested by the Bills Committee.

2. The responses are at Annex.

**Constitutional and Mainland Affairs Bureau
December 2011**

Annex

Section of the Personal Data (Privacy) Ordinance	Deputations' Views	Responses of Constitutional and Mainland Affairs Bureau
New section 11A	HKAB: - Section 11A(1) should read: “..... anything done or omitted to be done by the person or officer in good faith in the performance or purported performance of any function, or <u>in</u> the exercise or purported exercise of any power, imposed or conferred on the Commissioner or officer under this Ordinance”.	- It is not necessary to add “in” before “the exercise”. There are a number of precedents in existing legislation for the wordings adopted in section 11A, such as section 18A of The Ombudsman Ordinance (Cap. 397), section 68(1) of Sex Discrimination Ordinance (Cap. 480), and section 62(1) of Race Discrimination Ordinance (Cap. 602).
New section 13	Law Society: - The proposed section 13(4)(d) which specifically adds “the chairman of the Administrative Appeals Board” to the definition of “specified body” should be explained.	- Certain decisions under the Administrative Appeals Board Ordinance (Cap. 442) have to be specifically made by the chairman of the Administrative Appeals Board, and therefore the reference to “the chairman of the Administrative Appeals Board” is added.
New section 14A	HKRMA: - More guidelines on the type of document, record, information or thing that may be verified by the Privacy Commissioner for the accuracy of data user returns should be provided.	- This will be conveyed to the Privacy Commissioner for Personal Data (“PCPD”) for consideration.
	HKAB: - Section 14A should read:	- The new section 14A empowers the PCPD to obtain

<p>Section of the Personal Data (Privacy) Ordinance</p>	<p>Deputations' Views</p>	<p>Responses of Constitutional and Mainland Affairs Bureau</p>
	<p>“(1) For the purpose of verifying the accuracy of information in a data user return submitted under section 14, the Commissioner may, by written notice, require any of the persons specified in subsection (2) —</p> <p>(a) to provide any document, record, information or thing <u>reasonably specified</u> in the notice; and</p> <p>(b) to respond in writing to any question <u>reasonably specified in the notice, which the Commissioner has reasonable grounds to believe to be relevant for the purpose of verifying the accuracy of information in a data user return submitted under section 14.</u></p> <p>(2)</p> <p>(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 <u>permitted, entitled or obliged under this or any other Ordinance, any legal or regulatory requirement or any direction or order of any regulatory authority or court to which that person is subject</u> to do so.</p> <p>(4) If, having regard to any document, record, information or thing, or any response to any question, provided under subsection (1), the Commissioner <u>reasonably considers</u> that any</p>	<p>information from the persons specified in new section 14A(2) to verify the information stated in a data user return to ensure that the information provided is accurate. The proposal is not that the PCPD may request for whatever document, record, information or thing as he likes. Rather, the request must be made <u>for the purpose of verifying the accuracy of information in a data user return, as stipulated in section 14(1).</u> There is thus no need for the amendments proposed by HKAB.</p> <p>- The meaning of “permitted” is already covered by “entitled”.</p> <p>- The reasons for refusals to provide information have to be circumscribed. The existing formulation provides an appropriate balance.</p>

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	<p>information in a data user return is inaccurate, the Commissioner may, by written notice, require the data user to correct the information in the data user return.</p> <p>(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 period <u>reasonably</u> specified in the notice.</p> <p>(6)</p>	
	<p>Law Society:</p> <ul style="list-style-type: none"> - Section 14A(6) should read: “A person who, in purported compliance with a notice under subsection (1) <u>or</u> (4), 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.” 	<ul style="list-style-type: none"> - Section 14A(4) empowers the PCPD to, by written notice, require a data user to <u>correct any information</u> in a data user return if he considers it to be inaccurate. Failure to comply with such a notice constitutes an offence, as stipulated in section 64(1). The element of “knowingly or recklessly providing false or misleading documents, information, etc.” is not relevant to purported compliance of a notice under section 14A(4).
New section 18(5)	<p>Law Society:</p> <ul style="list-style-type: none"> - Section 18(5) should read: “A person commits an offence if the person, in a data access request, <u>knowingly or recklessly</u>, 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 	<ul style="list-style-type: none"> - The offence in section 18(5) is not a new offence. This is a repositioning of the existing section 64(2) which does not contain a reference to “knowingly or recklessly”. - Section 18(5) (or the existing section 64(2)) covers false or misleading information supplied <u>for the purpose of</u>

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	<p>any personal data which is the subject of the request; and</p> <p>(b) if applicable, supplying a copy of the data.”</p>	<p>having the data user comply with the data access request or the data correction request. There is already the mens rea element and therefore there is no need for the words “knowingly or recklessly”.</p>
<p>New section 20(3)(ea)</p>	<p>HKAB:</p> <ul style="list-style-type: none"> - Section 20(3)(ea) should read: “the data user <u>is permitted, entitled or obliged</u> under this or any other Ordinance, <u>any legal or regulatory requirement or any direction or order of any regulatory authority or court to which the data user is subject</u> not to disclose the personal data which is the subject of the request; or”. 	<ul style="list-style-type: none"> - The meaning of “permitted” is already covered by “entitled”. - The scenario of a data user “obliged” to refuse a data access request is already covered under section 20(1)(c). - The reasons for refusing to comply with a data access request have to be circumscribed. The existing formulation provides an appropriate balance.
<p>New section 20(5)</p>	<p>HKAB:</p> <ul style="list-style-type: none"> - Section 20(5) should read: “..... whether a data user is <u>permitted, required</u> or entitled to refuse to comply with a data access request” 	<ul style="list-style-type: none"> - The meaning of “permitted” is already covered by “entitled”.
<p>Section 26</p>	<p>Law Society:</p> <ul style="list-style-type: none"> - In section 26(1), repeal “shall” and substitute “must take all practicable steps, <u>having regard to practical and technological limitations the data user faces,</u> to”. - In section 26(2)(a), repeal “shall” and substitute “must 	<ul style="list-style-type: none"> - The meaning of the underlined words is already covered by the phrase “all practical steps”.

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	take all practicable steps, <u>having regard to practical and technological limitations the data user faces, to</u> ".	
New section 31(4)	<p>Law Society:</p> <ul style="list-style-type: none"> - Section 31(4) should read: "A data user who, in a matching procedure request made under subsection (1), <u>knowingly or recklessly</u>, supplies any information which is false or misleading in a material particular for the purpose of obtaining the Commissioner's consent to the carrying out of the matching procedure to which the request relates, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months." 	<ul style="list-style-type: none"> - The offence in section 31(4) is not a new offence. This is a repositioning of the existing section 64(4) which does not contain a reference to "knowingly or recklessly". - Section 31(4) (or the existing section 64(4)) covers false or misleading information supplied <u>for the purpose of</u> having the Privacy Commissioner consent to the matching procedure. There is already the mens rea element and no need for the words "knowingly" or "recklessly".
New section 32(5)	<p>HKAB:</p> <ul style="list-style-type: none"> - Section 32(5) should be read: "<u>The Commissioner may suspend or revoke any consent given in a notice under subsection (1)(b)(i) if a</u>A requestor who carries out a matching procedure in contravention of any conditions specified in that a notice under subsection (1)(b)(i) commits an offence and is liable on conviction to a fine at level 3." - Alternatively, it should read: "A requestor who <u>carries out a matching procedure in contravention of</u>contravenes any conditions specified in a notice under subsection (1)(b)(i) commits an offence and is liable on conviction to a fine at 	<ul style="list-style-type: none"> - The offence in section 32(5) is not a new offence. This is a repositioning of the existing section 64(5).

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	level 3.”	
New section 35A	<p>HKRMA:</p> <ul style="list-style-type: none"> - The inclusion of the words “other property” in the definition of “sell” makes the definition too broad and may inadvertently prevent standard business practices. For example, many promotions involve many parties (such as retailers/banks), and such promotions are designed to provide some “gain” or benefits to the participants. <p>Law Society:</p> <ul style="list-style-type: none"> - The definition of “sell” should not be limited to “gain in money or other property”, for there may be intangible gains such as business opportunity, business relationship, etc. 	<ul style="list-style-type: none"> - The sharing and temporary transfer of data in exchange for fees or commissions are activities that have aroused widespread community concerns and calls for regulation. It is therefore our intention that such activities should be subject to regulation under the PDPO. Promotions to provide gains or benefits to the data subjects would not fall under the definition of “sell”, as long as there is no gain to the data user in money or other property. - “Property”, as defined under section 3 of the Interpretation and General Clauses Ordinance (Cap.1), includes “(a) money, goods, choses in action and land; and (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a) of this definition”. We believe the definition is appropriate for our purpose.
New section 35B	<p>HKRMA:</p> <ul style="list-style-type: none"> - It is not clear how section 35B (sale of personal data) can be distinguished from section 35N (provision (otherwise than by sale) of personal data to persons for use in direct marketing). 	<ul style="list-style-type: none"> - The new section 35B deals with sale of personal data while the new section 35N deals with provision (otherwise than by sale) of personal data to a person for that person’s own purposes.

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	<ul style="list-style-type: none"> - The new sanctions are severe (up to \$1,000,000 in fines and 5 years imprisonment). While the HKRMA expresses understanding towards the increase in fine, it objects to the proposal to impose custodial penalties. 	<ul style="list-style-type: none"> - The penalty has been set taking into account community concern about unauthorized sale of personal data and the need to provide sufficient deterrent effect.
	<p>HKAB:</p> <ul style="list-style-type: none"> - Section 35B(3) should read: “The data user must <u>take all practicable steps to provide the data subject with...</u>” - Section 35B(3)(b) should read: “a <u>response facility</u> through which the data subject may ... objects to the intended sale” - Section 35B(5) should read: “... must be presented in a manner that is easily readable and easily understandable <u>by the standards of a reasonable, average person</u>” - Section 35B(7) should read: “... it is a defence for the data user charged to prove that the data user took all <u>practicable steps</u> reasonable precautions and exercised all due diligence to avoid the commission of the offence” 	<ul style="list-style-type: none"> - There is already a defence provision under section 35B(7) for the data user to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. - It is not necessary to add “response” before facility in s.35B(3)(b). “Response facility” is defined under new section 35A as “the facility provided ... under section 35B(3)(b)....” - The court will use a “reasonable man test” when deciding what is “easily readable and easily understandable”. - The defence of “reasonable precautions and exercised all due diligence” is appropriate. There are quite a number of precedents in other legislation.

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	<p>Law Society:</p> <ul style="list-style-type: none"> - Section 35B should read: <ul style="list-style-type: none"> “(4) A response facility <u>under subsection 3(b)</u> may provide means that allow a data subject to indicate in writing whether the data subject objects to the intended sale, with reference to – <ul style="list-style-type: none"> (a) any specified kind of data <u>to be used</u>; (b) any specified class of persons <u>to which the data is to be sold</u>; or (c) any specified class of marketing subjects <u>in relation to which the data is to be used, if applicable</u>. (5) The information and response facility provided under subsection (3) must be presented in a manner that is easily readable and easily understandable <u>by the data subject</u>.” 	<ul style="list-style-type: none"> - The meaning of section 35B(4) is clear. There is no need for the proposed amendments. - The court will use a “reasonable man test” when deciding what is “easily readable and easily understandable”.
New section 35C	<p>HKAB:</p> <ul style="list-style-type: none"> - Section 35C(3) should read: “A data subject may indicate whether the data subject objects to a sale of personal data through the response facility or other means <u>as the data user may reasonably specify</u>” - Sections 35C(5) should read: “... it is a defence for the data user charged to prove that the data user took all <u>practicable steps</u> reasonable precautions and exercised all due diligence to avoid the commission of the offence”. 	<ul style="list-style-type: none"> - We do not intend to impose restrictions in respect of the means that the data subject may use to indicate objection. - The defence of “reasonable precautions and exercised all due diligence” is appropriate. There are quite a number of precedents in other legislation.

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	<p>Law Society:</p> <ul style="list-style-type: none"> - An “intra-group exemption” should be written into the new section 35C to allow flexibility for transfer of data within a group of companies. 	<ul style="list-style-type: none"> - We do not intend to provide for such exemption.
New section 35D	<p>HKAB:</p> <ul style="list-style-type: none"> - section 35D(1) should read: “... the data subject may subsequently object to such sale by sending a written notification to the data user through the response facility or other means <u>as the data user may reasonably specify</u>” - Section 35D(3) should read: “a data user must, without charge to a data subject, comply with the requirement specified in a notification from the data subject under subsection (1). <u>For the avoidance of doubt, a data user is deemed to have complied with this subsection (3) if the data user does more than the data subject specified in the notification</u>” - Sections 35D(7) should read – “... it is a defence for the data user charged to prove that the data user took all <u>practicable steps</u> reasonable precautions and exercised all due diligence to avoid the commission of the offence”. 	<ul style="list-style-type: none"> - Please see response to HKAB’s comment on section 35C above. - There is no need for such an “avoidance of doubt” clause. - The defence of “reasonable precautions and exercised all due diligence” is appropriate. There are quite a number of precedents in other legislation.
New section 35F	<p>HKRMA:</p> <ul style="list-style-type: none"> - The criteria to grant exemptions should be set out to make clear in what circumstances the powers should be 	<ul style="list-style-type: none"> - Notices made under section 35F are subsidiary legislation and will be subject to vetting by the Legislative Council.

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	exercised.	
New section 35G	<p>Law Society:</p> <ul style="list-style-type: none"> - As circumstances of society may change and there may be need to expand the “exceptions” to application of the new Division 3, a further exception should be added to the new Section 35G: “any other circumstances by the Commissioner from time to time”. 	<ul style="list-style-type: none"> - It is not appropriate to vest such power in the PCPD.
New section 35H	<p>HKRMA:</p> <ul style="list-style-type: none"> - The HKRMA is concerned about the implications of section 35H(4) which seems to require data users to give data subjects the option to agree to some elements of data usage, but not others. They are concerned that this will not be practicable as businesses would have to provide tailor-made marketing programmes for each customer’s requirements. 	<ul style="list-style-type: none"> - Section 35H(4) does not require data users to give each data subject a tailor-made option to agree to some elements of data usage, but not others.
	<p>Law Society:</p> <ul style="list-style-type: none"> - Section 35H(4) should read: “<u>A response facility under subsection 3(b) may provide means that allow a data subject to indicate in writing whether the data subject objects to the intended use, with reference to –</u> <p>(a) any specified kind of data <u>to be used</u>; or (b) any specified class of marketing subjects <u>in relation</u></p>	<ul style="list-style-type: none"> - Please see response to Law Society’s comment on section 35B above.

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	<p style="text-align: center;"><u>to which the data is to be used.</u>"</p> <ul style="list-style-type: none"> - Section 35H(5) should read: "The information and response facility provided under subsection (3) must be presented in a manner that is easily readable and easily understandable <u>by the data subject.</u>" 	
New section 35N	<p>Law Society:</p> <ul style="list-style-type: none"> - Section 35N(4) should read: "A response facility <u>under subsection 3(b)</u> may provide means that allow a data subject to indicate in writing whether the data subject objects to the intended provision, with reference to – <ul style="list-style-type: none"> (a) any specified kind of data <u>to be provided</u>; (b) any specified class of persons <u>to which the data is to be provided</u>; or (c) any specified class of marketing subjects <u>in relation to which the data is to be used.</u>" - Section 35N(5) should read: "The information and response facility provided under subsection (3) must be presented in a manner that is easily readable and easily understandable <u>by the data subject.</u>" 	<ul style="list-style-type: none"> - Please see response to Law Society's comment on section 35B above.
New section 35R	<p>HKAB:</p> <ul style="list-style-type: none"> - Section 35R(4)(b) should read: "the disclosure was <u>permitted, required</u> or authorized by or under any 	<ul style="list-style-type: none"> - Please see response to HKAB's comment on section 20(3)(ea) above.

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	<p>enactment, by any rule of law or by <u>any legal or regulatory requirement or any direction or an order of a regulatory authority or court to which the person is subject</u>"</p> <p>Law Society:</p> <ul style="list-style-type: none"> - Regarding section 35R(2)(b), a more detailed definition of the harm should be included in the new Section 35R(2), otherwise an offence could be committed by a disclosure without the data user's consent where the data subject suffers only mild embarrassment. 	<ul style="list-style-type: none"> - "Psychological harm" also appears in the Organized and Serious Crimes Ordinance (Cap. 455). There is no need for a more detailed definition of "psychological harm".
New section 50(1A)(c)	<p>PCPD:</p> <ul style="list-style-type: none"> - It is not clear whether the scope of steps specified by the Privacy Commissioner pursuant to section 50(1A)(c) will be confined to remedy the contravention attributed to the data user's act or omission under section 50(1A)(b)(ii). <p>HKRMA:</p> <ul style="list-style-type: none"> - Guidelines should be issued on specific steps required to remedy contravention in compliance with the enforcement notices. 	<ul style="list-style-type: none"> - The new section 50(1A)(c) empowers the Privacy Commissioner to specify in an enforcement notice the steps that a data user must take to remedy a contravention of a requirement under the PDPO. The provision does not qualify the steps that may be taken as long as they are directed at remedying the contravention. - This will be conveyed to the PCPD for consideration
New section 50A	<p>Law Society:</p> <ul style="list-style-type: none"> - Section 50A(1) should read: 	<ul style="list-style-type: none"> - "Enforcement notice" is already defined as "a notice

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	<p>“A data user who contravenes an enforcement notice <u>under section 50(1)</u> commits an offence</p> <p>- We cannot locate “section 50(1A)(b)” and believe this to be an error. Accordingly, section 50A(3) should read: “A data user who, having complied with an enforcement notice, intentionally does the same act or makes the same omission in contravention of the requirement under this Ordinance, as specified in the enforcement notice under section 50(1A)(b)<u>50(1)</u>, commits an offence</p>	<p>under section 50(1)” in section 2 of PDPO.</p> <p>- Section 50(1A)(b) is added by clause 27 of the Personal Data (Privacy) (Amendment) Bill 2011 and can be found on page C3883 of the gazetted version. It is more appropriate to make reference to section 50(1A)(b) than to section 50(1), as section 50(1A)(b) specifically refers to “the act or omission that constitutes the contravention” which is the subject of section 50A(3).</p>
New section 50B	<p>HKAB:</p> <p>- Section 50B should read: “A person commits an offence if the person –</p> <p>(a) without lawful <u>authority or reasonable</u> excuse, obstructs, hinders or resists the Commissioner</p> <p>(b) without lawful <u>authority or reasonable</u> excuse, fails to comply with any lawful requirement of the Commissioner</p> <p>(c) in the course of the performance or exercise by the Commissioner</p> <p>(i)</p> <p>(ii) otherwise knowingly misleads the Commissioner or that other person <u>in a material particular.</u>”</p>	<p>- The offence in section 50B is not a new offence. This is a repositioning of the existing section 64(9).</p>

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New section 58(6)	<p>HKAB:</p> <ul style="list-style-type: none"> - The new definition of “crime” in section 58(6) significantly limits the scope of exemption under section 58, which renders it applicable to law enforcement agencies only (and not data users in general). It should read: <u>“crime means an offence under the law of Hong Kong or any other jurisdiction;</u> <ul style="list-style-type: none"> (a) an offence under the laws of Hong Kong; or (b) if personal data is held or used in connection with legal or law enforcement cooperation between Hong Kong and a place outside Hong Kong, an offence under the laws of that place;” 	<ul style="list-style-type: none"> - The exemption under section 58 applies, inter alia, to personal data held for the purpose of the prevention or detection of crime. Pursuant to section 58(1)(a) and new section 58(6)(b), the exemption will apply if, among others, any of the following conditions is fulfilled: (a) the use/disclosure is for the prevention or detection of an offence under the laws of Hong Kong; or (b) the use/disclosure is for the prevention or detection of an offence in a place outside Hong Kong, and such use/disclosure is in connection with a legal or law enforcement cooperation between Hong Kong and that place.
New section 60A(2)	<p>PCPD:</p> <ul style="list-style-type: none"> - The new section 60A(2) will create practical difficulty in enforcing PDPO, as it will render information provided in compliance with Data Protection Principle 6 or section 18(1)(b) inadmissible as evidence against the data user for any offence under the PDPO. 	<ul style="list-style-type: none"> - We are further considering the points raised.
New section 63B	<p>Law Society:</p> <ul style="list-style-type: none"> - Section 63B should read: “63B. Due diligence exercise <ul style="list-style-type: none"> (1) Personal data due diligence exercise to be conducted in connection with a proposed business transaction that involves — 	<ul style="list-style-type: none"> - We do not intend to extend the exemption to related companies.

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	<p>(a) a transfer of <u>all or any part of the business or property of, or any shares in, the data user</u>;</p> <p>(b) a change in the shareholdings of the data user <u>or a related company</u>; or</p> <p>(c) an amalgamation of the data user <u>or a related company</u> with another body,</p> <p>is exempt from the provisions of data protection principle 3 if each of the conditions specified in subsection (2) is satisfied.</p> <p>(2) The conditions are —</p> <p>(a)</p> <p>(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 <u>or another company in the same group of companies</u> or a new body formed as a result of the transaction;”</p>	
	<p>HKAB:</p> <p>- Section 63B(4) should read: “(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</p>	<p>- The exemption is confined to the purpose of a due diligence exercise and therefore it follows that the data should be returned after completion of the exercise.</p>

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	<p>transaction described in subsection (1), the person –</p> <ul style="list-style-type: none"> (a) must only use the data for that purpose; and (b) must, as soon as practicable after the completion of the due diligence exercise <u>and provided that the data is no longer necessary for the purpose of the business transaction</u> – <ul style="list-style-type: none"> (i) return the personal data to the data user <u>without keeping any record of the data; and</u> (ii) destroy any record of the personal data that is kept by the person.” 	
Section 64	<p>HKAB:</p> <ul style="list-style-type: none"> - The amended section 64(2) should read: <ul style="list-style-type: none"> “Subsection (1) does not apply in relation to— (a) <u>a contravention that does not constitute an offence including a contravention of a data protection principle or a contravention of any requirement under section 35B(1), 35H(1) or 35N(1);</u> (b) a contravention that constitutes an offence under ...; or (c) a contravention of any requirement under section 35B(1), 35H(1) or 35N(1).” 	<ul style="list-style-type: none"> - The word “including” would render the scope imprecise.
New section 64A	<p>HKRMA:</p> <ul style="list-style-type: none"> - The proposal to extend the time limit for laying 	<ul style="list-style-type: none"> - The proposal aims to provide sufficient time for the

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	information for prosecution from six months to two years from the data of the commission of the offence should be justified.	PCPD, the Police and the Department of Justice to conduct investigation and institute prosecution as necessary.
Schedule 1 Data Protection Principle ("DPP") 2	HKRMA: - New DPP2(3): further clarification is needed on what types of "other means" are envisaged to ensure that data processors comply with PDPO.	- "Other means" is intended to provide some flexibility to data users in the event that contractual means is not practicable.
	HKAB: - New DPP2(3) should read: "Without limiting subsection (2), if a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user's behalf, the data user must adopt <u>such contractual or other means as are practicable</u> to prevent any personal data <u>transferred to the data processor from</u> being kept longer than is necessary for processing of the data."	- "Other means" already provides the necessary flexibility.
Schedule 1 DPP 3	HKAB: - New DPP3(3) should read: "A data user may <u>must not</u> use the personal data of a data subject for a new purpose even if the prescribed consent for so using that data has been given under subsection (2) by a relevant person, unless the data user has reasonable grounds for believing that the use of that data for the new	- For better protection of the data subject, we do not intend to relax the obligatory element.

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	purpose is clearly <u>not</u> in the interest of the data subject.”	
Schedule 1 DPP 4	<p>HKAB:</p> <ul style="list-style-type: none"> - The amended DPP4(1) and new DPP4(2) should read: “(1) All practicable steps shall be taken to ensure that personal data held by a data user is protected against unauthorised or accidental access, processing, erasure, loss or use, <u>or loss actually resulting in unauthorised or accidental access, processing, erasure or use of data</u> having particular regard to (2) Without limiting subsection (1), if a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user’s behalf, the data user must adopt <u>such</u> contractual or other means <u>as are practicable</u> to prevent unauthorised or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing, <u>or loss of the data actually resulting in unauthorised or accidental access, processing, erasure or use of the data.</u>” <p>PCPD:</p> <ul style="list-style-type: none"> - In order to achieve consistency with international standards, the amendment to regulate data processors indirectly on the use of personal data should be introduced in DPP 3, rather than the DPP 4. 	<ul style="list-style-type: none"> - We do not intend to confine the “loss” to “loss actually resulting in unauthorised or accidental access, processing, erasure or use of the data”. - This proposal is to require data users to take security measures to prevent loss of personal data. It is therefore proposed to stipulate the new requirements in DPP4, which deals with security of personal data (including unauthorised or accidental use of data), instead of DPP 3, which deals with use of personal data for a new purpose

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		(i.e. a purpose other than the one for which the data was originally collected).
Section 73F of District Court Ordinance	HKRMA: - The proposal to preempt a cost order against the Commissioner unless “the proceedings are brought maliciously or frivolously” and to dispose of the rules of evidence should be justified.	- This follows the model of the Equal Opportunities Commission’s legal assistance scheme and is intended to remove fear of the aggrieved data subject having to bear possibly huge legal costs in the event he or she loses the case.