

**LEGISLATIVE COUNCIL BRIEF**

**PERSONAL DATA (PRIVACY)(AMENDMENT) BILL 2011**

**INTRODUCTION**

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At the meeting of the Executive Council on 28 June 2011, the Council ADVISED and the Chief Executive ORDERED that the Personal Data (Privacy) (Amendment) Bill 2011 (“the Bill”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”).

**JUSTIFICATIONS**

2. Recent cases of transfer of massive customer personal data by some enterprises to others for direct marketing purposes without explicitly and specifically informing the customers of the purpose of the transfer and the identity of the transferees, and seeking the customer’s consent, have aroused widespread community concerns. We need to address these concerns as well as some technical problems encountered in the implementation of the Personal Data (Privacy) Ordinance (“PDPO”) (Cap. 486), which has been in force for more than a decade. Our major proposals are set out in the following paragraphs. Basically they follow the proposals in the Report on Further Public Discussions on Review of the PDPO (“further public discussions report”) published in April 2011.

**Provision and Use of Personal Data in Direct Marketing**

3. To provide data subjects with an informed choice as to whether to allow the use of their personal data in direct marketing, we propose to require a data user who intends to use personal data in direct marketing or provide (otherwise than by sale) personal data to other persons for use by those persons in direct marketing to, before such use or provision, –

- (a) provide the data subject with written information on –
  - (i) the kinds of personal data to be used or provided;

- (ii) the classes of persons (e.g. financial services companies or telecommunications services providers) to which the data is to be provided; and
  - (iii) the classes of goods, facilities or services (e.g. beauty products, financial services or telecommunications services) to be offered or advertised or the purposes (e.g. charitable, cultural or recreational) for which donations or contributions may be solicited; and
- (b) provide the data subject with a response facility<sup>1</sup> through which the data subject may, without charge from the data user, indicate in writing to the data user whether the data subject objects to the intended use or provision.

The information in (a) and the response facility in (b) above must be presented in a manner that is easily readable and easily understandable.

4. We propose to adopt the arrangement so as to strike a balance between the protection of personal data privacy and allowing room for businesses to operate while providing data subjects with an informed choice as to whether to allow the use of their personal data in direct marketing. If, after the information and response facility required under paragraph 3(a) and (b) are provided to the data subject, the data subject sends a reply to the data user indicating that he or she does not object, the data user may proceed to use or provide the data for use in direct marketing. If no reply indicating objection is sent within 30 days after the information and response facility are given to the data subject or after the data is collected, the data subject will be taken not to object. The reply has to be sent to the data user by the data subject in writing, whether or not through the response facility.

5. We further propose that, irrespective of whether a data subject has, within the 30-day response period, sent any written reply to the data user indicating no objection, the data subject may subsequently, at any time, object in writing to the use or provision of his or her personal data and the data user will then have to cease to use or provide the data subject's personal data for use in direct marketing. The data subject may also require the data user to notify the persons to whom his or her personal data has been provided for use in direct marketing to cease to so

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<sup>1</sup> A response facility is the "tool" that the data user provides to the data subject for the latter to indicate whether he or she objects. For example, it can be a check-box on a hardcopy or provided online.

use the data. Upon receipt of the notification, the persons concerned have to cease to so use the data.

6. The current section 34 of the PDPO requires a data user, when using the personal data of a data subject in direct marketing for the first time, to inform the data subject that the data subject may request the data user to cease to so use the data. If the data subject so requests, the data user must cease to so use the data. This requirement will be retained. To enhance the deterrent effect, we propose to raise the penalty for contravention of this provision from a fine at level 3 (\$10,000) to a fine of \$500,000 and imprisonment for three years.

7. For personal data which a data user has, before the entry into force of the new requirements in paragraph 3, used in direct marketing in compliance with the existing requirements under the PDPO, and which the data user intends to use (but not provide to other persons) for offering or advertising the same class(es) of goods, facilities or services or solicitation of donations or contributions for the same purpose(s), those new requirements in paragraph 3 above will not apply. There is a case for this arrangement as the data subject is aware of such direct marketing activities of the data user and could have requested the data user to cease had he or she so wished but he or she has not done so. This arrangement will also help avoid a huge number of notices providing the required information and response facility to be sent to data subjects to cover data to be used for such activities when the new requirements come into effect.

8. We propose that non-compliance with any of the requirements in paragraph 3 will be subject to the issue of an enforcement notice<sup>2</sup> by the Privacy Commissioner for Personal Data (“PCPD”). A data user will commit an offence and be liable, on conviction, to a fine of \$500,000 and imprisonment for three years if the data user–

- (a) uses personal data in direct marketing or provides personal data to other persons for use by those persons in direct marketing without complying with the requirements in paragraph 3 above;  
or
- (b) (i) uses or provides for use in direct marketing a kind of personal data; or

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<sup>2</sup> As currently provided for under the PDPO, non-compliance with an enforcement notice is an offence and the penalty a fine of \$50,000 and imprisonment for two years.

- (ii) uses or provides personal data for offering or advertising a class of goods, facilities or services; or
- (iii) uses or provides personal data for soliciting donations or contributions for a purpose; or
- (iv) provides personal data for use in direct marketing to a class of persons

not covered in the information given to the data subject pursuant to the requirement in paragraph 3(a) above, or in respect of which the data subject has indicated objection; or

- (c) uses or provides the personal data for use in direct marketing before the data subject is taken not to object under paragraph 4; or
- (d) fails to comply with a data subject's request to cease to use the data subject's personal data in direct marketing or to notify the persons concerned to cease to so use the data subject's data as required under paragraph 5.

A person referred to in subparagraph (d) who, upon receipt of the notification, does not cease to use the personal data in direct marketing will commit an offence and be liable on conviction to a fine of \$500,000 and imprisonment for three years. In order not to criminalise inadvertent acts, we propose that it shall be a defence for a data user or person referred to in subparagraph (d) to prove that all reasonable precautions have been taken and all due diligence has been exercised to avoid the commission of the offence in subparagraphs (a) to (d) above.

9. The social services run, subvented or subsidised by the Social Welfare Department ("SWD") and the healthcare services provided by the Hospital Authority ("HA") and the Department of Health ("DH") serve a very large number of clients and patients. It would impose onerous duties on the SWD, HA and DH to comply with the requirements on direct marketing activities above in respect of their services. Also, these service providers should be allowed to, in the proper interests of the clients/patients in need of such services and the society at large, continue to "knock at the door" of the clients/patients to provide them with information on these services. We, therefore, propose that the social services run, subvented or subsidised by the SWD and the healthcare services provided by the HA and DH should be exempted from the

provisions relating to direct marketing. We also propose that the exemption should apply to any other social or healthcare services which, if not provided, would be likely to cause serious harm to the physical or mental health of the person to whom the services are intended to be provided or any other individual.

### **Sale of Personal Data**

10. Some of the recent cases of transfer of customer personal data by enterprises involve monetary gains. This has aroused widespread concerns and there are calls from different quarters of the community for criminalising such acts. We propose to impose specific requirements on data users who intend to sell personal data and to criminalise unauthorised sale of personal data. The term “sell” will be defined as –

“to provide personal data to a person for gain in money or other property, irrespective of whether –

- (a) the gain is contingent on any condition; or
- (b) the provider retains possession of the data.”

Under this definition, activities such as “list rental” and “data licensing” in exchange for fees or commission will be covered.

11. A data user who intends to sell personal data must, before the sale, –

- (a) provide the data subject with the following information relating to the intended sale in writing –
  - (i) the kinds of personal data to be sold;
  - (ii) the classes of persons to which the data is to be sold; and
  - (iii) if the personal data is to be used by those classes of persons in direct marketing, the classes of goods, facilities or services to be offered or advertised, or the purpose for which donations or contributions are to be solicited; and

- (b) provide the data subject with a response facility through which the data subject may, without charge from the data user, indicate in writing to the data user whether the data subject objects to the intended sale.

The information in (a) and response facility in (b) above must be presented in a manner that is easily readable and easily understandable. The Chief Executive in Council may by notice published in the Gazette exempt a class of data users or a kind of personal data from the above requirements.

12. The arrangement in paragraph 4 under which a data subject will be taken not to object if no reply indicating objection is sent within 30 days will similarly apply to sale of personal data. We further propose that, irrespective of whether a data subject has, within the 30-day response period, sent any written reply to the data user indicating no objection, the data subject may subsequently, at any time, object in writing and the data user will then have to cease to sell the data subject's personal data. The data subject may also require the data user to notify the persons to whom his or her personal data has been sold to cease to use the data. Upon receipt of the notification, the buyers have to cease to use the data.

13. Non-compliance with any of the requirements in paragraph 11 will be subject to the issue of an enforcement notice by the PCPD. A data user will commit an offence and be liable, on conviction, to a fine of \$1,000,000 and imprisonment for five years if the data user –

- (a) sells personal data without complying with the requirements in paragraph 11 above; or
- (b) sells a kind of personal data, or sells personal data to a class of persons, not covered in the information given to the data subject pursuant to the requirement in paragraph 11(a) above<sup>3</sup>; or

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<sup>3</sup> If the personal data is to be sold to other persons for use by those persons in direct marketing, the offence provision will also apply if the class of goods, facilities or services to be offered or advertised, or the purpose for which donations or contributions are to be solicited, is not covered in the information.

- (c) sells a kind of personal data, or sells personal data to a class of persons, in respect of which the data subject has indicated objection<sup>4</sup>; or
- (d) sells the personal data before the data subject is taken not to object under paragraph 12; or
- (e) fails to comply with a data subject's request to cease to sell the personal data or to notify the buyers to cease to use the data subject's personal data as required under paragraph 12.

A buyer referred to in subparagraph (e) who, upon receipt of the notification, does not cease to use the personal data will commit an offence and be liable on conviction to a fine of \$1,000,000 and imprisonment for five years. In order not to criminalise inadvertent acts, we propose that it shall be a defence for a data user or buyer to prove that all reasonable precautions have been taken and all due diligence has been exercised to avoid the commission of the offence in subparagraphs (a) to (e) above.

### **Disclosure of Personal Data Obtained without the Data User's Consent**

14. In view of the seriousness of the intrusion into personal data privacy and the gravity of harm that may be caused to the data subjects, we propose to make it an offence for a person who obtains personal data from a data user without the data user's consent, and subsequently discloses the personal data, –

- (a) with an intent to obtain gain in money or other property, whether for the benefit of the person or another person;
- (b) with an intent to cause loss in money or other property to the data subject; or
- (c) causing psychological harm to the data subject.

The penalty will be a fine of \$1,000,000 and imprisonment for five years. Defences on grounds including crime prevention and news activity will be provided.

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<sup>4</sup> If the personal data is to be sold to other persons for use by those persons in direct marketing, the offence provision will also apply if the data subject has indicated objection to the class of goods, facilities or services to be offered or advertised, or the purpose for which donations or contributions is to be solicited.

## **Legal Assistance to Data Subjects**

15. Currently, a data subject (“aggrieved person”) who suffers damage by reason of a contravention of a requirement under the PDPO by a data user may seek compensation under section 66 of the PDPO. We propose to empower the PCPD to provide legal assistance to aggrieved persons who intend to institute legal proceedings under section 66. The assistance may include giving legal advice on the sufficiency of evidence and arranging for lawyers to represent the applicants in legal proceedings. To ensure proper use of public funds, applications for legal assistance may be granted in cases which raise a question of principle, or where it is unreasonable to expect the applicants to deal with the cases unaided having regard to the complexity of the cases or the applicants’ position in relation to the respondents or any other person involved or any other matter.

16. We further propose to, following the model of the Equal Opportunities Commission’s legal assistance scheme, stipulate that proceedings under section 66 are to be brought in the District Court and amend the District Court Ordinance (Cap. 336) to provide that each party (i.e. the claimant and the respondent) has to bear his or her own costs unless the District Court otherwise orders on the ground that the proceedings were brought maliciously or frivolously or that there are special circumstances which warrant an award of costs. This is to remove fear of the aggrieved data subject having to bear possibly huge legal costs in the event he or she loses the case.

## **Other Proposals**

17. We also intend to implement various proposals –
- (a) to make new provisions relating to the powers and liability of the PCPD;
  - (b) to impose a heavier penalty for repeated non-compliance with enforcement notices;
  - (c) to make it an offence for a person to intentionally do the same act or make the same omission again that constitutes a contravention of a requirement under the PDPO in respect of which an enforcement notice has been issued before;

- (d) to introduce new exemptions;
- (e) to impose requirements on data users to adopt measures to prevent retention for longer than is necessary, or unauthorised or accidental access, processing, erasure, loss or use of personal data transferred to the data processors they engage for processing;
- (f) to empower guardians of data subjects with mental incapacity to handle matters relating to personal data on behalf of these data subjects; and
- (g) to make technical amendments to improve the operation and presentation of the PDPO.

----- These proposals are summarised at **Annex B**.

## **OTHER OPTIONS**

18. The proposals have to be effected by amendments to the PDPO. There is no alternative.

## **THE BILL**

----- 19. The Bill at **Annex A** seeks to amend the PDPO to implement the proposals in paragraphs 3 to 17 above and makes related and consequential amendments to the District Court Ordinance (Cap. 336) and the Administrative Appeals Board Ordinance (Cap. 442). The main provisions of the Bill are explained below –

- (a) Clause 1 provides that the Personal Data (Privacy) (Amendment) Ordinance 2011 comes into operation on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice in the Gazette.
- (b) Clause 21 adds a new part VIA to the PDPO to implement the proposals in paragraphs 3 to 14 above. The newly added sections 35A to 35F set out the regulatory requirements relating to the sale of personal data. New sections 35G to 35Q set out

the regulatory requirements relating to the use of personal data in direct marketing. Section 35R sets out the offence provision relating to the disclosure of personal data which is obtained without the data user's consent.

- (c) Clauses 37 and 38 introduce new provisions governing the proceedings ("compensation proceedings") that may be instituted by an aggrieved person under section 66 of the PDPO to seek compensation from a data user. Clause 37 provides that the proceedings must be brought in the District Court. Clause 38 adds new sections 66A and 66B to the PDPO to empower the PCPD to provide legal and other assistance to aggrieved persons. Clause 42 makes related amendments to the District Court Ordinance to empower the District Court Rules Committee to make rules regulating the compensation proceedings.
- (d) The Bill introduces new provisions on the powers and liability of the PCPD. Clause 4 empowers the PCPD to impose charges for promotional and educational activities carried out, and services, publications and materials provided. Clause 5 provides that no civil liability is incurred by the person appointed to be the PCPD or prescribed officers in respect of anything done or omitted to be done in good faith in the performance of the PCPD's powers. Clause 8 empowers the PCPD to require, among other things, documents and information to be provided for verifying the accuracy of data user returns and to require inaccuracies in the returns to be corrected. Clause 24 provides for additional circumstances under which the PCPD may disclose information obtained in the course of inspections and investigations carried out under the PDPO.
- (e) Under the PDPO, the PCPD may issue an enforcement notice to a data user who has contravened a requirement under the Ordinance and non-compliance with the notice is an offence. To strengthen the impact and effect, clause 28 introduces a new section 50A to impose a heavier penalty on a data user for repeated non-compliance with enforcement notices. The new section also makes it an offence for a data user who, having complied with an enforcement notice, intentionally does the same act or makes the same omission again in contravention of

a requirement under the PDPO for which the enforcement notice was issued.

- (f) Clauses 29, 31, 32, 33 and 34 relate to amendments to provisions on exemptions. New sections 51A, 59A, 60A, 60B, 63B, 63C and 63D are added to introduce new exemptions in respect of personal data held by courts, magistrates or judicial officers in the course of performing judicial functions, personal data transferred or disclosed to facilitate proper care and guardianship of minors, personal data used in connection with legal proceedings, personal data transferred or disclosed for due diligence purposes in connection with merger, acquisition or transfer of businesses, personal data collected or used for the purpose of the carrying out of emergency rescue operations or provision of emergency relief services, and personal data contained in records transferred to the Government Record Service for archive purposes. Section 59 of the PDPO is amended to broaden the scope of application of the exemption on health grounds.
- (g) Clause 3 expands the definition of “relevant person” in section 2 of the PDPO to include guardians of data subjects with mental incapacity who are appointed under the Mental Health Ordinance (Cap. 136), so that they may handle matters relating to personal data of these data subjects on their behalf, including lodging complaints, making data access and data correction requests.
- (h) The Bill proposes to amend certain data protection principles (“DPPs”). Clause 39 amends DPP 2 and DPP 4 to require a data user who engages a data processor to carry out data processing on the data user’s behalf, to adopt contractual means or other means to prevent any personal data transferred to the data processor for processing purpose from being kept longer than is necessary for the purpose and to prevent unauthorised and accidental access, processing, erasure, loss or other use of the data. The clause also amends DPP 3 so that a relevant person of a data subject who is a minor, is incapable of managing his or her own affairs or is mentally incapacitated may, under certain circumstances, give consent for a change of use of the data subject’s personal data on the latter’s behalf.

- (i) The Bill also introduces technical amendments to improve the operation and presentation of the PDPO.

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The existing provisions of the PDPO being amended by the Bill are at **Annex C**.

## **LEGISLATIVE TIMETABLE**

20. The legislative timetable is as follows –

Publication in the Gazette	8 July 2011
First reading and commencement of Second Reading debate	13 July 2011
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **IMPLICATIONS OF THE PROPOSALS**

21. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. The proposals are not expected to have environmental or productivity implications. The financial, civil service, economic and sustainability implications are set out in **Annex D**.
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## **PUBLIC CONSULTATION**

22. We conducted a public consultation from August to November 2009 and published the consultation report in October 2010, setting out the legislative proposals drawn up in the light of the views received and a few new proposals in response to cases of transfer of customer personal data by some enterprises for direct marketing purposes. Further public discussions on the proposals ended on 31 December 2010 and the further public discussions report was published in April 2011.

23. During the two rounds of consultation, we briefed and consulted the LegCo Panel on Constitutional Affairs at five of its meetings and organised four public forums. We also met with representatives of the direct marketing, financial services, information technology, commercial

and social services sectors, attended the seminars and forums organised by interested organisations and discussed with the Chairmen and Vice-Chairmen of District Councils, the Human Rights Forum and Children's Rights Forum.

## **PUBLICITY**

24. We will issue a press release and a government spokesperson will be available to answer media and public enquiries.

## **BACKGROUND**

25. The PDPO has been in force since 1996. To ensure that the PDPO still provides adequate protection on personal data privacy, we conducted a comprehensive review of the PDPO with the support of the PCPD, and consulted the public from August to November 2009 on proposals arising from the review. We published the consultation report in October 2010 and further discussed the legislative proposals with the public from October to December 2010. The further public discussions report was released on 18 April 2011 and presented to the LegCo Panel on Constitutional Affairs on the same day.

## **ENQUIRIES**

26. For enquiries about this brief, please contact Mrs Philomena Leung, Principal Assistant Secretary for Constitutional and Mainland Affairs, at 2810 2681.

**Constitutional and Mainland Affairs Bureau**  
**July 2011**

# **PERSONAL DATA (PRIVACY) (AMENDMENT) BILL 2011**

## **ANNEXES**

Annex A – Personal Data (Privacy) (Amendment) Bill 2011

Annex B – Other Proposals to be Implemented

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**Personal Data (Privacy) (Amendment) Bill 2011**

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# A BILL

# To

Amend the Personal Data (Privacy) Ordinance to provide for the regulation of the sale of personal data and the use of personal data in direct marketing; to create a new offence for the disclosure of personal data obtained without consent; to empower the Privacy Commissioner for Personal Data to assist data subjects in bringing proceedings to seek compensation from data users under the Ordinance; to empower the Commissioner to verify the accuracy of data user returns and to impose certain charges; to give the person appointed to be the Commissioner and persons employed or engaged by the Commissioner immunity from civil liability in respect of certain actions or omissions; to impose a heavier penalty for repeated contravention of enforcement notices and to create a new offence for repeated contravention of the requirements under the Ordinance for which enforcement notices have been served; to introduce new exemptions in respect of certain requirements under the Ordinance; to make new provisions relating to data protection principles; to make technical amendments to improve the operation and presentation of the Ordinance; and to provide for related and consequential matters.

Enacted by the Legislative Council.

## Part 1

### Preliminary

#### 1. Short title and commencement

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

- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice published in the Gazette.

## 2. Enactments amended

- (1) The enactments specified in Parts 2 and 3 are amended as set out in those Parts.
- (2) The provisions of the Personal Data (Privacy) Ordinance (Cap. 486) set out in an item in column 1 of the Schedule are amended by repealing the words set out in column 2 of that item and substituting the words set out in column 3 of that item.
- 

## Part 2

### Amendments to Personal Data (Privacy) Ordinance (Cap. 486)

#### Division 1

#### Amendments Relating to Provisions on Preliminary Matters

### 3. Section 2 amended (Interpretation)

- (1) Section 2(1), English text, definition of *matching procedure*—

#### Repeal

“are compared”

#### Substitute

“is compared”.

- (2) Section 2(1), definition of *relevant person*—

#### Repeal paragraph (c)

#### Substitute

- “(c) where the individual is mentally incapacitated within the meaning of section 2 of the Mental Health Ordinance (Cap. 136)—
- (i) a person appointed under section 44A, 59O or 59Q of that Ordinance to be the guardian of that individual; or
  - (ii) if the guardianship of that individual is vested in, or the functions of the appointed guardian are to be performed by, the Director of Social Welfare or any other person under section 44B(2A) or (2B) or 59T(1) or (2) of that Ordinance, the Director of Social Welfare or that other person;”.

- (3) Section 2(1)—

**Add in alphabetical order**

“*prescribed information* (訂明資訊) means any information specified in Schedule 3;

*rule of law* (法律規則) means—

- (a) a rule of common law or a rule of equity; or
- (b) customary law;”.

- (4) Section 2—

**Repeal subsection (2).**

- (5) Section 2(4)—

**Repeal**

“64(10)”

**Substitute**

“64”.

**Division 2****Amendments Relating to Provisions on Administration****4. Section 8 amended (Functions and powers of Commissioner)**

- (1) Section 8(1)(f)—

**Repeal**

“computer”

**Substitute**

“information”.

- (2) Section 8(1)(g), after “with”—

**Add**

“, and provide assistance to,”.

- (3) After section 8(2)(e)—

**Add**

“(ea) carry out promotional or educational activities or services; and”.

- (4) After section 8(2)—

**Add**

“(2A) The Commissioner may impose reasonable charges for any promotional or educational activities or services carried out, or any promotional or educational publications or materials made available, by the Commissioner in the course of the performance of the Commissioner’s functions under this Ordinance.”.

- (5) Section 8(5), after “data users”—

**Add**

“and data subjects”.

**5. Section 11A added**

Part II, after section 11—

**Add****“11A. Immunity**

- (1) No civil liability is incurred by the person appointed to be the Commissioner under section 5(3) or a prescribed officer in respect of 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 the exercise or purported exercise of any power, imposed or conferred on the Commissioner or officer under this Ordinance.
- (2) The protection conferred under subsection (1) on any person in respect of anything done or omitted to be done does not in any way affect the civil liability of the Commissioner as a corporation sole for that thing.”.

**Division 3****Amendments Relating to Provisions on Codes of Practice****6. Section 13 amended (Use of approved codes of practice in proceedings under this Ordinance)**

- (1) Section 13(4), definition of
- specified body*
- , paragraph (b)—

**Repeal**

“or”.

- (2) Section 13(4), definition of
- specified body*
- , paragraph (c)—

**Repeal the full stop****Substitute**

“; or”.

- (3) Section 13(4), definition of
- specified body*
- , after paragraph (c)—

**Add**

“(d) the chairman of the Administrative Appeals Board.”.

**Division 4****Amendments Relating to Provisions on Data User Returns and Register of Data Users****7. Section 14 amended (Data user returns)**

- (1) Section 14(9)(c)—

**Repeal**

“(3)”

**Substitute**

“(4)”.

- (2) Section 14—

**Repeal subsection (10).**

- (3) At the end of section 14—

**Add**

“(11) A data user who, in purported compliance with subsection (4) or (8), knowingly or recklessly in a data user return submitted to, or 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.”.

**8. Section 14A added**

After section 14—

**Add****“14A. Verification of data user returns**

- (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)—

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

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

- (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 that any 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.
- (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 specified in the notice.
- (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.”.

**9. Section 15 amended (Register of data users)**

- (1) After section 15(4)—

**Add**

“(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.”.

- (2) After section 15(6)—

**Add**

“(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.”.

**Division 5**

**Amendments Relating to Provisions on Access to and Correction of Personal Data**

**10. Part V, Division 1 heading and section 17A added**

Part V, before section 18—

**Add**

**“Division 1**

**Access to Personal Data**

**17A. Interpretation of Part V**

Without limiting the definition of *relevant person* in section 2(1), in this Part—

*relevant person* (有關人士), in relation to an individual, also includes a person authorized in writing by the individual to make, on behalf of the individual—

- (a) a data access request; or
- (b) a data correction request.”.

**11. Section 18 amended (Data access request)**

- (1) Section 18(4), English text—

**Repeal**

“those data”

**Substitute**

“the data”.

- (2) After section 18(4)—

**Add**

“(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.”.

**12. Section 19 amended (Compliance with data access request)**

- (1) Section 19—

**Repeal subsection (1)**

**Substitute**

“(1) Subject to subsection (2) and sections 20 and 28(5), a data user must comply with a data access request within 40 days after receiving the request by—

- (a) if the data user holds any personal data which is the subject of the request—
  - (i) informing the requestor in writing that the data user holds the data; and
  - (ii) supplying a copy of the data; or
- (b) if the data user does not hold any personal data which is the subject of the request, informing the

requestor in writing that the data user does not hold the data.

- (1A) Despite subsection (1)(b), if—

- (a) a data access request is made to the Hong Kong Police Force as to whether it holds any record of criminal conviction of an individual; and
- (b) it does not hold such record,  
it must comply with the request by informing the requestor orally, within 40 days after receiving the request, that it does not hold such record.”.

- (2) Section 19(2), after “(1)”—

**Add**

“or (1A)”.

- (3) Section 19(3)(b), English text—

**Repeal**

“data have”

**Substitute**

“data has”.

- (4) Section 19(3)(c)(iii)(B)(I), English text—

**Repeal**

“data are”

**Substitute**

“data is”.

**13. Section 20 amended (Circumstances in which data user shall or may refuse to comply with data access request)**

- (1) Section 20(1)(c), after “under this”—

**Add**

“or any other”.

- (2) Section 20(3)(e)—

**Repeal**

“or”.

- (3) After section 20(3)(e)—

**Add**

“(ea) the data user is entitled under this or any other Ordinance not to disclose the personal data which is the subject of the request; or”.

- (4) After section 20(4)—

**Add**

“(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).”.

**14. Part V, Division 2 heading added**

After section 21—

**Add****“Division 2****Correction of Personal Data”.****15. Section 22 amended (Data correction request)**

- (1) Section 22(1)—

**Repeal**

“subsection”

**Substitute**

“subsections (1A) and”.

- (2) Section 22(1)(b), English text—

**Repeal**

“data are”

**Substitute**

“data is”.

- (3) After section 22(1)—

**Add**

“(1A) If a person is a relevant person in relation to an individual only because the person has been authorized in writing by the individual to make a data access request on behalf of the individual, the person is not entitled to make a data correction request.”.

- (4) Section 22(3)—

**Repeal**

“data are”

**Substitute**

“data is”.

- (5) After section 22(3)—

**Add**

“(4) A person who, in a data correction request, supplies any information which is false or misleading in a material particular for the purpose of having the personal data corrected as indicated in the request, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.”.

**16. Part V, Division 3 heading added**

After section 25—

**Add**

**“Division 3**

**Miscellaneous”.**

**17. Section 26 amended (Erasure of personal data no longer required)**

- (1) Section 26(1)—

**Repeal**

“shall”

**Substitute**

“must take all practicable steps to”.

- (2) Section 26(1), English text—

**Repeal**

“data are”

**Substitute**

“data is”.

- (3) Section 26(1), English text—

**Repeal**

“data were”

**Substitute**

“data was”.

- (4) Section 26(2)(a)—

**Repeal**

“shall”

**Substitute**

“must take all practicable steps to”.

**Division 6**

**Amendments Relating to Provisions on Matching Procedures and Transfers of Personal Data, etc.**

**18. Section 31 amended (Matching procedure request)**

After section 31(3)—

**Add**

“(4) A data user who, in a matching procedure request made under subsection (1), 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.”.

**19. Section 32 amended (Determination of matching procedure request)**

After section 32(4)—

**Add**

“(5) A requestor who contravenes any conditions specified in a notice under subsection (1)(b)(i) commits an offence and is liable on conviction to a fine at level 3.”.

**20. Section 34 repealed (Use of personal data in direct marketing)**

Section 34—

**Repeal the section.****Division 7****Addition of Provisions on Sale and Use of Personal Data****21. Part VIA added**

After Part VI—

**Add****“Part VIA****Sale and Use of Personal Data****Division 1****Interpretation****35A. Interpretation of Part VIA**

In this Part—

*direct marketing* (直接促銷) means—

(a) the offering, or advertising of the availability, of goods, facilities or services; or

(b) the solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or other purposes,

through direct marketing means;

*direct marketing means* (直接促銷方法) means—

(a) sending information or goods by mail, facsimile transmission, electronic mail or other means of communication, which are addressed to specific persons by name; or

(b) making telephone calls to specific persons;

*marketing subject* (促銷標的), in relation to direct marketing, means—

(a) any goods, facility or service offered or advertised; or

(b) any purpose for which donations or contributions are solicited;

*response facility* (回應設施) means the facility provided by a data user to a data subject under section 35B(3)(b), 35H(3)(b) or 35N(3)(b);*response period* (回應限期), in relation to an intended sale of personal data, an intended use of personal data in direct marketing for a data user’s own purposes, or an intended provision (otherwise than by sale) of personal data to a person for use in direct marketing for that person’s own purposes, means the 30-day period beginning on—

(a) if the data has been collected when written information on the intended sale, use or provision is provided to a data subject under section 35B(3), 35H(3) or 35N(3), the date when the information is provided; or

- (b) if the data has not yet been collected when the information is provided, the date when the data is collected;

*sell* (售賣), in relation to personal data, means to provide the data to a person for gain in money or other property, irrespective of whether—

- (a) the gain is contingent on any condition; or  
(b) the provider retains possession of the data;

*specified class of marketing subjects* (指明類別促銷標的) means a class of marketing subjects specified in the information provided by a data user under section 35B(3)(a)(iii), 35H(3)(a)(ii) or 35N(3)(a)(iii);

*specified class of persons* (指明類別人士) means a class of persons specified in the information provided by a data user under section 35B(3)(a)(ii) or 35N(3)(a)(ii);

*specified kind of personal data* (指明種類個人資料) means a kind of personal data specified in the information provided by a data user under section 35B(3)(a)(i), 35H(3)(a)(i) or 35N(3)(a)(i).

## Division 2

### Sale of Personal Data

#### 35B. Data user to take specified action before selling personal data

- (1) A data user who intends to sell any personal data of a data subject must take the action specified in subsection (3).
- (2) Subsection (1) applies irrespective of whether the personal data is collected from the data subject by the data user.
- (3) The data user must provide the data subject with—

- (a) written information on—
- (i) the kinds of personal data to be sold;
- (ii) the classes of persons to which the data is to be sold; and
- (iii) if the data is to be sold to those classes of persons for use in direct marketing for their own purposes, the classes of marketing subjects in relation to which the data is to be used; together with
- (b) a facility through which the data subject may, without charge from the data user, indicate in writing to the data user whether the data subject objects to the intended sale.
- (4) A response facility may provide means that allow a data subject to indicate in writing whether the data subject objects to the intended sale, with reference to—
- (a) any specified kind of personal data;
- (b) any specified class of persons; or
- (c) any specified class of marketing subjects.
- (5) The information and response facility provided under subsection (3) must be presented in a manner that is easily readable and easily understandable.
- (6) A data user who sells any personal data of a data subject without taking the action specified in subsection (3) commits an offence and is liable on conviction to a fine of \$1,000,000 and to imprisonment for 5 years.
- (7) In any proceedings for an offence under subsection (6), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

**35C. Sale of personal data against data subject's wish**

- (1) A data user who has taken the action specified in section 35B(3) must not sell any personal data of the data subject unless—
  - (a) the sale falls within the scope of the information provided under that section; and
  - (b) the data subject does not object to the sale.
- (2) For the purposes of subsection (1)—
  - (a) a sale of personal data of a data subject falls within the scope of the information provided under section 35B(3) if—
    - (i) the personal data falls within a specified kind of personal data;
    - (ii) the person to whom the data is sold falls within a specified class of persons; and
    - (iii) where the data is sold to that person for use in direct marketing in relation to a marketing subject for that person's own purposes, the marketing subject falls within a specified class of marketing subjects; and
  - (b) the data subject is taken not to object to the sale if, within the response period—
    - (i) the data subject has sent a written reply to the data user indicating that the data subject does not object to any personal data of the data subject falling within the specified kind of personal data being sold to the specified class of persons, and if applicable, to the data being used in direct marketing in relation to the specified class of marketing subjects for the purposes of the persons to whom the data is sold; or

- (ii) the data subject does not send any written reply to the data user indicating that the data subject objects to such sale as referred to in subparagraph (i).

- (3) A data subject may indicate whether the data subject objects to a sale of personal data through the response facility or other means.
- (4) A data user who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$1,000,000 and to imprisonment for 5 years.
- (5) In any proceedings for an offence under subsection (4), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

**35D. Data subject may require data user to cease to sell personal data**

- (1) Irrespective of whether a data subject provided with information under section 35B(3) has, within the response period, sent any written reply to the data user indicating no objection to any personal data of the data subject falling within a specified kind of personal data being sold to a specified class of persons, and if applicable, to the data being used in direct marketing in relation to a specified class of marketing subjects for the purposes of the persons to whom the data is sold, the data subject may subsequently object to such sale by sending a written notification to the data user.
- (2) The written notification from the data subject under subsection (1) may require the data user—
  - (a) to cease to sell to the specified class of persons any personal data of the data subject falling within the specified kind of personal data, and if applicable,

- for use in direct marketing in relation to the specified class of marketing subjects; and
- (b) to notify any person falling within the specified class of persons to whom any personal data of the data subject falling within the specified kind of personal data has been sold to cease to use the data, as the case may be—
- (i) for any purpose; or
  - (ii) in direct marketing in relation to the specified class of marketing subjects.
- (3) 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).
- (4) If a notification from a data subject under subsection (1) requires a data user to notify a person of the matter specified in subsection (2)(b), the data user must notify that person of the matter in writing.
- (5) If a data user, under subsection (4), notifies a person in writing to cease to use any personal data of a data subject, the person must cease to use the data in accordance with the notification from the data user.
- (6) A data user who contravenes subsection (3) or (4), or a person who contravenes subsection (5), commits an offence and is liable on conviction to a fine of \$1,000,000 and to imprisonment for 5 years.
- (7) In any proceedings for an offence under subsection (6), it is a defence for the data user or person charged to prove that the data user or person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (8) This section does not affect the operation of section 26.

**35E. Prescribed consent for sale of personal data under data protection principle 3**

Despite section 2(3), where a data user requires, under data protection principle 3, the prescribed consent of a data subject for selling any personal data of the data subject, the data user is taken to have obtained the consent if the data user has not contravened any requirement under section 35B, 35C or 35D.

**35F. Chief Executive in Council may grant exemption**

The Chief Executive in Council may, by notice published in the Gazette, exempt conditionally or unconditionally—

- (a) any class or description of data users; or
- (b) any kind or description of personal data,

from all the requirements under this Division.

### **Division 3**

## **Use of Personal Data in Direct Marketing**

### **Subdivision 1**

#### **Application**

**35G. Application**

This Division does not apply in relation to the offering, or advertising of the availability, of—

- (a) social services run, subvented or subsidized by the Social Welfare Department;
- (b) health care services provided by the Hospital Authority or Department of Health; or
- (c) any other social or health care services which, if not provided, would be likely to cause serious harm to the physical or mental health of—

- (i) the person to whom the services are intended to be provided; or
- (ii) any other individual.

### **Subdivision 2**

#### **Use of Personal Data in Direct Marketing for Data Users' Own Purposes**

##### **35H. Data user to take specified action before using personal data in direct marketing**

- (1) Subject to section 35I, a data user who intends to use any personal data of a data subject in direct marketing for the data user's own purposes must take the action specified in subsection (3).
- (2) Subsection (1) applies irrespective of whether the personal data is collected from the data subject by the data user.
- (3) The data user must provide the data subject with—
  - (a) written information on—
    - (i) the kinds of personal data to be used; and
    - (ii) the classes of marketing subjects in relation to which the data is to be used; together with
  - (b) a facility through which the data subject may, without charge from the data user, indicate in writing to the data user whether the data subject objects to the intended use.
- (4) A response facility may provide means that allow a data subject to indicate in writing whether the data subject objects to the intended use, with reference to—
  - (a) any specified kind of personal data; or
  - (b) any specified class of marketing subjects.

- (5) The information and response facility provided under subsection (3) must be presented in a manner that is easily readable and easily understandable.
- (6) Subject to section 35I, a data user who uses any personal data of a data subject in direct marketing for the data user's own purposes without taking the action specified in subsection (3) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.
- (7) In any proceedings for an offence under subsection (6), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (8) In any proceedings for an offence under subsection (6) on the use of any personal data in direct marketing in relation to a marketing subject, the burden of proving that this section does not apply in relation to that use because of section 35I lies on the data user.

##### **35I. Circumstances under which section 35H does not apply**

- (1) Section 35H does not apply in relation to the continued use by a data user of any personal data in direct marketing in relation to a marketing subject for the data user's own purposes if—
  - (a) before the commencement date, the data user had so used the personal data; and
  - (b) such use did not contravene any provision of this Ordinance as in force immediately before the commencement date.
- (2) Section 35H does not apply in relation to the intended use or use by a data user of any personal data in direct marketing in relation to a marketing subject for the data user's own purposes if—

- (a) the data is sold or provided to the data user by another person for such intended use or use; and
- (b) the data user has been notified in writing by that person—
  - (i) that the action specified in section 35B(3) or 35N(3) has been taken by that person in relation to the sale or provision of data; and
  - (ii) that each of the conditions specified in section 35C(1) or 35O(1) in relation to the sale or provision of the data has been satisfied.
- (3) In this section—

*commencement date* (本部生效日期) means the date on which this Part comes into operation.

**35J. Use of personal data in direct marketing against data subject's wish**

- (1) A data user who has taken the action specified in section 35H(3) must not use, for the data user's own purposes, any personal data of the data subject in direct marketing unless—
  - (a) the use falls within the scope of the information provided under that section; and
  - (b) the data subject does not object to the use.
- (2) For the purposes of subsection (1)—
  - (a) a use of personal data of a data subject falls within the scope of the information provided under section 35H(3) if—
    - (i) the personal data falls within a specified kind of personal data; and
    - (ii) the marketing subject in relation to which the data is used falls within a specified class of marketing subjects; and

- (b) the data subject is taken not to object to the use if, within the response period—
  - (i) the data subject has sent a written reply to the data user indicating that the data subject does not object to any personal data of the data subject falling within the specified kind of personal data being used in direct marketing in relation to the specified class of marketing subjects for the data user's own purposes; or
  - (ii) the data subject does not send any written reply to the data user indicating that the data subject objects to such use as referred to in subparagraph (i).
- (3) A data subject may indicate whether the data subject objects to a use of personal data through the response facility or other means.
- (4) A data user who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.
- (5) In any proceedings for an offence under subsection (4), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

**35K. Data subject may require data user to cease to use personal data in direct marketing**

- (1) Irrespective of whether a data subject provided with information under section 35H(3) has, within the response period, sent any written reply to the data user indicating no objection to any personal data of the data subject falling within a specified kind of personal data being used in direct marketing in relation to a specified class of marketing subjects for the data user's own purposes, the data subject may subsequently object to

such use by sending a written notification to the data user, requiring the data user to cease to so use the data.

- (2) 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).
- (3) A data user who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.
- (4) In any proceedings for an offence under subsection (3), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (5) This section does not affect the operation of section 26.

**35L. Data user must notify data subject when using personal data in direct marketing for first time**

- (1) A data user who uses personal data of a data subject in direct marketing for the data user's own purposes must, when the data user so uses the data for the first time, inform the data subject that the data user is required, without charge to the data subject, to cease to so use the data if the data subject so requires in writing.
- (2) If a data subject, by written notification, requires a data user to cease to use any personal data of the data subject in direct marketing, the data user must cease to so use the data without charge to the data subject.
- (3) A data user who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.
- (4) In any proceedings for an offence under subsection (3), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

**35M. Prescribed consent for use of personal data in direct marketing under data protection principle 3**

Despite section 2(3), where a data user requires, under data protection principle 3, the prescribed consent of a data subject for using any personal data of the data subject in direct marketing for the data user's own purposes, the data user is taken to have obtained the consent if the data user has not contravened any requirement under section 35H, 35J or 35K.

**Subdivision 3**

**Provision (Otherwise than by Sale) of Personal Data to Person for Use in Direct Marketing**

**35N. Data user to take specified action before providing (otherwise than by sale) personal data to person for use in direct marketing**

- (1) A data user who intends to provide, otherwise than by sale, any personal data of a data subject to a person for use in direct marketing for that person's own purposes must take the action specified in subsection (3).
- (2) Subsection (1) applies irrespective of whether the personal data is collected from the data subject by the data user.
- (3) The data user must provide the data subject with—
  - (a) written information on—
    - (i) the kinds of personal data to be provided;
    - (ii) the classes of persons to which the data is to be provided; and
    - (iii) the classes of marketing subjects in relation to which the data is to be used; together with
  - (b) a facility through which the data subject may, without charge from the data user, indicate in

writing to the data user whether the data subject objects to the intended provision.

- (4) A response facility may provide means that allow a data subject to indicate in writing whether the data subject objects to the intended provision, with reference to—
  - (a) any specified kind of personal data;
  - (b) any specified class of persons; or
  - (c) any specified class of marketing subjects.
- (5) The information and response facility provided under subsection (3) must be presented in a manner that is easily readable and easily understandable.
- (6) A data user who provides, otherwise than by sale, any personal data of a data subject to a person for use in direct marketing for that person's own purposes without taking the action specified in subsection (3) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.
- (7) In any proceedings for an offence under subsection (6), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

**350. Provision (otherwise than by sale) of personal data to person for use in direct marketing against data subject's wish**

- (1) A data user who has taken the action specified in section 35N(3) must not provide, otherwise than by sale, any personal data of the data subject to a person for use in direct marketing for that person's own purposes unless—
  - (a) the provision falls within the scope of the information provided under that section; and
  - (b) the data subject does not object to the provision.

- (2) For the purposes of subsection (1)—
  - (a) a provision of personal data of a data subject falls within the scope of the information provided under section 35N(3) if—
    - (i) the personal data falls within a specified kind of personal data;
    - (ii) the person to whom the data is provided falls within a specified class of persons; and
    - (iii) the marketing subject in relation to which the data is to be used falls within a specified class of marketing subjects; and
  - (b) the data subject is taken not to object to the provision if, within the response period—
    - (i) the data subject has sent a written reply to the data user indicating that the data subject does not object to any personal data of the data subject falling within the specified kind of personal data being provided to the specified class of persons for use in direct marketing in relation to the specified class of marketing subjects for the purposes of the persons provided with the data; or
    - (ii) the data subject does not send any written reply to the data user indicating that the data subject objects to such provision as referred to in subparagraph (i).
- (3) A data subject may indicate whether the data subject objects to a provision of personal data through the response facility or other means.
- (4) A data user who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.

- (5) In any proceedings for an offence under subsection (4), it is a defence for the data user charged to prove that the data user took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

**35P. Data subject may require data user to cease to provide personal data to person for use in direct marketing**

- (1) Irrespective of whether a data subject provided with information by a data user under section 35N(3) has, within the response period, sent any written reply to the data user indicating no objection to any personal data of the data subject falling within a specified kind of personal data being provided to a specified class of persons for use in direct marketing in relation to a specified class of marketing subjects for the purposes of the persons provided with the data, the data subject may subsequently object to such provision by sending a written notification to the data user.
- (2) The written notification from the data subject under subsection (1) may require the data user—
- (a) to cease to provide to the specified class of persons any personal data of the data subject falling within the specified kind of personal data for use in direct marketing in relation to the specified class of marketing subjects; and
  - (b) to notify any person falling within the specified class of persons to whom any personal data of the data subject falling within the specified kind of personal data has been provided to cease to so use the data.
- (3) 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).

- (4) If a notification from a data subject under subsection (1) requires a data user to notify a person of the matter specified in subsection (2)(b), the data user must notify person of the matter in writing.
- (5) If a data user, under subsection (4), notifies a person in writing to cease to use any personal data of a data subject, the person must cease to use the data in accordance with the notification from the data user.
- (6) A data user who contravenes subsection (3) or (4), or a person who contravenes subsection (5), commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.
- (7) In any proceedings for an offence under subsection (6), it is a defence for the data user or person charged to prove that the data user or person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (8) This section does not affect the operation of section 26.

**35Q. Prescribed consent for provision of personal data to person for use in direct marketing under data protection principle 3**

Despite section 2(3), where a data user requires, under data protection principle 3, the prescribed consent of a data subject for providing, otherwise than by sale, any personal data of the data subject to a person for use in direct marketing for that person's own purposes, the data user is taken to have obtained the consent if the data user has not contravened any requirement under section 35N, 35O or 35P.

**Division 4****Disclosure of Personal Data Obtained without Consent****35R. Disclosure of personal data obtained without consent from data users**

- (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.”.

**Division 8****Amendments to Provisions on Inspections, Complaints and Investigations****22. Section 39 amended (Restrictions on investigations initiated by complaints)**

- (1) Section 39(1)—
 

**Repeal**

“continue”

**Substitute**

“decide to terminate”.
- (2) Section 39(1)(a)—
 

**Repeal**

“continue”

**Substitute**

“not to terminate”.
- (3) Section 39(2)—

**Repeal**

“continue”.

**Substitute**

“decide to terminate”.

- (4) Section 39(2)(c)—

**Repeal**

“faith; or”.

**Substitute**

“faith;”.

- (5) After section 39(2)(c)—

**Add**

“(ca) the primary subject matter of the complaint, as shown by the act or practice specified in it, is not related to privacy of individuals in relation to personal data; or”.

- (6) Section 39(3)—

**Repeal**

“or continue”.

- (7) After section 39(3)—

**Add**

“(3A) If the Commissioner decides to terminate an investigation initiated by a complaint before its completion, the Commissioner must, as soon as practicable by notice in writing served on the complainant accompanied by a copy of subsection (4), inform the complainant—

- (a) of the decision; and  
(b) of the reasons for the decision.”.

- (8) Section 39(4)(a)—

**Repeal**

“specified in a notice under subsection (3)”

**Substitute**

“or termination specified in a notice under subsection (3) or (3A)”.

- (9) Section 39(4)(b), Chinese text, after “拒絕”—

**Add**

“或終止而提出”.

**23. Section 44 amended (Evidence)**

- (1) Section 44(2)(d)(i), English text—

**Repeal**

“those data were”

**Substitute**

“that data was”.

- (2) After section 44(9)—

**Add**

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

**24. Section 46 amended (Commissioner, etc. to maintain secrecy)**

- (1) Section 46(1)—

**Repeal**

“and (3)”

**Substitute**

“, (3) and (7)”.

- (2) Section 46(2)—

**Renumber paragraphs (a), (b) and (c) as paragraphs (b), (c) and (d) respectively.**

- (3) Before section 46(2)(b)—

**Add**

“(a) 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;”.

- (4) Section 46(3), English text—

**Repeal**

“are exempt”

**Substitute**

“is exempt”.

- (5) Section 46(4)—

**Repeal**

“The Commissioner shall not publish a report under this Ordinance after completing an inspection or investigation”

**Substitute**

“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”.

- (6) Section 46(4)(b)(i), English text—

**Repeal**

“are exempt”

**Substitute**

“is exempt”.

- (7) After section 46(6)—

**Add**

“(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.”.

**25. Section 47 amended (Persons to be informed of result of inspection or investigation)**

(1) Section 47(2)(d)—

**Repeal**

“proposes”

**Substitute**

“has decided”.

(2) After section 47(2)—

**Add**

“(2A) If the Commissioner decides to serve an enforcement notice on a data user in consequence of an investigation, the Commissioner may serve the notice at the same time when informing the data user of the information relating to the investigation under subsection (2).”.

(3) Section 47(3)(e)—

**Repeal**

“proposes”

**Substitute**

“has decided”.

(4) Section 47(3)(f)—

**Repeal**

“does not propose”

**Substitute**

“has decided not”.

(5) After section 47(3)—

**Add**

“(3A) Subsection (3) does not apply if the complainant has withdrawn the complaint.”.

(6) Section 47(4)(a)—

**Repeal**

“does not propose”

**Substitute**

“has decided not”.

**26. Section 48 amended (Reports by Commissioner)**

Section 48(3), English text—

**Repeal**

“as to the”

**Substitute**

“as to”.

**27. Section 50 amended (Enforcement notices)**

(1) Section 50—

**Repeal subsection (1)**

**Substitute**

- “(1) If, following the completion of an investigation, the Commissioner is of the opinion that the relevant data user is contravening or has contravened a requirement under this Ordinance, the Commissioner may serve on the data user a notice in writing, directing the data user to remedy the contravention.
- (1A) An enforcement notice under subsection (1) must—
- (a) state that the Commissioner is of the opinion referred to in subsection (1);
  - (b) specify—
    - (i) the requirement which, in the opinion of the Commissioner, is being or has been contravened;
    - (ii) the act or omission that constitutes the contravention; and
    - (iii) the reason for that opinion;
  - (c) specify the steps that the data user must take (including ceasing any act or practice) to remedy the contravention;
  - (d) specify the date on or before which the steps must be taken; and
  - (e) be accompanied by a copy of this section.
- (1B) The date specified in subsection (1A)(d) must be a date which is not earlier than the expiry of the period specified in subsection (7) within which an appeal against the notice may be made.”.
- (2) Section 50(2)—
- Repeal**  
“or matter to which”
- Substitute**  
“to which”.

- (3) Section 50(2)—
- Repeal**  
“or matter, as the case may be,”.
- (4) Section 50(3)—
- Repeal**  
“or matter to which”
- Substitute**  
“to which”.
- (5) Section 50(3)(b)—
- Repeal**  
“or matter, as the case may be”.
- 28. Sections 50A and 50B added**  
Part VII, after section 50—
- Add**
- “50A. Offences relating to enforcement notices**
- (1) A data user who contravenes an enforcement notice commits an offence and is liable—
- (a) on a first conviction—
    - (i) to a fine at level 5 and to imprisonment for 2 years; and
    - (ii) if the offence continues after the conviction, to a daily penalty of \$1,000; and
  - (b) on a second or subsequent conviction—
    - (i) to a fine at level 6 and to imprisonment for 2 years; and
    - (ii) if the offence continues after the conviction, to a daily penalty of \$2,000.

- (2) In any proceedings for an offence under subsection (1), it is a defence for the data user charged to show that the data user exercised all due diligence to comply with the enforcement notice.
- (3) 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), commits an offence and is liable on conviction—
  - (a) to a fine at level 5 and to imprisonment for 2 years; and
  - (b) if the offence continues after the conviction, to a daily penalty of \$1,000.

**50B. Offences relating to failure to comply with requirements of Commissioner etc.**

- (1) A person commits an offence if the person—
  - (a) without lawful excuse, obstructs, hinders or resists the Commissioner or any other person in performing the functions or exercising the powers of the Commissioner or that other person under this Part;
  - (b) without lawful excuse, fails to comply with any lawful requirement of the Commissioner or any other person under this Part; or
  - (c) in the course of the performance or exercise by the Commissioner or any other person of functions or powers under this Part—
    - (i) makes to the Commissioner or that other person 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.

- (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.”.

## **Division 9**

### **Amendments to Provisions on Exemptions**

**29. Section 51A added**

After section 51—

**Add**

**“51A. Performance of judicial functions**

- (1) Personal data held by a court, a magistrate or a judicial officer in the course of performing judicial functions is exempt from the provisions of the data protection principles and Parts IV and V and sections 36 and 38(b).
- (2) In this section—  
*judicial officer* (司法人員) has the same meaning given by section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92).”.

**30. Section 58 amended (Crime, etc.)**

- (1) Section 58(1), English text—

**Repeal**

“are exempt”

**Substitute**

“is exempt”.

- (2) Section 58(2), English text—

**Repeal**

“are exempt”

**Substitute**

“is exempt”.

- (3) Section 58(2)(a), English text—

**Repeal**

“data are”

**Substitute**

“data is”.

- (4) After section 58(5)—

**Add**

“(6) In this section—

*crime* (罪行) means—

- (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;

*offender* (犯罪者) means a person who commits a crime.”.

**31. Section 59 amended (Health)**

- (1) Section 59—

**Renumber the section as section 59(1).**

- (2) Section 59(1), English text—

**Repeal**

“are exempt”

**Substitute**

“is exempt”.

- (3) After section 59(1)—

**Add**

“(2) Personal data relating to the identity or location of a data subject is exempt from the provisions of data protection principle 3 if the application of those provisions to the data would be likely to cause serious harm to the physical or mental health of—

- (a) the data subject; or
- (b) any other individual.”.

**32. Section 59A added**

After section 59—

**Add**

**“59A. Care and guardianship of minors**

(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 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).”.

### 33. Sections 60A and 60B added

After section 60—

#### Add

#### “60A. Self incrimination

- (1) If, as a result of complying with 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 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.

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 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.”.

### 34. Sections 63B, 63C and 63D added

Part VIII, after section 63A—

#### Add

#### “63B. Due diligence exercise

- (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, 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;

*sell* (售賣), in relation to personal data, has the same meaning given by section 35A.

**63C. Emergency situations**

- (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**

- (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.
- (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.”.

**Division 10****Amendments Relating to Provisions on Offences and Compensation****35. Section 64 substituted**

Section 64—

**Repeal the section**

**Substitute****“64. Offence for contravention of requirements under Ordinance**

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

**36. Section 64A added**

After section 64—

**Add****“64A. Time limit for laying of information etc.**

- (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).”.

**37. Section 66 amended (Compensation)**

- (1) Section 66(3)(b) and (4), English text—

**Repeal**

“were inaccurate”

**Substitute**

“was inaccurate”.

- (2) After section 66(4)—

**Add**

“(5) Proceedings brought by an individual in reliance on subsection (1) are to be brought in the District Court but all such remedies are obtainable in those proceedings as would be obtainable in the Court of First Instance.”.

**38. Sections 66A and 66B added**

Part IX, after section 66—

**Add****“66A. Help for aggrieved persons in obtaining information, etc.**

- (1) With a view to helping a person (*the person aggrieved*) to decide whether to institute proceedings under section 66 and, if the person does so, to formulate and present his or her case in the most effective manner, the Commissioner may prescribe—
  - (a) forms by which the person aggrieved may question the respondent on the respondent’s reasons for doing any relevant act, or on any other matter which is or may be relevant; and
  - (b) forms by which the respondent may, if he or she so wishes, reply to any questions.

- (2) If the person aggrieved questions the respondent (whether or not in accordance with a form referred to in subsection (1))—
  - (a) the question and any reply by the respondent (whether or not in accordance with such a form) are, subject to subsections (3), (4) and (5), admissible as evidence in the proceedings; and
  - (b) if it appears to the District Court that the respondent, deliberately and without reasonable excuse, omitted to reply within a reasonable period or that the respondent's reply is evasive or equivocal, the Court may draw any inference from that fact it considers just and equitable to draw.
- (3) The Commissioner may—
  - (a) prescribe the period within which questions must be served in order to be admissible under subsection (2)(a); and
  - (b) prescribe the manner in which a question and any reply by the respondent may be served.
- (4) Rules under the District Court Ordinance (Cap. 336) may empower the District Court entertaining a claim under section 66 to determine, before the date fixed for the hearing of the claim, whether a question or reply is admissible under this section or not.
- (5) This section is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before the District Court, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.
- (6) In this section—  
*respondent* (答辯人) includes a prospective respondent.

**66B. Commissioner may grant assistance in respect of proceedings**

- (1) A person who may institute proceedings to seek compensation under section 66 may make an application to the Commissioner for assistance in respect of those proceedings.
- (2) The Commissioner must consider an application under subsection (1) and may grant it if the Commissioner thinks fit to do so, in particular if—
  - (a) the case raises a question of principle; or
  - (b) it is unreasonable, having regard to the complexity of the case or the applicant's position in relation to the respondent or another person involved or any other matter, to expect the applicant to deal with the case unaided.
- (3) Assistance by the Commissioner under this section may include—
  - (a) giving advice;
  - (b) arranging for the giving of advice or assistance by a solicitor or counsel;
  - (c) arranging for representation by any person, including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings; and
  - (d) any other form of assistance which the Commissioner may consider appropriate.
- (4) Subsection (3)(c) does not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address a court in, any proceedings except to the extent permitted under rules

made in accordance with section 73F of the District Court Ordinance (Cap. 336).

- (5) If expenses are incurred by the Commissioner in providing the applicant with assistance under this section, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by relevant rules) constitutes a first charge for the benefit of the Commissioner—
- (a) on any costs or expenses which are payable to the applicant by any other person (whether by virtue of a judgment or order of the District Court or an agreement or otherwise) in respect of the matter in connection with which the assistance is given; and
- (b) on the applicant's rights (so far as those rights relate to any costs or expenses) under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.
- (6) The charge created by subsection (5) is subject to any charge under the Legal Aid Ordinance (Cap. 91) and to any provision in that Ordinance for payment of any sum into the Supplementary Legal Aid Fund established under that Ordinance.
- (7) In this section—
- relevant rules* (《法院規則》) means any rules made under the District Court Ordinance (Cap. 336);
- respondent* (答辯人) includes a prospective respondent.”.

## Division 11

### Amendments Relating to Provisions in Schedules

#### 39. Schedule 1 amended (Data protection principles)

- (1) Schedule 1, English text, section 1(1)(a) and (c)—
- Repeal**  
“data are”
- Substitute**  
“data is”.
- (2) Schedule 1, English text, section 1(3)—
- Repeal**  
“are or are to be collected”
- Substitute**  
“is or is to be collected”.
- (3) Schedule 1, English text, section 1(3)(b)(i)(A)—
- Repeal**  
“data are”
- Substitute**  
“data is”.
- (4) Schedule 1, English text, section 1(3)(b)(ii)—
- Repeal**  
“they were”
- Substitute**  
“it was”.
- (5) Schedule 1, section 1(3)(b)(ii)—
- Repeal sub-subparagraph (B)**
- Substitute**

“(B) the name or job title, and address, of the individual who is to handle any such request made to the data user.”.

- (6) Schedule 1, English text, section 1(3)—

**Repeal**

“data were”

**Substitute**

“data was”.

- (7) Schedule 1, English text, section 1(3)—

**Repeal**

“are exempt ”

**Substitute**

“is exempt”.

- (8) Schedule 1, English text, section 2(1)(a)—

**Repeal**

“are accurate”

**Substitute**

“is accurate”.

- (9) Schedule 1, English text, section 2(1)(a)—

**Repeal**

“data are or are”

**Substitute**

“data is or is”.

- (10) Schedule 1, English text, section 2(1)(b)—

**Repeal**

“are inaccurate”

**Substitute**

“is inaccurate”.

- (11) Schedule 1, English text, section 2(1)(b)—

**Repeal**

“the data are or are ”

**Substitute**

“the data is or is”.

- (12) Schedule 1, English text, section 2(1)(b)(i) and (ii)—

**Repeal**

“the data are”

**Substitute**

“the data is”.

- (13) Schedule 1, English text, section 2(1)(c)(i)—

**Repeal**

“are materially inaccurate”

**Substitute**

“is materially inaccurate”.

- (14) Schedule 1, English text, section 2(1)(c)(i)—

**Repeal**

“the data are or are”

**Substitute**

“the data is or is”.

- (15) Schedule 1, English text, section 2(1)(c)(ii)—

**Repeal**

“that data were”

**Substitute**

“that data was”.

- (16) Schedule 1, English text, section 2(1)(c)(ii)(A)—

**Repeal**

“are inaccurate”

**Substitute**

“is inaccurate”.

- (17) Schedule 1, section 2(2)—

**Repeal**

“Personal data shall not be”

**Substitute**

“All practicable steps must be taken to ensure that personal data is not”.

- (18) Schedule 1, English text, section 2(2)—

**Repeal**

“the data are or are”

**Substitute**

“the data is or is”.

- (19) Schedule 1, after section 2(2)—

**Add**

“(3) 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 contractual or other means to prevent any personal data transferred to the data processor from being kept longer than is necessary for processing of the data.

- (4) In subsection (3)—

**data processor** (資料處理者) means a person who—

- (a) processes personal data on behalf of another person; and
- (b) does not process the data for any of the person’s own purposes.”.

- (20) Schedule 1—

**Renumber section 3 as section 3(1).**

- (21) Schedule 1, section 3(1)—

**Repeal**

everything after “used for”

**Substitute**

“a new purpose.”.

- (22) Schedule 1, after section 3(1)—

**Add**

“(2) A relevant person in relation to a data subject may, on his or her behalf, give the prescribed consent required for using his or her personal data for a new purpose if—

- (a) the data subject is—
  - (i) a minor;
  - (ii) incapable of managing his or her own affairs; or
  - (iii) mentally incapacitated within the meaning of section 2 of the Mental Health Ordinance (Cap. 136);
- (b) the data subject is incapable of understanding the new purpose and deciding whether to give the prescribed consent; and
- (c) the relevant person has reasonable grounds for believing that the use of the data for the new purpose is clearly in the interest of the data subject.

(3) A data user must not 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 purpose is clearly in the interest of the data subject.

- (4) In this section—

*new purpose* (新目的), in relation to the use of personal data, means any purpose other than—

- (a) the purpose for which the data was to be used at the time of the collection of the data; or
- (b) a purpose directly related to the purpose referred to in paragraph (a).”.

(23) Schedule 1—

**ReNUMBER section 4 as section 4(1).**

(24) Schedule 1, section 4(1)—

**Repeal**

“or other”

**Substitute**

“, loss or”.

(25) Schedule 1, English text, section 4(1)(b) and (c)—

**Repeal**

“data are”

**Substitute**

“data is”.

(26) Schedule 1, after section 4(1)—

**Add**

“(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 contractual or other means to prevent unauthorized or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing.

(3) In subsection (2)—

*data processor* (資料處理者) has the same meaning given by subsection (4) of data protection principle 2.”.

(27) Schedule 1, English text, section 5(c)—

**Repeal**

“are or are to be ”

**Substitute**

“is or is to be”.

#### 40. Schedule 3 amended (Prescribed information)

(1) Schedule 3—

**Repeal**

“[s. 14(10)]”

**Substitute**

“[s. 2]”.

(2) Schedule 3, English text, item 3—

**Repeal**

“are or are to be”

**Substitute**

“is or is to be”.

(3) Schedule 3—

**Repeal item 6**

**Substitute**

“6. The name or job title, and address, of the individual who is to handle data access requests made to the data user.”.

#### 41. Schedule 5 amended (Prescribed matters)

Schedule 5, item 4(a)—

**Repeal**

“any”. \_\_\_\_\_

**Part 3****Related and Consequential Amendments****Division 1****Amendment to District Court Ordinance (Cap. 336)****42. Section 73F added**

Part IV, after section 73E—

**Add****“73F. Rules in relation to jurisdiction under Personal Data (Privacy) Ordinance**

- (1) The Rules Committee may make rules regulating the practice of the Court in the exercise of its jurisdiction under section 66 of the Personal Data (Privacy) Ordinance (Cap. 486) and the forms of proceedings in the Court.
- (2) The power to make rules under subsection (1)—
  - (a) extends to—
    - (i) all matters of procedure or practice; and
    - (ii) matters relating to or concerning the effect or operation in law of any procedure or practice in any case within the cognizance of the Court as to which rules of the High Court have been or might be made for cases within the cognizance of the High Court; and
  - (b) includes the power to make rules—
    - (i) as to proceedings by or against the Government; and

- (ii) as to the persons who may appear in, conduct, defend and address the Court in, any proceedings in the Court.
- (3) Each party to any proceedings in the Court in the exercise of its jurisdiction under section 66 of the Personal Data (Privacy) Ordinance (Cap. 486) bears its own costs unless the Court otherwise orders on the ground that—
  - (a) the proceedings were brought maliciously or frivolously; or
  - (b) there are special circumstances which warrant an award of costs.
- (4) Without limiting subsections (1) and (2), the power to make rules under this section extends to—
  - (a) prescribing the place or places which are to be the venue or venues for proceedings to which this section relates;
  - (b) requiring the judge or judges sitting at such venue or venues to give priority, to such extent as may be specified in the rules, to hearing and disposing of proceedings to which this section relates.
- (5) The Court in the exercise of its jurisdiction under section 66 of the Personal Data (Privacy) Ordinance (Cap. 486)—
  - (a) is not bound by the rules of evidence; and
  - (b) may inform itself on any matter in such manner as it sees fit, with due regard to—
    - (i) the rights of the parties to the proceedings in the Court to a fair hearing;
    - (ii) the need to determine the substantial merits of the case; and

- (iii) the need to achieve a prompt hearing of the matters at issue between the parties.
- (6) Subject to subsection (5), any rules made in accordance with the provisions of this section may be made so as to modify, with respect to proceedings in the Court, any rule of law or practice as to the proof of any matter or as to the reception or admissibility of any matter in evidence.
- (7) No rule made in accordance with the provisions of this section applies to any proceedings by or against the Government except in so far as it expressly purports so to do.
- (8) It is declared that—
  - (a) subject to paragraph (c), this section—
    - (i) does not of itself operate to prevent the making of any rules—
      - (A) under the provisions of any other section of this Ordinance; and
      - (B) which relate, whether in whole or in part, to the jurisdiction conferred on the Court under the Personal Data (Privacy) Ordinance (Cap. 486); and
    - (ii) does not of itself operate to prevent any rules made under the provisions of any other section of this Ordinance from applying to and in relation to such jurisdiction;
  - (b) where there is any conflict or inconsistency between—
    - (i) any rules made under subsection (2)(b); and
    - (ii) any law and practice regulating the description of persons who may appear in, conduct, defend and address the Court, in any proceedings,

- then those rules, to the extent of that conflict or inconsistency, as the case may be, prevail over that law and practice;
- (c) where there is any conflict or inconsistency between any rules made under the provisions of this section and any rules made under the provisions of another section of this Ordinance, then those first-mentioned rules, to the extent of that conflict or inconsistency, as the case may be, prevail over those second-mentioned rules.
- (9) To avoid doubt, it is declared that no rule made in accordance with this section may empower the Court to hear and determine any proceedings involving any claim beyond its jurisdiction.”.

## **Division 2**

### **Amendments to Administrative Appeals Board Ordinance (Cap. 442)**

#### **43. Schedule amended**

- (1) The Schedule, item 29, column 3, paragraph (c)—
  - Repeal**
  - “or continue”.
- (2) The Schedule, item 29, column 3, after paragraph (c)—
  - Add**
  - “(ca) to terminate under section 39(3A) an investigation initiated by a complaint;”.

**Schedule** [s. 2]

**Part 1**

**Minor Amendments to English Text of Personal Data (Privacy) Ordinance Relating to “Personal Data” in Singular Form**

	Section	Repeal	Substitution
1.	2(12)	those data	the data
2.	12(8)	data which are	data which is
3.	23(1)	relates are	relates is
4.	23(1)(a) and (b)	those data	the data
5.	23(1)(c)(i)	those data have	the data has
6.	23(1)(c)(ii)	those data	the data
7.	23(1)(c)(ii)	data were	data was
8.	23(1)(c)	those data as	the data as
9.	23(3)(a)	data are	data is
10.	24(3)(b) and (c)	relates are	relates is
11.	25(2)(a)	relates are	relates is
12.	25(2)(i)(B)	those data	that data
13.	27(2)(b)	relates were	relates was
14.	28(6)(b)	those data	that data
15.	33(2)(e)	data are	data is
16.	51	are exempt	is exempt
17.	51	those data	that data
18.	52	are exempt	is exempt

	Section	Repeal	Substitution
19.	53	consist	consists
20.	53	are exempt	is exempt
21.	54(1) and (2)	are exempt	is exempt
22.	55(1)	are exempt	is exempt
23.	55(2), definition of <i>relevant process</i> , paragraph (a)	data are	data is
24.	56	consist	consists
25.	56	are exempt	is exempt
26.	57(1)	are exempt	is exempt
27.	57(2)	are exempt	is exempt
28.	57(2)(a)	data are	data is
29.	57(4)	data are or have	data is or has
30.	58A(1)	which are, or are	which is, or is
31.	58A(2)	which are, or are	which is, or is
32.	58A(2)	are exempt	is exempt
33.	60	are exempt	is exempt
34.	60	consist	consists
35.	61(1)	are exempt	is exempt
36.	61(1)(i)	data are	data is
37.	61(2)	are exempt	is exempt
38.	61(2)(b)	they are	it is
39.	62	are exempt	is exempt
40.	62(a) and (b)	data are	data is
41.	63	which are	which is
42.	63	data are	data is
434.	63	those data	that data

	Section	Repeal	Substitution
44.	63A(1)	consist	consists
45.	63A(1)	are exempt	is exempt
46.	63A(1)	their disclosure	its disclosure
47.	63A(2)	which are	which is
48.	63A(2)	data are	data is

## Part 2

### Minor Amendments to Chinese Text of Personal Data (Privacy) Ordinance Relating to “Personal Data” in Singular Form

	Section	Repeal	Substitution
1.	2(1), definition of <b>使用</b>	該等資料	該資料
2.	2(1), definition of <b>個人資料</b> , paragraphs (b) and (c)	該等資料	該資料
3.	2(1), definition of <b>核對程序</b> , paragraph (a)	某些可	可
4.	2(1), definition of <b>核對程序</b> , paragraph (b)	某些資料，而就該等資料	資料，而就該資料
5.	2(1), definition of <b>核對程序</b> , paragraph (b)	將該等資料	將該資料
6.	2(1), definition of <b>資料使用者</b>	該等資料	該資料

	Section	Repeal	Substitution
7.	2(1), definition of <b>資料當事人</b>	該等資料	該資料
8.	2(12)	該等資料	該資料
9.	2(12)	該等個人資料	該個人資料
10.	18(1)(b)	該等資料	該資料
11.	18(4)	該等資料	該資料
12.	18(4)	某些個人資料	個人資料
13.	19(3)(a), (b) and (c)(i) and (iii)	該等資料	該資料
14.	20(1)(b)	該等資料	該資料
15.	20(3)(c)	某些個人資料	個人資料
16.	20(3)(c)(i)	該等資料	該資料
17.	20(3)(d)	該等資料	該資料
18.	22(1)	該等資料	該資料
19.	22(2)	某些個人資料	個人資料
20.	22(2)(a) and (b)	該等資料	該資料
21.	23(1)(a), (b) and (c)	該等資料	該資料
22.	23(3)	該等資料	該資料
23.	24(3)(e)	該等資料	該資料
24.	25(2)(i)	該等資料	該資料
25.	26(1)	該等資料	該資料
26.	26(2)(a)	該等資料	該資料
27.	27(1)(c)(i)	該等資料	該資料
28.	28(6)(b)	該等資料	該資料
29.	33(2)(e) and (f)	該等資料	該資料
30.	44(2)(d)(i)	該等資料	該資料
31.	54(1)	該等資料	該資料

	Section	Repeal	Substitution
32.	54(2)	該等資料	該資料
33.	57(1)	該等資料	該資料
34.	57(2)	該等資料	該資料
35.	58(1)(i) and (ii)	該等資料	該資料
36.	58(2)	該等資料	該資料
37.	59(1)(i) and (ii)	該等資料	該資料
38.	61(1)(i)	該等資料	該資料
39.	61(2)(a) and (b)	該等資料	該資料
40.	62(a) and (b)	該等資料	該資料
41.	63	該等資料	該資料
42.	63A(1)	該等資料	該資料
43.	63A(2)	該等資料	該資料
44.	Schedule 1, section 1(1)(a)	該等資料	該資料
45.	Schedule 1, section 1(3)	該等資料	該資料
46.	Schedule 1, section 2(1)(a)	該等個人資料	該個人資料
47.	Schedule 1, section 2(1)(b)	該等個人資料	該個人資料
48.	Schedule 1, section 2(1)(b)(i) and (ii)	該等資料	該資料
49.	Schedule 1, section 2(1)(c)	該等資料	該資料
50.	Schedule 1, section 2(2)	該等資料	該資料
51.	Schedule 1, section 4(1)	該等資料	該資料

	Section	Repeal	Substitution
52.	Schedule 3, item 2	該等資料	該資料
53.	Schedule 3, item 2	某些個人資料	個人資料

**Explanatory Memorandum**

The object of this Bill is to amend the Personal Data (Privacy) Ordinance (Cap. 486) (*Ordinance*) for the purposes set out in the long title.

2. Clause 1 sets out the short title and provides for commencement.

**Sale of personal data**

3. Clause 21 adds new sections 35B to 35F to the Ordinance to regulate the sale of personal data. The new section 35B requires a data user who intends to sell any personal data of a data subject to provide the data subject with written information on the sale, together with a facility (*response facility*) through which the latter may indicate whether he or she objects to the intended sale.
4. The new section 35C provides that a data user must not sell any personal data of a data subject unless the sale falls within the scope set out in the written information provided to the data subject on the sale, and within the period of 30 days (*response period*) from the provision of the information or collection of data, the data subject either has sent to the data user a reply indicating no objection to the sale or does not send any reply indicating objection.
5. Irrespective of whether a data subject has, within the response period, sent a reply to the data user indicating no objection to a sale of personal data, the data subject may, under the new section 35D, subsequently require a data user to cease to sell the data subject's personal data and to notify any person to whom the data has been sold to cease to use the data. The data user must comply with the requirement of the data subject. If the data user has notified a person to cease to use the personal data of the data subject, the person must cease to use the data.
6. Contravention of any of the requirements set out in paragraphs 3 to 5 constitutes an offence. The penalty is a fine of \$1,000,000 and imprisonment for 5 years. Under the new section 35F, the Chief

Executive in Council may, by notice published in the Gazette, exempt a class of data users or a kind of personal data from the requirements.

7. The new section 35E sets out what constitutes the consent required under data protection principle 3 in cases involving a sale of personal data.

**Use of personal data in direct marketing**

8. Clause 21 also adds new sections 35G to 35Q to the Ordinance to regulate the use of personal data in direct marketing. The new section 35G provides that the new requirements do not apply to social services run, subvented or subsidized by the Social Welfare Department, health care services provided by the Hospital Authority or Department of Health and certain other social or health care services.
9. New sections 35H to 35L regulate the use of personal data in direct marketing for the data user's own purposes. The new section 35H requires a data user who intends to so use any personal data to provide the data subject with written information on the intended use together with a response facility. The new section 35I sets out the circumstances under which the above requirements do not apply.
10. The new section 35J provides that a data user must not use any personal data of a data subject in direct marketing unless the use falls within the scope set out in the written information provided to the data subject on the use, and within the response period, the data subject either has sent to the data user a reply indicating no objection to the use or does not send any reply indicating objection.
11. Irrespective of whether a data subject has, within the response period, sent a reply to the data user indicating no objection to a use of personal data in direct marketing for the data user's own purposes, the data subject may, under the new section 35K, subsequently require a data user to cease to use the data subject's

- personal data. The data user must comply with the requirement of the data subject.
12. The new section 35L further requires a data user, when using any personal data of a data subject in direct marketing for the first time, to inform the data subject that the data user must cease to so use the data if the data subject so requires. On receiving such a requirement from the data subject, the data user must cease to so use the data.
  13. Contravention of any of the requirements set out in paragraphs 9 to 12 constitutes an offence. The penalty is a fine of \$500,000 and imprisonment for 3 years.
  14. The new section 35M sets out what constitutes the consent required under data protection principle 3 in cases involving a use of personal data in direct marketing for the data user's own purposes.
  15. New sections 35N to 35Q regulate the provision (otherwise than by sale) of personal data of a data subject to other persons for use in direct marketing for those persons' own purposes. The new section 35N requires a data user who intends to so provide any personal data of a data subject to provide the data subject with written information on the intended provision together with a response facility. Under the new section 35O, a data user must not so provide the data unless the provision of the data falls within the scope set out in the written information provided to the data subject, and within the response period, the data subject either has sent to the data user a reply indicating no objection to the provision or does not send any reply indicating objection.
  16. Irrespective of whether a data subject has, within the response period, sent a reply to the data user indicating no objection to the provision of personal data by the data user to other persons for use in direct marketing for those persons' own purposes, the data subject may, under the new section 35P, subsequently require a data user to cease to so provide the data and to notify any person to whom the data has been provided to cease to so use the data. The data user must comply with the requirement of the data subject. If the data user has notified a person to cease to use the personal data

- of the data subject in direct marketing, the person must cease to so use the data.
17. Contravention of any of the requirements set out in paragraphs 15 and 16 constitutes an offence. The penalty is a fine of \$500,000 and imprisonment for 3 years.
  18. The new section 35Q sets out what constitutes the consent required under data protection principle 3 in cases involving a provision (otherwise than by sale) of personal data to other persons for use in direct marketing for those persons' own purposes.

#### **Disclosure of personal data obtained without consent from data users**

19. Clause 21 also adds a new section 35R to the Ordinance. The new section 35R creates a new offence for the disclosure of personal data obtained from a data user without the latter's consent. The penalty for the offence is a fine of \$1,000,000 and imprisonment for 5 years.

#### **Compensation proceedings under section 66 of Ordinance**

20. Under section 66 of the Ordinance, if an individual (*aggrieved person*) suffers damage because of a contravention of a requirement under the Ordinance, the aggrieved person may seek compensation from the data user. Clause 37 amends that section 66 to provide that proceedings (*compensation proceedings*) instituted by an aggrieved person under that section are to be brought in the District Court.
21. Clause 38 adds new sections 66A and 66B to the Ordinance. The new section 66A empowers the Privacy Commissioner for Personal Data (*Commissioner*) to prescribe forms which aggrieved persons and respondents may use in questioning and replying. The new section 66A also provides for various matters relating to the questions and replies. The new section 66B empowers the Commissioner to grant legal assistance in respect of compensation proceedings in cases where the Commissioner thinks fit to do so. Assistance granted may include giving advice, arranging for

solicitors' or counsel's advice and arranging for representation relating to compensation proceedings.

22. Clause 42 makes consequential amendment to the District Court Ordinance (Cap. 336) to empower the District Court Rules Committee to make rules regulating the compensation proceedings.

### **New powers for Commissioner and immunity**

23. Clause 4 amends section 8 of the Ordinance to provide that the Commissioner may carry out promotional or educational activities and services, and impose reasonable charges for those activities and services, as well as promotional or educational publications and materials.
24. Clause 5 adds a new section 11A to the Ordinance to provide that no civil liability will be incurred by the person appointed to be the Commissioner and the staff of the Commissioner for anything done or omitted to be done in good faith in performing the Commissioner's functions and exercising the Commissioner's powers under the Ordinance. The civil liability of the Commissioner as a corporation sole for the thing done or omitted to be done will not be affected.
25. Clause 8 adds a new section 14A to the Ordinance to empower the Commissioner to verify the accuracy of data user returns submitted by data users under section 14 of the Ordinance and to require data users to correct inaccurate information in the returns.

### **Enforcement notices**

26. Under section 50 of the Ordinance, if the Commissioner is of the opinion that a data user is contravening or has contravened a requirement under the Ordinance, the Commissioner may, by an enforcement notice, direct the data user to remedy the contravention. Clause 27 amends that section to provide that the notice must, in addition to other information, also set out the act or omission that constitutes the contravention.

27. Clause 28 adds a new section 50A to the Ordinance to impose a heavier penalty for repeated contravention of enforcement notices. The clause also adds a new offence for intentional repetition of an act or omission in contravention of a requirement under the Ordinance in respect of which an enforcement notice has already been served.

### **Exemptions**

28. Clauses 29 to 34 introduce new exemptions and extend existing exemptions in respect of certain requirements under the Ordinance.
29. Clause 29 adds a new section 51A to the Ordinance to provide exemptions in respect of personal data held by a court, a magistrate or a judicial officer in the course of performing judicial functions.
30. Clause 30 expands the definition of *crime* in section 58 of the Ordinance so that under certain circumstances, personal data held or used in connection with the prevention, detection or prosecution of crimes under the laws of places outside Hong Kong is exempt from specified requirements under the Ordinance.
31. Clause 31 adds a new subsection to section 59 of the Ordinance to extend the scope of exemption on health grounds.
32. Clause 32 adds a new section 59A to the Ordinance to provide for exemption in relation to disclosure of personal data of a minor under certain circumstances.
33. Clause 33 adds new sections 60A and 60B to the Ordinance to provide for exemptions in relation to legal proceedings and related matters.
34. Clause 34 adds various new sections to the Ordinance to provide for new exemptions. The new section 63B introduces an exemption in respect of personal data transferred or disclosed in due diligence exercises conducted in connection with proposed business transactions. The new section 63C provides for an exemption in respect of personal data used for the purposes of emergency rescue operations or emergency relief services. The new section 63D

provides for an exemption in respect of personal data contained in records that are transferred to the Government Records Service for archive purposes.

### Data protection principles

35. Clause 39 amends data protection principle 1 so that a data user may, in compliance with the principle, provide a data subject with the job title, instead of the name, of the individual who is to handle a request for access to and correction of personal data. Clause 40 makes related amendments to Schedule 3.
36. Clause 39 also amends data protection principles 2 and 4 to require a data user who has engaged a data processor, whether within or outside Hong Kong, to adopt contractual or other means to prevent any personal data transferred to the processor from being kept longer than is necessary for processing of the data, and from unauthorized or accidental access, processing, erasure, loss or use of the data.
37. Data protection principle 3 is amended to allow a relevant person of a data subject who is a minor, or is mentally incapacitated or incapable of managing his or her own affairs, to give the consent required for using the data subject's personal data for a new purpose if certain conditions are met. On receiving a consent from a relevant person of the data subject, the data user must not use the data for the new purpose unless the data user has reasonable grounds for believing that the new purpose is clearly in the interest of the data subject.

### Miscellaneous amendments

38. Clause 3 amends section 2(1) of the Ordinance. The definition of *relevant person* is amended to include guardians of mentally incapacitated persons and persons appointed to perform the functions of guardians, so that the guardians or appointed persons may handle certain matters relating to personal data on behalf of the mentally incapacitated persons.

39. Clause 12 amends section 19 of the Ordinance to provide for the manner in which the Hong Kong Police Force is to respond to a data access request as to whether it holds any criminal record of an individual.
40. Clause 13 amends section 20 of the Ordinance to provide additional grounds on which a data user must or may refuse to comply with a data access request. The clause also adds a new subsection to that section to empower a court, a magistrate, the Administrative Appeals Board and its chairman, in deciding on an issue as to whether a data user must or may refuse to comply with a data access request, or any question related to the issue, to require the personal data which is the subject of the request to be made available for their inspection.
41. Clause 17 amends section 26 of the Ordinance to require a data user to take all practicable steps to erase the personal data held if the data is no longer required for the purpose of use.
42. Clause 22 amends section 39 of the Ordinance to provide additional grounds on which the Commissioner may refuse to carry out or decide to terminate an investigation as to whether any requirement under the Ordinance has been contravened.
43. Clause 24 amends section 46 of the Ordinance to provide new circumstances under which the Commissioner may disclose a matter that comes to the Commissioner's knowledge in relation to an inspection of personal data system, a complaint received or an investigation carried out on a complaint.
44. Clause 25 makes technical amendments to section 47 of the Ordinance to improve the procedures for informing a data user of the result of an investigation carried out by the Commissioner.
45. Clause 35 amends section 64 of the Ordinance. The original section 64 contains all offence provisions relating to contravention of the requirements under the Ordinance. Most offence provisions have been moved to the individual provisions to which the offences relate (see clauses 7, 9, 11, 15, 18 and 19). The new section 64 now

only contains a general offence provision that deals with contravention of requirements (except those relating to data protection principles and those for which only enforcement notices may be served) under the Ordinance for which no offence provisions are provided.

46. Clause 36 adds a new section 64A to the Ordinance to provide that a complaint or information in respect of an offence under the Ordinance may be made to or laid before a magistrate within 2 years from the date of commission of the offence.
47. Clause 43 makes consequential amendments to the Administrative Appeals Board Ordinance (Cap. 442).
48. The Schedule amends various provisions of the Ordinance to reflect the use of the words “personal data” in the singular form.

## **Other Proposals to be Implemented**

### **Statutory Powers, Functions and Liability of the PCPD**

#### Power to Impose Charges for Promotional or Educational Activities

(new section 8(2A) proposed to be added)

- To expressly provide that the PCPD may impose reasonable charges for promotional or educational activities or services carried out, or promotional or educational publications or materials made available by the PCPD.

#### Immunity for the PCPD or Prescribed Officers from being Personally Liable to Lawsuit

(new section 11A proposed to be added)

- To provide that no civil liability is to be incurred by the person appointed to be the PCPD or prescribed officers in respect of anything done or omitted to be done in good faith in the performance or exercise of the PCPD's functions and powers under the PDPO.

#### Power to Obtain Information to Verify a Data User Return

(new section 14A proposed to be added)

- To empower the PCPD to obtain information in order to verify the accuracy of information in a data user return.

#### Removing the Time Limit to Notify the Complainant of a Decision to Terminate an Investigation

(section 39(2) and new section 39(3A) proposed to be added)

- To provide that if the PCPD decides to terminate an investigation, the PCPD is required to notify the complainant as soon as practicable, instead of doing so within 45 days of receiving the complaint.

#### Additional Ground for Refusing to Investigate

(section 39(2))

- To include “the primary subject matter of the complaint, as shown by the act or practice specified in it, is not related to privacy of individuals in relation to personal data” as an additional ground for the PCPD to refuse to carry out or to terminate an investigation.

PCPD to Disclose Information in the Performance of Functions  
(section 46)

- To allow the PCPD to disclose any matter if the disclosure is necessary for the proper performance of the PCPD's functions or the proper exercise of the PCPD's powers.
- To allow the PCPD to disclose matters to an authority of a place outside Hong Kong subject to certain conditions.

Time Limit for Responding to PCPD's Inspection/ Investigation Report  
(section 46(4))

- To amend the PDPO to the effect that the requirements for the PCPD to provide a copy of his inspection or investigation report to the relevant data user prior to publication and to invite the data user to advise within 28 days whether the data user objects to the disclosure in the report of personal data that is exempted under the PDPO only apply if the report contains personal data.

PCPD to Serve Enforcement Notice together with Result of Investigation  
(new section 47(2A) proposed to be added)

- To allow the PCPD to, after completion of an investigation, serve an enforcement notice on a data user at the same time when he notifies the data user of the investigation result.

Relieving the PCPD's Obligation to Notify the Complainant who has Withdrawn his Complaint of Investigation Result  
(new section 47(3A) proposed to be added)

- To remove the obligation for the PCPD to inform the complainant of the PCPD's investigation result and related matters in cases where the complainant has withdrawn the complaint.

Circumstances for Issue of Enforcement Notice  
(section 50)

- To amend the circumstances under which the PCPD may, following the completion of an investigation, issue an enforcement notice to a data user, so that an enforcement notice may be issued in situations where the data user has contravened a requirement under the PDPO, irrespective of whether there is evidence to show that the contravention will likely be repeated.

- In deciding whether to serve an enforcement notice, the PCPD still has to follow the existing requirement to consider whether the contravention has caused or is likely to cause damage or distress to the data subject.

## **Offences and Sanctions**

### Repeated Non-compliance with Enforcement Notices

(new section 50A(1) proposed to be added)

- To impose heavier penalty for repeated non-compliance with enforcement notices, from a fine at Level 5 (\$50,000) to a fine at Level 6 (\$100,000) and if the offence continues after the conviction, from a daily fine of \$1,000 to a daily fine of \$2,000, while the term of imprisonment would remain at two years, the same as that for first-time non-compliance with enforcement notice.

### Repeated Contravention of Same Requirements under the PDPO on Same Facts

(new section 50A(3) proposed to be added)

- To make it an offence for a data user who, having complied with an enforcement notice, intentionally does the same act or makes the same omission in contravention of a requirement of the PDPO for which an enforcement notice has been issued.
- The penalty should be the same as that for breaching an enforcement notice, i.e. a fine at Level 5 (\$50,000) and imprisonment for two years and, if the offence continues after the conviction, a daily fine of \$1,000.

## **New Exemptions**

### Exemption for Personal Data Held by the Court or Judicial Officer

(new section 51A proposed to be added)

- To exempt personal data held by a court, a magistrate or a judicial officer in the course of performing judicial functions from certain provisions of the PDPO.

### Provision of Identity and Location Data on Health Grounds

(new section 59(2) proposed to be added)

- To broaden the scope of application of the exemption under section 59 to cover personal data relating to the identity or location of a data subject on health grounds.

### Transfer of Personal Data of Minors Relevant to Parental Care and Guardianship

(new section 59A proposed to be added)

- To exempt from DPP 3 personal data of a minor transferred or disclosed by the Police or the Customs and Excise Department to the relevant person of the minor if the purpose of the transfer or disclosure is to facilitate the relevant person to exercise proper care and guardianship of the minor and is in the interest of the minor.

### Refusal to Comply with Data Access Requests on Ground of Self-Incrimination

(new section 60A proposed to be added)

- To provide that if a data user might be incriminated in any legal proceedings for an offence (other than an offence under the PDPO) as a result of complying with DPP 6 or section 18(1)(b) on data access requests, the personal data is exempt from that provision or section.

### Use of Personal Data Required or Authorised by Law or Related to Legal Proceedings

(new section 60B proposed to be added)

- To exempt from DPP 3 the use of personal data required or authorised by or under the law of Hong Kong or an order of a court in Hong Kong, or in connection with any legal proceedings in Hong Kong, or otherwise for establishing, exercising or defending legal rights in Hong Kong.

### Transfer of Personal Data in Merger, Acquisition or Transfer of Businesses

(new section 63B proposed to be added)

- To exempt from DPP 3 the transfer or disclosure of personal data for use in due diligence exercises in connection with merger, acquisition or transfer of businesses subject to certain conditions.

- To make it an offence, with a penalty at a fine at Level 5 (\$50,000) and imprisonment for two years, for contravention of the requirements on retention and restriction on the use of the personal data concerned.

### Handling of Personal Data in Emergency Situations

(new section 63C proposed to be added)

- To exempt personal data collected or used for the purpose of the carrying out of emergency rescue operations or provision of emergency relief services from DPP 1(3) and DPP 3 subject to certain conditions.

### Transfer of Records for Archive Purpose

(new section 63D proposed to be added)

- To exempt from DPP 3 personal data contained in records of historical, research, educational or cultural interest that are transferred to the Government Records Service for archive purposes.

## **Rights of Data Subjects**

### Empowering “Relevant Person” to Give Prescribed Consent to Change of Use of Personal Data

(section 2 and DPP 3 in Schedule 1)

- To empower a “relevant person” to give prescribed consent on behalf of a data subject in relation to the use of the latter’s personal data for a new purpose by a data user under certain circumstances. Both the relevant person and the data user must have reasonable grounds for believing that the use of the data for the new purpose is clearly in the interest of the data subject before the personal data may be used for the new purpose.

### Access to Personal Data in Dispute

(new section 20(5) and 20(6) proposed to be added)

- To expressly prohibit the disclosure of personal data which is the subject of a dispute in connection with a data access request, before the Administrative Appeals Board or the court determines that the request must be complied with.

## **Rights and Obligations of Data Users**

### Response to Data Access Requests in Writing and within 40 Days

(section 19)

- To require a data user to inform a requestor in writing if he or she does not hold the requested personal data. As regards the handling of data access requests in respect of criminal conviction records held by the Police, if the Police does not hold such record, the Police is only required to inform the requestor orally.

### Refusal to Comply with a Data Access Request on Ground of Compliance with an Ordinance

(section 20(1) and 20(3))

- To provide that a data user must or may refuse to comply with a data access request where the data user is obliged or entitled under the PDPO or any other ordinance not to disclose the personal data.

### Erasure of Personal Data

(section 26 and DPP 2 in Schedule 1)

- To make clear that the duty to erase personal data would be regarded as having been complied with if a data user has taken all practicable steps to erase obsolete personal data.

### Contact Information about the Individual who Handles Data Access or Correction Requests

(DPP 1(3) in Schedule 1 and Schedule 3)

- To permit a data user to provide the job title or the name of the individual who is to handle data access or correction requests made to the data user.

### Duty to Prevent Loss of Personal Data

(DPP 4 in Schedule 1)

- To make it explicit that a data user is required to take all practicable steps to prevent the loss of personal data.

Regulation of Data Processors  
(DPP 2 and DPP 4 in Schedule 1)

- To require a data user who engages a data processor to adopt contractual or other means to prevent personal data transferred to the data processor from being kept longer than is necessary for processing purpose and to prevent unauthorised and accidental access, processing, erasure, loss or use of the data.

**Miscellaneous Proposed Amendments**

Expanding the Definition of “Relevant Person”  
(section 2)

- To expand the definition of “relevant person” to include the guardians of data subjects with mental incapacity, who are appointed under sections 44A, 59O or 59Q of the Mental Health Ordinance (Cap. 136) and the Director of Social Welfare or any other person (if the guardianship of that data subject is vested in, or the functions of the appointed guardian are to be performed by him under section 44B(2A) or (2B) or 59T(1) or (2) of that Ordinance) so that they may handle certain matters on behalf of the data subjects concerned, including lodging complaints and making data access and data correction requests.

Definition of Crime  
(new section 58(6) proposed to be added)

- To add a definition of “crime” to clarify the scope of application of section 58, which provides that personal data used for the purposes of the prevention or detection of crime are exempt from DPP 3 and DPP 6.

Extending the Time Limit for Laying Information for Prosecution  
(new section 64A proposed to be added)

- To extend the time limit for laying complaint or information in respect of an offence under the PDPO from six months to two years from the date of commission of the offence.

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 2	Interpretation	L.N. 204 of 2006	01/12/2006
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- (1) In this Ordinance, unless the context otherwise requires-
- "act" (作為) includes a deliberate omission;
- "adverse action" (不利行動), in relation to an individual, means any action that may adversely affect the individual's rights, benefits, privileges, obligations or interests (including legitimate expectations);
- "appointed day" (指定日) means the day appointed under section 1(2);
- "approved code of practice" (核准實務守則) means a code of practice approved under section 12;
- "code of practice" (實務守則) includes-
- (a) a standard;
  - (b) a specification; and
  - (c) any other documentary form of practical guidance;
- "Commissioner" (專員) means the Privacy Commissioner for Personal Data established under section 5(1);
- "Committee" (諮詢委員會) means the Personal Data (Privacy) Advisory Committee established under section 11(1);
- "complainant" (投訴人) means the individual, or the relevant person on behalf of an individual, who has made a complaint;
- "complaint" (投訴) means a complaint under section 37;
- "correction" (改正), in relation to personal data, means rectification, erasure or completion;
- "daily penalty" (每日罰款) means a penalty for each day on which the offence is continued after conviction therefor;
- "data" (資料) means any representation of information (including an expression of opinion) in any document, and includes a personal identifier;
- "data access request" (查閱資料要求) means a request under section 18;
- "data correction request" (改正資料要求) means a request under section 22(1);
- "data protection principle" (保障資料原則) means any of the data protection principles set out in Schedule 1;
- "data subject" (資料當事人), in relation to personal data, means the individual who is the subject of the data;
- "data user" (資料使用者), in relation to personal data, means a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data;
- "data user return" (資料使用者申報表) means a data user return referred to in section 14(4);
- "disclosing" (披露), in relation to personal data, includes disclosing information inferred from the data;
- "document" (文件) includes, in addition to a document in writing-
- (a) a disc, tape or other device in which data other than visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the disc, tape or other device; and
  - (b) a film, tape or other device in which visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the film, tape or other device;
- "employment" (僱用) means employment under-
- (a) a contract of service or of apprenticeship; or
  - (b) a contract personally to execute any work or labour,
- and related expressions shall be construed accordingly;

"enforcement notice" (執行通知) means a notice under section 50(1);

"financial regulator" (財經規管者) means any of-

- (a) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66);
- (b) the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap 571); (Replaced 5 of 2002 s. 407)
- (c) a recognized clearing house, a recognized exchange company, a recognized exchange controller or a recognized investor compensation company within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); (Replaced 5 of 2002 s. 407)
- (d) a person authorized under Part III of the Securities and Futures Ordinance (Cap 571) to provide automated trading services as defined in Schedule 5 to that Ordinance; (Replaced 5 of 2002 s. 407)
- (e)-(ea) (Repealed 5 of 2002 s. 407)
- (f) the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap 41);
- (g) the Registrar of Occupational Retirement Schemes appointed under section 5 of the Occupational Retirement Schemes Ordinance (Cap 426);
- (ga) the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 4 of 1998 s. 14)
- (gb) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap 588); (Added 18 of 2006 s. 84)
- (h) a person specified in a notice under subsection (7) to be a regulator for the purposes of this definition;

"inaccurate" (不準確), in relation to personal data, means the data is incorrect, misleading, incomplete or obsolete;

"inspection" (視察) means an inspection under section 36;

"investigation" (調查) means an investigation under section 38;

"log book" (紀錄簿), in relation to a data user, means the log book kept and maintained by the data user under section 27(1);

"matching procedure" (核對程序) means any procedure whereby personal data collected for 1 or more purposes in respect of 10 or more data subjects are compared (except by manual means) with personal data collected for any other purpose in respect of those data subjects where the comparison-

- (a) is (whether in whole or in part) for the purpose of producing or verifying data that; or
- (b) produces or verifies data in respect of which it is reasonable to believe that it is practicable that the data,

may be used (whether immediately or at any subsequent time) for the purpose of taking adverse action against any of those data subjects;

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

"personal data" (個人資料) means any data-

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

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

"personal identifier" (個人身分標識符) means an identifier-

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

- but does not include an individual's name used to identify that individual;
- "practicable" (切實可行) means reasonably practicable;
- "prescribed officer" (訂明人員) means a person employed or engaged under section 9(1);
- "processing" (處理), in relation to personal data, includes amending, augmenting, deleting or rearranging the data, whether by automated means or otherwise;
- "register" (登記冊) means the register of data users kept and maintained by the Commissioner under section 15(1);
- "relevant data user" (有關資料使用者), in relation to-
- (a) an inspection, means the data user who uses the personal data system which is the subject of the inspection;
  - (b) a complaint, means the data user specified in the complaint;
  - (c) an investigation-
    - (i) in the case of an investigation initiated by a complaint, means the data user specified in the complaint;
    - (ii) in any other case, means the data user the subject of the investigation;
  - (d) an enforcement notice, means the data user on whom the notice is served;
- "relevant person" (有關人士), in relation to an individual (howsoever the individual is described), means-
- (a) where the individual is a minor, a person who has parental responsibility for the minor;
  - (b) where the individual is incapable of managing his own affairs, a person who has been appointed by a court to manage those affairs;
  - (c) in any other case, a person authorized in writing by the individual to make a data access request, a data correction request, or both such requests, on behalf of the individual;
- "requestor" (提出要求者), in relation to-
- (a) a data access request or data correction request, means the individual, or the relevant person on behalf of an individual, who has made the request;
  - (b) a matching procedure request, means the data user who has made the request;
- "specified" (指明), in relation to a form, means specified under section 67;
- "third party" (第三者), in relation to personal data, means any person other than-
- (a) the data subject;
  - (b) a relevant person in the case of the data subject;
  - (c) the data user; or
  - (d) a person authorized in writing by the data user to collect, hold, process or use the data-
    - (i) under the direct control of the data user; or
    - (ii) on behalf of the data user;
- "use" (使用), in relation to personal data, includes disclose or transfer the data;
- "would be likely to prejudice" (相當可能損害) includes would prejudice.
- (2) For the avoidance of doubt, it is hereby declared that paragraph (c) of the definition of "relevant person" shall not be construed-
- (a) to entitle a person who has only been authorized to make a data access request on behalf of an individual to make a data correction request on behalf of the individual;
  - (b) to entitle a person who has only been authorized to make a data correction request on behalf of an individual to make a data access request on behalf of the individual.
- (3) Where under this Ordinance an act may be done with the prescribed consent of a person (and howsoever the person is described), such consent-
- (a) means the express consent of the person given voluntarily;
  - (b) does not include any consent which has been withdrawn by notice in writing served on the person to whom the consent has been given (but without prejudice to so much of that act that has been done pursuant to the consent at any time before the notice is so served).

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

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

includes-

- (i) where paragraph (a) is applicable, any case where the data user has done an act, or engaged in a practice, in contravention of a data protection principle;
- (ii) where paragraph (b) is applicable, any case where the data user is doing an act, or engaging in a practice, in contravention of a data protection principle.

(5) Notwithstanding any other provisions of this Ordinance, a complaint may be made (and an investigation, if any, initiated by the complaint may be carried out) in relation to a person who has ceased to be a data user except any such person who has not at any time been a data user during the period of 2 years immediately preceding the date on which the Commissioner receives the complaint and, accordingly, a person in relation to whom such a complaint is made shall for the purposes of such complaint (and an investigation, if any, initiated by such complaint) be deemed to be a data user, and the other provisions of this Ordinance shall be construed accordingly.

(6) Any reference in this Ordinance to a data protection principle followed by a number is a reference to the principle bearing that number set out in Schedule 1.

(7) The Chief Executive may, by notice in the Gazette, specify a person to be a regulator for the purposes of the definition of "financial regulator". (Amended 34 of 1999 s. 3)

(8) It is hereby declared that a notice under subsection (7) is subsidiary legislation.

(9) Where a person-

- (a) holds any office, engages in any profession or carries on any occupation; and
- (b) is required by any law, or by any rules made under or by virtue of any law, to be a fit and proper person (or words to the like effect) to hold that office, engage in that profession or carry on that occupation,

then, for the purposes of this Ordinance, any conduct by that person by virtue of which he ceases, or would cease, to be such a fit and proper person shall be deemed to be seriously improper conduct.

(10) Subsection (9) shall not operate to prevent seriously improper conduct including, for the purposes of this Ordinance, conduct by virtue of which a person ceases, or would cease, to be a fit and proper person notwithstanding that the conduct is not conduct to which that subsection applies.

(11) Words and expressions importing the neuter gender in relation to any data user shall include the masculine and feminine genders.

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

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

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 8	Functions and powers of Commissioner	34 of 1999	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 34 of 1999 s. 3

(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 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 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.

(2) The Commissioner may do all such things as are necessary for, or incidental or conducive to, the better performance of his functions and in particular but without prejudice to the generality of the foregoing, may-

- (a) acquire and hold property of any description if in the opinion of the Commissioner such property is necessary for-
  - (i) the accommodation of the Commissioner or of any prescribed officer; or
  - (ii) the performance of any function which the Commissioner may perform, and, subject to the terms and conditions upon which such property is held, dispose of it;
- (b) enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement or other obligation;
- (c) undertake and execute any lawful trust which has as an object the furtherance of any function which the Commissioner is required or is permitted by this Ordinance to perform or any other similar object;
- (d) accept gifts and donations, whether subject to any trust or not;
- (e) with the prior approval of the Chief Executive, become a member of or affiliate to any international body concerned with (whether in whole or in part) the privacy of individuals in relation to personal data; (Amended 34 of 1999 s. 3)
- (f) exercise such other powers as are conferred on him under this Ordinance or any other enactment.

(3) The Commissioner may make and execute any document in the performance of his functions or the exercise of his powers or in connection with any matter reasonably incidental to or consequential upon the performance of his functions or the exercise of his powers.

(4) Any document purporting to be executed under the seal of the Commissioner shall be admitted in evidence and shall, in the absence of evidence to the contrary, be deemed to have been duly executed.

(5) The Commissioner may from time to time cause to be prepared and published by notice in the Gazette, for the guidance of data users, guidelines not inconsistent with this Ordinance, indicating the manner in which he proposes to perform any of his functions, or exercise any of his powers, under this Ordinance.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 12	Approval of codes of practice by Commissioner		30/06/1997
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### PART III

#### CODES OF PRACTICE

(1) Subject to subsections (8) and (9), for the purpose of providing practical guidance in respect of any requirements under this Ordinance imposed on data users, the Commissioner may-

- (a) approve and issue such codes of practice (whether prepared by him or not) as in his opinion are suitable for that purpose; and
- (b) approve such codes of practice issued or proposed to be issued otherwise than by him as in his opinion are suitable for that purpose.

(2) Where a code of practice is approved under subsection (1), the Commissioner shall, by notice in the Gazette-

- (a) identify the code concerned and specify the date on which its approval is to take effect; and
- (b) specify for which of the requirements under this Ordinance the code is so approved.

(3) The Commissioner may-

- (a) from time to time revise the whole or any part of any code of practice prepared by him under this section; and
- (b) approve any revision or proposed revision of the whole or any part of any code of practice for the time being approved under this section,

and the provisions of subsection (2) shall, with the necessary modifications, apply in relation to the approval of any revision under this subsection as they apply in relation to the approval of a code of practice under subsection (1).

(4) The Commissioner may at any time withdraw his approval from any code of practice approved under this section.

(5) Where under subsection (4) the Commissioner withdraws his approval from a code of practice approved under this section, he shall, by notice in the Gazette, identify the code concerned and specify the date on which his approval of it is to cease to have effect.

(6) References in this Ordinance to an approved code of practice are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under this section.

(7) The power of the Commissioner under subsection (1)(b) to approve a code of practice issued or proposed to be issued otherwise than by him shall include power to approve a part of such a code and, accordingly, in this Ordinance "code of practice" (實務守則) may be read as including a part of such a code.

(8) The Commissioner shall, not later than 6 months after the day on which this section comes into operation (or within such further period, not exceeding 6 months, as the Secretary for Home Affairs may allow), approve a code of practice under subsection (1) in respect of all or any requirements referred to in that subsection in so far as such requirements relate to personal data which are personal identifiers.

(9) The Commissioner shall, before approving a code of practice under subsection (1) or any revision or proposed revision of the code under subsection (3), consult with-

- (a) such bodies representative of data users to which the code or the code as so revised, as the case may be, will apply (whether in whole or in part); and
- (b) such other interested persons,

as he thinks fit.

(10) For the avoidance of doubt, it is hereby declared that different codes of practice may be approved under subsection (1) (including any code of practice referred to in subsection (8)) for

different classes of data users, and may be so approved for the same or different requirements referred to in subsection (1).

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 13	Use of approved codes of practice in proceedings under this Ordinance		30/06/1997

(1) A failure on the part of any data user to observe any provision of an approved code of practice shall not of itself render the data user liable to any civil or criminal proceedings but where in any proceedings under this Ordinance a data user is alleged to have contravened a requirement under this Ordinance, being a requirement for which there was an approved code of practice at the time of the alleged contravention, subsection (2) shall have effect with respect to such code in relation to those proceedings.

(2) Any provision of a code of practice which appears to a specified body to be relevant to a requirement under this Ordinance alleged to have been contravened shall be admissible in evidence in the proceedings under this Ordinance concerned and if it is proved that there was at any material time a failure to observe any provision of the code which appears to that body to be relevant to any matter which it is necessary to prove in order to establish a contravention of such requirement, that matter shall be taken as proved in the absence of evidence that such requirement was in respect of that matter complied with otherwise than by way of observance of that provision.

(3) In any proceedings under this Ordinance, a code of practice which appears to a specified body to be the subject of a notice under section 12 shall be taken to be the subject of such notice in the absence of evidence to the contrary.

(4) In this section-

"proceedings under this Ordinance" (根據本條例進行的法律程序) includes any criminal proceedings where a data user is alleged to have committed an offence by reason of a contravention of a requirement under this Ordinance;

"specified body" (指明當局) means-

- (a) a magistrate;
- (b) a court; or
- (c) the Administrative Appeals Board.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 14	Data user returns	L.N. 130 of 2007	01/07/2007

Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

#### PART IV

#### DATA USER RETURNS AND REGISTER OF DATA USERS

(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;
- (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 (3) 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.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 15	Register of data users		30/06/1997

- (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 keep and maintain a register of data users which have submitted such returns.
- (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 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 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.
- (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.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 18	Data access request		30/06/1997

PART V

## ACCESS TO AND CORRECTION OF PERSONAL DATA

- (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 data, and the provisions of this Ordinance (including this section) shall be construed accordingly.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 19	Compliance with data access request		30/06/1997

- (1) Subject to subsection (2) and sections 20 and 28(5), a data user shall comply with a data access request not later than 40 days after receiving the request.
- (2) A data user who is unable to comply with a data access request within the period specified in subsection (1) shall-
  - (a) before the expiration of that period-
    - (i) by notice in writing inform the requestor that the data user is so unable and of the reasons why the data user is so unable; and
    - (ii) comply with the request to the extent, if any, that the data user is able to comply with the request; and
  - (b) as soon as practicable after the expiration of that period, comply or fully comply, as the case may be, with the request.
- (3) A copy of the personal data to be supplied by a data user in compliance with a data access request shall-
  - (a) be supplied by reference to the data at the time when the request is received except that the copy may take account of-
    - (i) any processing of the data-
      - (A) made between that time and the time when the copy is supplied; and
      - (B) that would have been made irrespective of the receipt of the request; and
    - (ii) subject to subsection (5), any correction to the data made between that time and the time when the copy is supplied;
  - (b) where any correction referred to paragraph (a)(ii) has been made to the data, be accompanied by a notice stating that the data have been corrected pursuant to that paragraph (or words to the like effect); and
  - (c) as far as practicable, be-
    - (i) intelligible unless the copy is a true copy of a document which-
      - (A) contains the data; and
      - (B) is unintelligible on its face;
    - (ii) readily comprehensible with any codes used by the data user adequately explained; and

- (iii) in-
    - (A) subject to sub-subparagraph (B), the language specified in the request or, if no language is so specified, the language in which the request is made (which may be the Chinese or English language in either case);
    - (B) a language other than the language specified in the request or, if no language is so specified, the language in which the request is made, if, but only if-
      - (I) the language in which the data are held is not the language specified in the request or, if no language is so specified, the language in which the request is made, as the case may be; and
      - (II) subject to section 20(2)(b), the copy is a true copy of a document which contains the data;
  - (iv) without prejudice to the generality of subparagraph (iii) but subject to subsection (4), be in the form, or one of the forms, if any, specified in the request;
  - (v) where subparagraph (iv) is not applicable, in such form as the data user thinks fit.
- (4) Where-
- (a) a data access request specifies the form or forms in which a copy of the personal data to be supplied in compliance with the request is or are sought; and
  - (b) the data user concerned is unable to supply the copy in that form or any of those forms, as the case may be, because it is not practicable for the data user to do so,
- then the data user shall-
- (i) where there is only one form in which it is practicable for the data user to supply the copy, supply the copy in that form accompanied by a notice in writing informing the requestor that that form is the only form in which it is practicable for the data user to supply the copy;
  - (ii) in any other case-
    - (A) as soon as practicable, by notice in writing inform the requestor-
      - (I) that it is not practicable for the data user to supply the copy in the form or any of the forms, as the case may be, specified in the request;
      - (II) of the forms in which it is practicable for the data user to supply the copy; and
      - (III) that the requestor may, not later than 14 days after the requestor has received the notice, specify in writing one of the forms referred to in sub-subparagraph (II) in which the copy is to be supplied; and
    - (B) as soon as practicable, supply the copy-
      - (I) in the form specified in the response, if any, to the notice referred to in subparagraph (A);
      - (II) if there is no such response within the period specified in subparagraph (A)(III), supply the copy in any one of the forms referred to in subparagraph (A)(II) as the data user thinks fit.
- (5) Subparagraph (ii) of paragraph (a) and paragraph (b) of subsection (3) shall expire on the 1st anniversary of the appointed day.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 20	Circumstances in which data user shall or may refuse to comply with data access request		30/06/1997

- (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 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
  - (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.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 22	Data correction request		30/06/1997

- (1) Subject to subsection (2), where-

- (a) a copy of personal data has been supplied by a data user in compliance with a data access request; and
- (b) the individual, or a relevant person on behalf of the individual, who is the data subject considers that the data are inaccurate,

then that individual or relevant person, as the case may be, may make a request that the data user make the necessary correction to the data.

(2) A data user who, in relation to personal data-

- (a) does not hold the data; but
- (b) controls the processing 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 section 23(1) in relation to a data correction request which relates to the data,

shall be deemed to be a data user to whom such a request may be made, and the provisions of this Ordinance (including subsection (1)) shall be construed accordingly.

(3) Without prejudice to the generality of sections 23(1)(c) and 25(2), if a data user, subsequent to the receipt of a data correction request but before complying with the request pursuant to section 24 or refusing to comply with the request pursuant to section 25, discloses to a third party the personal data to which the request relates, then the user shall take all practicable steps to advise the third party that the data are the subject of a data correction request still under consideration by the user (or words to the like effect).

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 23	Compliance with data correction request		30/06/1997
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(1) Subject to subsection (2) and section 24, a data user who is satisfied that personal data to which a data correction request relates are inaccurate shall, not later than 40 days after receiving the request-

- (a) make the necessary correction to those data;
- (b) supply the requestor with a copy of those data as so corrected; and
- (c) subject to subsection (3), if-
  - (i) those data have been disclosed to a third party during the 12 months immediately preceding the day on which the correction is made; and
  - (ii) the data user has no reason to believe that the third party has ceased using those data for the purpose (including any directly related purpose) for which the data were disclosed to the third party,
 take all practicable steps to supply the third party with a copy of those data as so corrected accompanied by a notice in writing stating the reasons for the correction.

(2) A data user who is unable to comply with subsection (1) in relation to a data correction request within the period specified in that subsection shall-

- (a) before the expiration of that period-
  - (i) by notice in writing inform the requestor that the data user is so unable and of the reasons why the data user is so unable; and
  - (ii) comply with that subsection to the extent, if any, that the data user is able to comply with that subsection; and
- (b) as soon as practicable after the expiration of that period, comply or fully comply, as the case may be, with that subsection.

(3) A data user is not required to comply with subsection (1)(c) in any case where the disclosure concerned of the personal data to the third party consists of the third party's inspection of a register or other like document-

- (a) in which the data are entered or otherwise recorded; and
- (b) which is available for inspection by the public,

but this subsection shall not apply if the third party has been supplied with a copy, certified by or under the authority of the data user to be correct, of the data.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 24	Circumstances in which data user shall or may refuse to comply with data correction request		30/06/1997

(1) Subject to subsection (2), a data user shall refuse to comply with section 23(1) in relation to a data correction request if the data user is not supplied with such information as the data user may reasonably require-

- (a) in order to satisfy the data user as to the identity of the requestor;
- (b) where the requestor purports to be a relevant person, in order to satisfy the data user-
  - (i) as to the identity of the individual in relation to whom the requestor purports to be such a person; and
  - (ii) that the requestor is such a person in relation to that individual.

(2) Subsection (1) shall not apply to a data correction request where the requestor is the same person as the requestor in respect of the data access request which gave rise to the data correction request.

(3) A data user may refuse to comply with section 23(1) in relation to a data correction request if-

- (a) the request is not in writing in the Chinese or English language;
- (b) the data user is not satisfied that the personal data to which the request relates are inaccurate;
- (c) the data user is not supplied with such information as the data user may reasonably require to ascertain in what way the personal data to which the request relates are inaccurate;
- (d) the data user is not satisfied that the correction which is the subject of the request is accurate; or
- (e) subject to subsection (4), any other data user controls the processing of the personal data to which the request relates in such a way as to prohibit the first-mentioned data user from complying (whether in whole or in part) with that section.

(4) Subsection (3)(e) shall not operate so as to excuse a data user from complying with section 23(1) in relation to the data correction request concerned to the extent that the data user can comply with that section without contravening the prohibition concerned.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 25	Notification of refusal to comply with data correction request, etc.		30/06/1997

(1) A data user who pursuant to section 24 refuses to comply with section 23(1) in relation to a data correction request shall, as soon as practicable but, in any case, not later than 40 days after receiving the request, by notice in writing inform the requestor-

- (a) of the refusal and the reasons for the refusal; and
- (b) where section 24(3)(e) is applicable, of the name and address of the other data user concerned.

(2) Without prejudice to the generality of subsection (1), where-

- (a) the personal data to which a data correction request relates are an expression of opinion; and
  - (b) the data user concerned is not satisfied that the opinion is inaccurate,
- then the data user shall-
- (i) make a note, whether annexed to that data or elsewhere-
    - (A) of the matters in respect of which the opinion is considered by the requestor to be inaccurate; and
    - (B) in such a way that those data cannot be used by a person (including the data user and a third party) without the note being drawn to the attention of, and being available for inspection by, that person; and
  - (ii) attach a copy of the note to the notice referred to in subsection (1) which relates to that request.
- (3) In this section, "expression of opinion" (意見表達) includes an assertion of fact which-
- (a) is unverifiable; or
  - (b) in all the circumstances of the case, is not practicable to verify.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 26	Erasure of personal data no longer required		30/06/1997

- (1) A data user shall erase personal data held by the data user where the data are no longer required for the purpose (including any directly related purpose) for which the data were used unless-
- (a) any such erasure is prohibited under any law; or
  - (b) it is in the public interest (including historical interest) for the data not to be erased.
- (2) For the avoidance of doubt, it is hereby declared that-
- (a) a data user shall erase personal data in accordance with subsection (1) notwithstanding that any other data user controls (whether in whole or in part) the processing of the data;
  - (b) the first-mentioned data user shall not be liable in an action for damages at the suit of the second-mentioned data user in respect of any such erasure.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 27	Log book to be kept by data user		30/06/1997

- (1) A data user shall keep and maintain a log book-
- (a) for the purposes of this Part;
  - (b) in the Chinese or English language; and
  - (c) such that any particulars entered in the log book pursuant to this section are not erased therefrom before the expiration of-
    - (i) subject to subparagraph (ii), 4 years after the day on which they were so entered;
    - (ii) such longer or shorter period as may be prescribed, either generally or in any particular case, by regulations made under section 70.
- (2) A data user shall in accordance with subsection (3) enter in the log book-
- (a) where pursuant to section 20 the data user refuses to comply with a data access request, particulars of the reasons for the refusal;
  - (b) where pursuant to section 21(2) the data user does not comply with section 21(1), particulars of the prejudice that would be caused to the interest protected by the

- exemption concerned under Part VIII if the existence or non-existence of the personal data to which the data access request concerned relates were disclosed;
- (c) where pursuant to section 24 the data user refuses to comply with section 23(1) in relation to a data correction request, particulars of the reasons for the refusal;
  - (d) any other particulars required by regulations made under section 70 to be entered in the log book.
- (3) The particulars required by subsection (2) to be entered by a data user in the log book shall be so entered-
- (a) in the case of particulars referred to in paragraph (a) of that subsection, on or before the notice under section 21(1) is served in respect of the refusal to which those particulars relate;
  - (b) in the case of particulars referred to in paragraph (b) of that subsection, on or before the notice under section 21(1) is served in respect of the refusal to which those particulars relate;
  - (c) in the case of particulars referred to in paragraph (c) of that subsection, on or before the notice under section 25(1) is served in respect of the refusal to which those particulars relate;
  - (d) in the case of particulars referred to in paragraph (d) of that subsection, within the period specified in regulations made under section 70 in respect of those particulars.
- (4) A data user shall-
- (a) permit the Commissioner to inspect and copy the log book (or any part thereof) at any reasonable time; and
  - (b) without charge, afford the Commissioner such facilities and assistance as the Commissioner may reasonably require for the purposes of such inspection and copying.
- (Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 28	Imposition of fees by data user		30/06/1997

- (1) A data user shall not impose a fee for complying or refusing to comply with a data access request or data correction request unless the imposition of the fee is expressly permitted by this section.
- (2) Subject to subsections (3) and (4), a data user may impose a fee for complying with a data access request.
- (3) No fee imposed for complying with a data access request shall be excessive.
- (4) Where pursuant to section 19(3)(c)(iv) or (v) or (4)(ii)(B)(II) a data user may comply with a data access request by supplying a copy of the personal data to which the request relates in one of 2 or more forms, the data user shall not, and irrespective of the form in which the data user complies with the request, impose a fee for complying with the request which is higher than the lowest fee the data user imposes for complying with the request in any of those forms.
- (5) A data user may refuse to comply with a data access request unless and until any fee imposed by the data user for complying with the request has been paid.
- (6) Where-
- (a) a data user has complied with a data access request by supplying a copy of the personal data to which the request relates; and
  - (b) the data subject, or a relevant person on behalf of the data subject, requests the data user to supply a further copy of those data,
- then the data user may, and notwithstanding the fee, if any, that the data user imposed for complying with that data access request, impose a fee for supplying that further copy which is not more than the administrative and other costs incurred by the data user in supplying that further copy.
- (Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 31	Matching procedure request		30/06/1997
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(1) A data user proposing to carry out, whether in whole or in part, a matching procedure may make a request-

- (a) in the specified form;
- (b) to the Commissioner; and
- (c) seeking the Commissioner's consent under section 32 to the carrying out of that procedure.

(2) Where 2 or more data users may each make a matching procedure request in respect of the same matching procedure, then any of those data users may make such a request on behalf of all those data users, and the provisions of this Ordinance (including subsection (1)) shall be construed accordingly.

(3) Without prejudice to the generality of subsection (2), it is hereby declared that a matching procedure request may be made in relation to 2 or more matching procedures, or a series of matching procedures, and the other provisions of this Ordinance (including section 32) shall be construed accordingly.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 32	Determination of matching procedure request		30/06/1997
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(1) The Commissioner shall determine a matching procedure request-

- (a) not later than 45 days after receiving the request; and
- (b) by taking into account the prescribed matters applicable to the request and-
  - (i) where he is satisfied as to those matters, serving a notice in writing on the requestor stating that he consents to the carrying out of the matching procedure to which the request relates subject to the conditions, if any, specified in the notice;
  - (ii) where he is not so satisfied, serving a notice in writing on the requestor stating-
    - (A) that he refuses to consent to the carrying out of the matching procedure to which the request relates; and
    - (B) such of those matters in respect of which he is not so satisfied and the reasons why he is not so satisfied.

(2) For the avoidance of doubt, it is hereby declared that a consent in a notice under subsection (1)(b)(i) to the carrying out of a matching procedure to which a matching procedure request relates shall not operate to prevent a data user who is neither the requestor nor, where section 31(2) applies to the request, any data user on whose behalf such request was made, from carrying out, whether in whole or in part, the procedure.

(3) An appeal may be made to the Administrative Appeals Board-

- (a) against-
  - (i) any conditions specified in a notice under subsection (1) (b)(i); or
  - (ii) any refusal specified in a notice under subsection (1) (b)(ii); and
- (b) by the requestor on whom the notice was served or any data user on whose behalf the matching procedure request concerned was made.

(4) In this section, "prescribed matter" (訂明事宜) means a matter specified in Schedule 5.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 33	Prohibition against transfer of personal data to place outside Hong Kong except in specified circumstances		
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Remarks:  
not yet in operation

(1) This section shall not apply to personal data other than personal data the collection, holding, processing or use of which-

- (a) takes place in Hong Kong; or
- (b) is controlled by a data user whose principal place of business is in Hong Kong.

(2) A data user shall not transfer personal data to a place outside Hong Kong unless-

- (a) the place is specified for the purposes of this section in a notice under subsection (3);
- (b) the user has reasonable grounds for believing that there is in force in that place any law which is substantially similar to, or serves the same purposes as, this Ordinance;
- (c) the data subject has consented in writing to the transfer;
- (d) the user has reasonable grounds for believing that, in all the circumstances of the case-
  - (i) the transfer 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 transfer; and
  - (iii) if it was practicable to obtain such consent, the data subject would give it;
- (e) the data are exempt from data protection principle 3 by virtue of an exemption under Part VIII; or
- (f) the user has taken all reasonable precautions and exercised all due diligence to ensure that the data 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.

(3) Where the Commissioner has reasonable grounds for believing that there is in force in a place outside Hong Kong any law which is substantially similar to, or serves the same purposes as, this Ordinance, he may, by notice in the Gazette, specify that place for the purposes of this section.

(4) Where the Commissioner has reasonable grounds for believing that in a place specified in a notice under subsection (3) there is no longer in force any law which is substantially similar to, or serves the same purposes as, this Ordinance, he shall, either by repealing or amending that notice, cause that place to cease to be specified for the purposes of this section.

(5) For the avoidance of doubt, it is hereby declared that-

- (a) for the purposes of subsection (1)(b), a data user which is a company incorporated in Hong Kong is a data user whose principal place of business is in Hong Kong;
- (b) a notice under subsection (3) is subsidiary legislation; and
- (c) this section shall not operate to prejudice the generality of section 50.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 34	Use of personal data in direct marketing		30/06/1997
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(1) A data user who-

- (a) has obtained personal data from any source (including the data subject); and
- (b) uses the data for direct marketing purposes,

shall-

- (i) the first time he so uses those data after this section comes into operation, inform the data subject that the data user is required, without charge to the data subject, to cease to so use those data if the data subject so requests;
- (ii) if the data subject so requests, cease to so use those data without charge to the data subject.

(2) In this section-

"direct marketing" (直接促銷) means-

- (a) the offering of goods, facilities or services;
- (b) the advertising of the availability of goods, facilities or services; or
- (c) the solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or other purposes,

by means of-

- (i) information or goods sent to any person by mail, facsimile transmission, electronic mail, or other similar means of communication, where the information or goods are addressed to a specific person or specific persons by name; or
- (ii) telephone calls made to specific persons.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 39	Restrictions on investigations initiated by complaints		30/06/1997

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

- (a) the complainant (or, if the complainant is a relevant person, the individual in respect of whom the complainant is such a person) has had actual knowledge of the act or practice specified in the complaint for more than 2 years immediately preceding the date on which the Commissioner received the complaint, unless the Commissioner is satisfied that in all the circumstances of the case it is proper to carry out or continue, as the case may be, the investigation;
- (b) the complaint is made anonymously;
- (c) the complainant cannot be identified or traced;
- (d) none of the following conditions is fulfilled in respect of the act or practice specified in the complaint-
  - (i) either-
    - (A) the complainant (or, if the complainant is a relevant person, the individual in respect of whom the complainant is such a person) was resident in Hong Kong; or
    - (B) the relevant data user was able to control, in or from Hong Kong, the collection, holding, processing or use of the personal data concerned, at any time the act or practice was done or engaged in, as the case may be;
  - (ii) the complainant (or, if the complainant is a relevant person, the individual in respect of whom the complainant is such a person) was in Hong Kong at any time the act or practice was done or engaged in, as the case may be;
  - (iii) in the opinion of the Commissioner, the act or practice done or engaged in, as the case may be, may prejudice the enforcement of any right, or the exercise of any privilege, acquired or accrued in Hong Kong by the complainant (or, if the complainant is a relevant person, the individual in respect of whom the complainant is such a person); or

- (e) the Commissioner is satisfied that the relevant data user has not been a data user for a period of not less than 2 years immediately preceding the date on which the Commissioner received the complaint.
  - (2) The Commissioner may refuse to carry out or continue an investigation initiated by a complaint if he is of the opinion that, having regard to all the circumstances of the case-
    - (a) the complaint, or a complaint of a substantially similar nature, has previously initiated an investigation as a result of which the Commissioner was of the opinion that there had been no contravention of a requirement under this Ordinance;
    - (b) the act or practice specified in the complaint is trivial;
    - (c) the complaint is frivolous or vexatious or is not made in good faith; or
    - (d) any investigation or further investigation is for any other reason unnecessary.
  - (3) Where the Commissioner refuses under this section to carry out or continue an investigation initiated by a complaint, he shall, as soon as practicable but, in any case, not later than 45 days after receiving the complaint, by notice in writing served on the complainant accompanied by a copy of subsection (4), inform the complainant-
    - (a) of the refusal; and
    - (b) of the reasons for the refusal.
  - (4) An appeal may be made to the Administrative Appeals Board-
    - (a) against any refusal specified in a notice under subsection (3); and
    - (b) by the complainant on whom the notice was served (or, if the complainant is a relevant person, the individual in respect of whom the complainant is such a person, or either).
- (Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 44	Evidence	25 of 1998 s. 2	01/07/1997

Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) Subject to subsection (2) and section 45, the Commissioner may, for the purposes of any investigation, summon before him any person who-
  - (a) in the opinion of the Commissioner, is able to give any information relevant to those purposes;
  - (b) where the investigation was initiated by a complaint, is the complainant (or, if the complainant is a relevant person, the individual in respect of whom the complainant is such a person, or both),
 and may examine any such person and require him to furnish to the Commissioner any information and to produce any document or thing which, in the opinion of the Commissioner, is relevant to those purposes and which may be in the possession or under the control of any such person.
- (2) Where-
  - (a) an investigation has been initiated by a complaint;
  - (b) the complaint relates, whether in whole or in part, to personal data referred to in section 61(1);
  - (c) the Commissioner has, for the purposes of that investigation, under subsection (1)(a) summoned before him a person; and
  - (d) that person asserts, in response to any requirement under subsection (1) by the Commissioner to furnish him with information or to produce a document or thing, that-
    - (i) to comply with that requirement would directly or indirectly disclose the identity of the individual from whom those data were collected (whether in whole or in part); or
    - (ii) he is not required to comply with that requirement by virtue of any common law privilege,

then-

- (i) notwithstanding any other provision of this Ordinance, the Commissioner shall not serve an enforcement notice on that person in relation to that requirement;
- (ii) the Commissioner may, not later than 28 days after that assertion is made known to him, make an application to the Court of First Instance for an order directing that person to comply with that requirement; (Amended 25 of 1998 s. 2)
- (iii) the Court of First Instance may make the order if, but only if, it is satisfied, having regard to all the circumstances (including the circumstances of the complainant), that-
  - (A) if the act or practice specified in the complaint were proven to be a contravention of a requirement under this Ordinance, the contravention would be of sufficient gravity to warrant that person complying with the requirement referred to in paragraph (d);
  - (B) that investigation would be substantially prejudiced if the requirement referred to in paragraph (d) were not complied with;
  - (C) it is in the public interest, having regard to the benefit likely to accrue to that investigation, that the requirement referred to in paragraph (d) be complied with; and
  - (D) in any case to which paragraph (d)(ii) is applicable, the common law privilege asserted does not apply; and
- (iv) on the hearing of the application, the Commissioner, that person and the complainant shall each be entitled to be heard on the application and to call, examine and cross-examine any witness.

(3) Where-

- (a) a person has complied with a requirement referred to in subsection (2)(d) the subject of an assertion referred to in that subsection; and
- (b) the result (whether in whole or in part) of the investigation to which that requirement relates is that the Commissioner is of the opinion that the individual concerned referred to in subsection (2)(d)(i) has not contravened a requirement under this Ordinance in relation to the matter the subject of the complaint which initiated the investigation,

then, notwithstanding any other provision of this Ordinance, neither the Commissioner nor any prescribed officer shall disclose the identity of that individual to the complainant.

(4) The Court of First Instance may, of its own volition or on an application made to it for the purpose, by order reverse, vary or discharge an order made under subsection (2)(iii) or suspend the operation of such an order. (Amended 25 of 1998 s. 2)

(5) Provision may be made by rules of court-

- (a) with respect to applications to the Court of First Instance under subsection (2)(iii) or (4);
- (b) generally with respect to procedure before the Court of First Instance in relation to any such application. (Amended 25 of 1998 s. 2)

(6) Subsection (5) is without prejudice to the generality of any existing power to make rules.

(7) The Commissioner may administer an oath for the purposes of an examination under subsection (1) if he thinks fit.

(8) It is hereby declared that-

- (a) no obligation to maintain secrecy or other restriction, imposed by law, upon the disclosure of any information, document or other thing, that is or has been in the possession or under the control of any person referred to in subsection (1), shall apply to its disclosure for the purposes of an investigation; and
- (b) any requirement by the Commissioner that any such information, document or thing as is referred to in paragraph (a) be disclosed or produced for the purposes of an investigation shall be sufficient authority for its disclosure or production to the Commissioner.

(9) The Commissioner may pay the reasonable expenses of complainants (including, if the complainant is a relevant person, the individual in respect of whom the complainant is such a person) and witnesses incurred during the course of an investigation.

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 46	Commissioner, etc. to maintain secrecy		30/06/1997

(1) Subject to subsections (2) 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) 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;
- (b) reporting evidence of any crime to such authority as he considers appropriate;
- (c) 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 are exempt from data protection principle 6 by virtue of an exemption under Part VIII.

(4) 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 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.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 47	Persons to be informed of result of inspection or investigation		30/06/1997

(1) Where the Commissioner has completed an inspection, he shall, in such manner and at such time as he thinks fit, inform the relevant data user of-

- (a) the result of the inspection;
- (b) any recommendations arising from the inspection that the Commissioner thinks fit to make relating to the promotion of compliance with the provisions of this Ordinance, in particular the data protection principles, by the data user;
- (c) any report arising from the inspection that he proposes to publish under section 48; and
- (d) such other comments arising from the inspection as he thinks fit to make.

(2) Where the Commissioner has completed an investigation, he shall, in such manner and at such time as he thinks fit, inform the relevant data user of-

- (a) the result of the investigation;
- (b) any recommendations arising from the investigation that the Commissioner thinks fit to make relating to the promotion of compliance with the provisions of this Ordinance, in particular the data protection principles, by the data user;
- (c) any report arising from the investigation that he proposes to publish under section 48;
- (d) whether or not he proposes to serve an enforcement notice on the data user in consequence of the investigation; and
- (e) such other comments arising from the investigation as he thinks fit to make.

(3) Where the Commissioner has completed an investigation initiated by a complaint, he shall, in such manner and at such time as he thinks fit, inform the complainant of-

- (a) the result of the investigation;
- (b) any recommendations made to the relevant data user under subsection (2)(b);
- (c) any report arising from the investigation that he proposes to publish under section 48;
- (d) any comments made by or on behalf of the relevant data user on any such recommendations or report;
- (e) whether or not he has served, or proposes to serve, an enforcement notice on the relevant data user in consequence of the investigation;
- (f) if the Commissioner has not so served, and does not propose to so serve, such enforcement notice, his right to object thereto under subsection (4); and
- (g) such other comments arising from the investigation as he thinks fit to make.

(4) The complainant (or, if the complainant is a relevant person, the individual in respect of whom the complainant is such a person, or either) may appeal to the Administrative Appeals Board against a decision of the Commissioner-

- (a) to the effect that he has not served, and does not propose to serve, an enforcement notice on the relevant data user in consequence of the investigation concerned; and
- (b) of which the complainant was informed in the notice concerned under subsection (3) served on him.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 48	Reports by Commissioner		30/06/1997
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(1) Subject to subsection (3), the Commissioner may, after completing an inspection where section 36(b) is applicable, publish a report-

- (a) setting out any recommendations arising from the inspection that the Commissioner thinks fit to make relating to the promotion of compliance with the provisions of this Ordinance, in particular the data protection principles, by the class of data users to which the relevant data user belongs; and
- (b) in such manner as he thinks fit.

(2) Subject to subsection (3), the Commissioner may, after completing an investigation and if he is of the opinion that it is in the public interest to do so, publish a report-

- (a) setting out-
  - (i) the result of the investigation;
  - (ii) any recommendations arising from the investigation that the Commissioner thinks fit to make relating to the promotion of compliance with the provisions of this Ordinance, in particular the data protection principles, by the class of data users to which the relevant data user belongs; and
  - (iii) such other comments arising from the investigation as he thinks fit to make; and
- (b) in such manner as he thinks fit.

(3) Subject to subsection (4), a report published under subsection (1) or (2) shall be so framed as to prevent the identity of any individual being ascertained from it.

(4) Subsection (3) shall not apply to any individual who is-

- (a) the Commissioner or a prescribed officer;
- (b) the relevant data user.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 50	Enforcement notices		30/06/1997
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(1) Where, following the completion of an investigation, the Commissioner is of the opinion that the relevant data user-

- (a) is contravening a requirement under this Ordinance; or
- (b) has contravened such a requirement in circumstances that make it likely that the contravention will continue or be repeated,

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

- (i) stating that he is of that opinion;
- (ii) specifying the requirement as to which he is of that opinion and the reasons why he is of that opinion;
- (iii) directing the data user to take such steps as are specified in the notice to remedy the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period specified in subsection (7) within which an appeal against the notice may be made) as is specified in the notice; and
- (iv) accompanied by a copy of this section.

(2) In deciding whether to serve an enforcement notice the Commissioner shall consider whether the contravention or matter to which the notice relates has caused or is likely to cause damage or distress to any individual who is the data subject of any personal data to which the contravention or matter, as the case may be, relates.

(3) The steps specified in an enforcement notice to remedy any contravention or matter to which the notice relates may be framed-

- (a) to any extent by reference to any approved code of practice;
- (b) so as to afford the relevant data user a choice between different ways of remedying the contravention or matter, as the case may be.

(4) Subject to subsection (5), the period specified in an enforcement notice for taking the steps specified in it shall not expire before the end of the period specified in subsection (7) within which an appeal against the notice may be made and, if such an appeal is made, those steps need not be taken pending the determination or withdrawal of the appeal.

(5) If the Commissioner is of the opinion that by reason of special circumstances the steps specified in an enforcement notice should be taken as a matter of urgency-

- (a) he may include a statement to that effect in the notice together with the reasons why he is of that opinion;
- (b) where such a statement is so included, subsection (4) shall not apply but the notice shall not require those steps to be taken before the end of the period of 7 days beginning with the date on which the notice was served.

(6) The Commissioner may cancel an enforcement notice by notice in writing served on the relevant data user.

(7) An appeal may be made to the Administrative Appeals Board against an enforcement notice by the relevant data user not later than 14 days after the notice was served.

(8) Where the Commissioner-

- (a) forms an opinion referred to in subsection (1) in respect of the relevant data user at any time before the completion of an investigation; and
- (b) is also of the opinion that, by reason of special circumstances, an enforcement notice should be served on the relevant data user as a matter of urgency,

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

- (i) the Commissioner shall, without prejudice to any other matters to be included in such notice, specify in the notice the reasons as to why he is of the opinion referred to in paragraph (b); and
- (ii) the other provisions of this Ordinance (including this section) shall be construed accordingly.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 51	Interpretation		30/06/1997

## PART VIII

### EXEMPTIONS

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

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 52	Domestic purposes		30/06/1997
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Personal data held by an individual and-

- (a) concerned only with the management of his personal, family or household affairs; or
- (b) so held only for recreational purposes,

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

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 53	Employment - staff planning		30/06/1997
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Personal data which consist of information relevant to any staff planning proposal to-

- (a) fill any series of positions of employment which are presently, or may become, unfilled; or
- (b) cease any group of individuals' employment,

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

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 54	Employment - transitional provisions		30/06/1997
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(1) Personal data-

- (a) held by a data user-
  - (i) immediately before the appointed day;
  - (ii) who is the employer of the data subject; and
  - (iii) relating to the employment of the subject; and
- (b) provided by an individual on the implicit or explicit condition that the subject would not have access to the data,

are exempt from the provisions of data protection principle 6 and section 18(1)(b) until the expiration of 7 years immediately following the enactment of this Ordinance.

(2) Personal data-

- (a) to which subsection (1)(a) applies; or
- (b) held by a data user-
  - (i) but not so held at any time before the appointed day;
  - (ii) who is the employer of the data subject; and
  - (iii) relating to the employment of the subject,

are exempt from the provisions of data protection principle 6 and section 18(1)(b) until 1 July 1996.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 55	Relevant process		30/06/1997
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(1) Personal data the subject of a relevant process are exempt from the provisions of data protection principle 6 and section 18(1)(b) until the completion of that process.

(2) In this section-  
 "completion" (完成), in relation to a relevant process, means the making of the determination concerned referred to in paragraph (a) of the definition of "relevant process";

"relevant process" (有關程序)-

- (a) subject to paragraph (b), means any process whereby personal data are considered by one or more persons for the purpose of determining, or enabling there to be determined-
  - (i) the suitability, eligibility or qualifications of the data subject for-
    - (A) employment or appointment to office;
    - (B) promotion in employment or office or continuance in employment or office;
    - (C) removal from employment or office; or
    - (D) the awarding of contracts, awards (including academic and professional qualifications), scholarships, honours or other benefits;
  - (ii) whether any contract, award (including academic and professional qualifications), scholarship, honour or benefit relating to the data subject should be continued, modified or cancelled; or
  - (iii) whether any disciplinary action should be taken against the data subject for a breach of the terms of his employment or appointment to office;
- (b) does not include any such process where no appeal, whether under an Ordinance or otherwise, may be made against any such determination.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 56	Personal references		30/06/1997
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Personal data held by a data user which consist of a personal reference-

- (a) given by an individual other than in the ordinary course of his occupation; and
- (b) relevant to another individual's suitability or otherwise to fill any position of employment or office which is presently, or may become, unfilled,

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

- (i) in any case, unless the individual referred to in paragraph (a) has informed the data user in writing that he has no objection to the reference being seen by the individual referred to in paragraph (b) (or words to the like effect); or
- (ii) in the case of a reference given on or after the day on which this section comes into operation, until the individual referred to in paragraph (b) has been informed in writing that he has been accepted or rejected to fill that position or office (or words to the like effect),

whichever first occurs.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 57	Security, etc. in respect of Hong Kong	L.N. 362 of 1997; 34 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 34 of 1999 s. 3

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

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

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

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

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

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

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

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

(7) In this section-

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

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

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 58	Crime, etc.	L.N. 28 of 2010	12/03/2010
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- (1) Personal data held for the purposes of-
  - (a) the prevention or detection of crime;
  - (b) the apprehension, prosecution or detention of offenders;
  - (c) the assessment or collection of any tax or duty;
  - (d) the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
  - (e) the prevention or preclusion of significant financial loss arising from-
    - (i) any imprudent business practices or activities of persons; or
    - (ii) unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
  - (f) ascertaining whether the character or activities of the data subject are likely to have a significantly adverse impact on any thing-

- (i) to which the discharge of statutory functions by the data user relates; or
- (ii) which relates to the discharge of functions to which this paragraph applies by virtue of subsection (3); or
- (g) discharging functions to which this paragraph applies by virtue of subsection (3), are exempt from the provisions of data protection principle 6 and section 18(1)(b) where the application of those provisions to the data would be likely to-
  - (i) prejudice any of the matters referred to in this subsection; or
  - (ii) directly or indirectly identify the person who is the source of the data.
- (1A) In subsection (1)(c), “tax” (稅項) includes any tax of a territory outside Hong Kong if-
  - (a) arrangements having effect under section 49(1A) of the Inland Revenue Ordinance (Cap 112) are made with the government of that territory; and
  - (b) that tax is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory. (Added 1 of 2010 s. 9)
- (2) Personal data are exempt from the provisions of data protection principle 3 in any case in which-
  - (a) the use of the data is for any of the purposes referred to in subsection (1) (and whether or not the data are held for any of those purposes); and
  - (b) the application of those provisions in relation to such use would be likely to prejudice any of the matters referred to in that subsection,
 and in any proceedings against any person for a contravention of any of those provisions it shall be a defence to show that he had reasonable grounds for believing that failure to so use the data would have been likely to prejudice any of those matters.
- (3) Paragraphs (f)(ii) and (g) of subsection (1) apply to any functions of a financial regulator-
  - (a) for protecting members of the public against financial loss arising from-
    - (i) dishonesty, incompetence, malpractice or seriously improper conduct by persons-
      - (A) concerned in the provision of banking, insurance, investment or other financial services;
      - (B) concerned in the management of companies;
      - (BA) concerned in the administration of provident fund schemes registered under the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 4 of 1998 s. 14)
      - (C) concerned in the management of occupational retirement schemes within the meaning of the Occupational Retirement Schemes Ordinance (Cap 426); or
      - (D) who are shareholders in companies; or
    - (ii) the conduct of discharged or undischarged bankrupts;
  - (b) for maintaining or promoting the general stability or effective working of any of the systems which provide any of the services referred to in paragraph (a)(i)(A); or
  - (c) specified for the purposes of this subsection in a notice under subsection (4).
- (4) For the purposes of subsection (3), the Chief Executive may, by notice in the Gazette, specify a function of a financial regulator. (Amended 34 of 1999 s. 3)
- (5) It is hereby declared that-
  - (a) subsection (3) shall not operate to prejudice the generality of the operation of paragraphs (a), (b), (c), (d) and (f)(i) of subsection (1) in relation to a financial regulator;
  - (b) a notice under subsection (4) is subsidiary legislation.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 58A	Protected product and relevant records under Interception of Communications and Surveillance Ordinance	20 of 2006	09/08/2006
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(1) A personal data system is exempt from the provisions of this Ordinance to the extent that it is used by a data user for the collection, holding, processing or use of personal data which are, or are contained in, protected product or relevant records.

(2) Personal data which are, or are contained in, protected product or relevant records are exempt from the provisions of this Ordinance.

(3) In this section—

"device retrieval warrant" (器材取出手令) has the meaning assigned to it by section 2(1) of the Interception of Communications and Surveillance Ordinance (Cap 589);

"prescribed authorization" (訂明授權) has the meaning assigned to it by section 2(1) of the Interception of Communications and Surveillance Ordinance (Cap 589);

"protected product" (受保護成果) has the meaning assigned to it by section 2(1) of the Interception of Communications and Surveillance Ordinance (Cap 589);

"relevant records" (有關紀錄) means documents and records relating to—

- (a) any application for the issue or renewal of any prescribed authorization or device retrieval warrant under the Interception of Communications and Surveillance Ordinance (Cap 589); or
- (b) any prescribed authorization or device retrieval warrant issued or renewed under that Ordinance (including anything done pursuant to or in relation to such prescribed authorization or device retrieval warrant).

(Added 20 of 2006 s. 68)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 59	Health		30/06/1997
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Personal data relating to the physical or mental health of the data subject are exempt from the provisions of either or both of-

- (a) data protection principle 6 and section 18(1)(b);
- (b) data protection principle 3,

in any case in which the application of those provisions to the data would be likely to cause serious harm to the physical or mental health of-

- (i) the data subject; or
- (ii) any other individual.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 60	Legal professional privilege		30/06/1997
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Personal data are exempt from the provisions of data protection principle 6 and section 18(1)(b) if the data consist of information in respect of which a claim to legal professional privilege could be maintained in law.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 61	News		30/06/1997
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- (1) Personal data held by a data user-
- (a) whose business, or part of whose business, consists of a news activity; and
  - (b) solely for the purpose of that activity (or any directly related activity),
- are exempt from the provisions of-
- (i) data protection principle 6 and sections 18(1)(b) and 38(i) unless and until the data are published or broadcast (wherever and by whatever means);
  - (ii) sections 36 and 38(b).
- (2) Personal data are exempt from the provisions of data protection principle 3 in any case in which-
- (a) the use of the data consists of disclosing the data to a data user referred to in subsection (1); and
  - (b) such disclosure is made by a person who has reasonable grounds to believe (and reasonably believes) that the publishing or broadcasting (wherever and by whatever means) of the data (and whether or not they are published or broadcast) is in the public interest.
- (3) In this section-
- "news activity" (新聞活動) means any journalistic activity and includes-
- (a) the-
    - (i) gathering of news;
    - (ii) preparation or compiling of articles or programmes concerning news; or
    - (iii) observations on news or current affairs,
for the purpose of dissemination to the public; or
  - (b) the dissemination to the public of-
    - (i) any article or programme of or concerning news; or
    - (ii) observations on news or current affairs.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 62	Statistics and research		30/06/1997
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Personal data are exempt from the provisions of data protection principle 3 where-

- (a) the data are to be used for preparing statistics or carrying out research;
- (b) the data are not to be used for any other purpose; and
- (c) the resulting statistics or results of the research are not made available in a form which identifies the data subjects or any of them.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 63	Exemption from section 18(1)(a)		30/06/1997
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Where a data access request relates to personal data which are or, if the data existed, would be exempt from section 18(1)(b) by virtue of section 57 or 58, then the data are also exempt from section 18(1)(a) if the interest protected by that exemption would be likely to be prejudiced by the disclosure of the existence or non-existence of those data.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 63A	Human embryos, etc.	L.N. 164 of 2007	01/08/2007
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(1) Personal data which consist of information showing that an identifiable individual was, or may have been, born in consequence of a reproductive technology procedure within the meaning of the Human Reproductive Technology Ordinance (Cap 561) are exempt from the provisions of data protection principle 6 and section 18(1)(b) except so far as their disclosure under those provisions is made in accordance with section 33 of that Ordinance.

(2) Where a data access request relates to personal data which are or, if the data existed, would be exempt from section 18(1)(b) by virtue of subsection (1), then the data are also exempt from section 18(1)(a) if the interest protected by that exemption would be likely to be prejudiced by the disclosure of the existence or non-existence of the data.

(Added 47 of 2000 s. 48)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Section 64	Offences		30/06/1997
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## PART IX

### OFFENCES AND COMPENSATION

- (1) A data user who, in any-
- (a) data user return submitted under section 14(4) to the Commissioner;
  - (b) notice under section 14(8) served on the Commissioner; or
  - (c) notice under section 15(3) or (4) submitted to or served on the Commissioner,
- knowingly or recklessly supplies any information-
- (i) which is false or misleading in a material particular; and
  - (ii) in purported compliance with that section,
- commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (2) A person who, in any data access request or data correction request, supplies any information-
- (a) which is false or misleading in a material particular; and
  - (b) which is so supplied for the purpose of having the data user concerned comply with the request,
- commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (3) A person who, in any notice under section 15(6) served on the Commissioner, supplies any information-
- (a) which is false or misleading in a material particular; and
  - (b) which is so supplied for the purpose of having the Commissioner comply with the request to which the notice relates,
- commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (4) A data user who, in any matching procedure request submitted to the Commissioner, supplies any information-
- (a) which is false or misleading in a material particular; and
  - (b) which is so supplied for the purpose of having the Commissioner consent to 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.

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

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

(7) Subject to subsection (8), any relevant data user who contravenes an enforcement notice served on the data user commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years and, in the case of a continuing offence, to a daily penalty of \$1000.

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

(9) Any person who-

- (a) without lawful excuse, obstructs, hinders or resists the Commissioner or any other person in the performance of his functions or the exercise of his powers under Part VII;
- (b) without lawful excuse, fails to comply with any lawful requirement of the Commissioner or any other person under that Part; or
- (c) makes a statement which he knows to be false or does not believe to be true, or otherwise knowingly misleads the Commissioner or any other person in the performance of his functions or the exercise of his powers under that Part,

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

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

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Section 66	Compensation		30/06/1997

- (1) Subject to subsection (4), an individual who suffers damage by reason of a contravention-
- (a) of a requirement under this Ordinance;
  - (b) by a data user; and
  - (c) which relates, whether in whole or in part, to personal data of which that individual is the data subject,

shall be entitled to compensation from that data user for that damage.

(2) For the avoidance of doubt, it is hereby declared that damage referred to in subsection (1) may be or include injury to feelings.

(3) In any proceedings brought against any person by virtue of this section it shall be a defence to show that-

- (a) he had taken such care as in all the circumstances was reasonably required to avoid the contravention concerned; or
- (b) in any case where the contravention concerned occurred because the personal data concerned were inaccurate, the data accurately record data received or obtained by the data user concerned from the data subject or a third party.

(4) Where an individual suffers damage referred to in subsection (1) by reason of a contravention referred to in that subsection which occurred because the personal data concerned were inaccurate, then no compensation shall be payable under that subsection in respect of so much of that damage that has occurred at any time before the expiration of 1 year immediately following the day on which this section commences.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
Schedule 1	DATA PROTECTION PRINCIPLES		30/06/1997

[sections 2(1) & (6)]

**1. Principle 1-purpose and manner of collection of personal data**

- (1) Personal data shall not be collected unless-
  - (a) the data are collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;
  - (b) subject to paragraph (c), the collection of the data is necessary for or directly related to that purpose; and
  - (c) the data are adequate but not excessive in relation to that purpose.
- (2) Personal data shall be collected by means which are-
  - (a) lawful; and
  - (b) fair in the circumstances of the case.
- (3) Where the person from whom personal data are or are to be collected is the data subject, all practicable steps shall be taken to ensure that-
  - (a) he is explicitly or implicitly informed, on or before collecting the data, of-
    - (i) whether it is obligatory or voluntary for him to supply the data; and
    - (ii) where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data; and
  - (b) he is explicitly informed-
    - (i) on or before collecting the data, of-
      - (A) the purpose (in general or specific terms) for which the data are to be used; and
      - (B) the classes of persons to whom the data may be transferred; and
    - (ii) on or before first use of the data for the purpose for which they were collected, of-
      - (A) his rights to request access to and to request the correction of the data; and
      - (B) the name and address of the individual to whom any such request may be made,

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

**2. Principle 2-accuracy and duration of retention of personal data**

- (1) All practicable steps shall be taken to ensure that-
  - (a) personal data are accurate having regard to the purpose (including any directly related purpose) for which the personal data are or are to be used;
  - (b) where there are reasonable grounds for believing that personal data are inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used-
    - (i) the data are not used for that purpose unless and until those grounds cease to be applicable to the data, whether by the rectification of the data or otherwise; or
    - (ii) the data are erased;
  - (c) where it is practicable in all the circumstances of the case to know that-

- (i) personal data disclosed on or after the appointed day to a third party are materially inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used by the third party; and
- (ii) that data were inaccurate at the time of such disclosure,
  - that the third party-
    - (A) is informed that the data are inaccurate; and
    - (B) is provided with such particulars as will enable the third party to rectify the data having regard to that purpose.

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

### 3. **Principle 3-use of personal data**

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

- (a) the purpose for which the data were to be used at the time of the collection of the data; or
- (b) a purpose directly related to the purpose referred to in paragraph (a).

### 4. **Principle 4-security of personal data**

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

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

### 5. **Principle 5-information to be generally available**

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

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

### 6. **Principle 6-access to personal data**

A data subject shall be entitled to-

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

- (d) object to a refusal referred to in paragraph (c);
- (e) request the correction of personal data;
- (f) be given reasons if a request referred to in paragraph (e) is refused; and
- (g) object to a refusal referred to in paragraph (f).

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Schedule 3	PRESCRIBED INFORMATION		30/06/1997
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[section 14(10)]

1. The name and address of the data user.
2. A description of the kind of personal data in respect of which the data user is a data user.
3. A description of the purpose or purposes for which the personal data referred to in item 2 are or are to be collected, held, processed or used by the data user.
4. A description of any classes of persons to whom the data user discloses, intends to disclose or may wish to disclose the personal data referred to in item 2.
5. The names or a description of any places outside Hong Kong to which the data user transfers, intends to transfer or may wish to transfer, the personal data referred to in item 2.
6. The name and address of the individual to whom data access requests may be made to the data user.

(Enacted 1995)

Chapter 486	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number	Version Date
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Schedule 5	PRESCRIBED MATTERS		30/06/1997
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[section 32(4)]

1. Whether the carrying out of the matching procedure is in the public interest.
2. The kind of personal data to be the subject of the matching procedure.
3. The likely consequences to a data subject if the matching procedure were to result in any adverse action taken against the data subject.
4. The practices and procedures, if any, that will be followed to enable a data subject to make a data correction request-
  - (a) in respect any of the personal data produced or verified by the matching procedure;
  - (b) before any adverse action is taken against the data subject.
5. The practices and procedures, if any, that will be followed to ensure, so far as is practicable, the accuracy of any personal data produced or verified by the matching procedure.

6. Whether any such data subject is to be informed of the procedure before it is first carried out.
7. Whether there is any practicable alternative to the matching procedure.
8. The benefits to be derived from carrying out the matching procedure.

(Enacted 1995)

Chapter 442	ADMINISTRATIVE APPEALS BOARD ORDINANCE	Gazette Number	Version Date
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Schedule	SCHEDULE	L.N. 170 of 2010	01/03/2011
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[sections 3, 4 & 22]

Item	Ordinance	Decision
1.	Apprenticeship Ordinance (Cap 47)	A decision of the Director of Apprenticeship or any public officer in the performance or exercise of any function, duty or power under the Ordinance.
2.	Boilers and Pressure Vessels Ordinance (Cap 56)	<ol style="list-style-type: none"> <li>(a) The revocation or suspension of an appointment as a boiler inspector, air receiver inspector or pressurized fuel container inspector under section 5A. (Amended 15 of 2002 s. 8)</li> <li>(b) A decision of the Boilers and Pressure Vessels Authority on the issue or endorsement of a certificate of competency under section 6(1)(a) or (3A)(a). (Added 15 of 2002 s. 8)</li> <li>(c) A decision of the Boilers and Pressure Vessels Authority to revoke or amend a certificate of competency under section 6(4)(a) or (b), as the case may be. (Added 15 of 2002 s. 8)</li> </ol>
3.	Employment Ordinance (Cap 57)	A decision of the Commissioner for Labour under section 53(1) to refuse to issue or renew or to revoke a licence to operate an employment agency.
4.	Factories and Industrial Undertakings Ordinance (Cap 59)	<ol style="list-style-type: none"> <li>(a) An exemption by the Commissioner for Labour under section 7(4) of an industrial undertaking from any regulation.</li> <li>(b) An order by the Commissioner for Labour under section 7(4), for an industrial undertaking to adopt special precautions in addition to any precautions required by any regulation.</li> <li>(c) Under section 9A- <ol style="list-style-type: none"> <li>(i) the issue by the Commissioner for Labour of a prohibition notice in respect of a notifiable workplace;</li> <li>(ii) a refusal by the Commissioner for Labour to cancel a prohibition notice;</li> <li>(iii) the giving by the Commissioner for Labour of any direction upon the cancellation of a prohibition notice.</li> </ol> </li> <li>(d) (Repealed 39 of 1997 s. 49)</li> </ol>

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| 5. Quarries (Safety) Regulations (Cap 59 sub. leg. F)  | <ul style="list-style-type: none"> <li>(a) A refusal by the Commissioner for Labour to approve any person as a supervisor or deputy supervisor under regulation 4(1) or 6(1).</li> <li>(b) A withdrawal by the Commissioner for Labour of his approval of a supervisor or deputy supervisor under regulation 10(1).</li> </ul>  |
| 6. Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap 59 sub. leg. Z) | <ul style="list-style-type: none"> <li>(a) A refusal by the Commissioner for Labour to register a person as a safety officer under regulation 7.</li> <li>(b) The cancellation by the Commissioner for Labour of a person's registration as a safety officer under regulation 9.</li> <li>(c) The suspension by the Commissioner for Labour of a person's registration as a safety officer under regulation 10.</li> <li>(d) A refusal by the Commissioner for Labour to renew or revalidate a person's registration as a safety officer under regulation 7B. (Added L.N. 100 of 2002)</li> </ul> |
| 7. Weights and Measures Ordinance (Cap 68)   | A decision of the Commissioner, as defined in section 2, or of an authorized officer which is taken in the exercise or performance of any function under the Ordinance.   |
| 8. Miscellaneous Licences Ordinance (Cap 114)  | The decision under section 5 of any officer authorized to issue a licence under the Ordinance as to the grant of a licence, the renewal of a licence or the revocation of a licence.  |
| 9. Control of Chemicals Ordinance (Cap 145) (Amended 23 of 2002 s. 14)   | <p>A decision of the Commissioner, as defined in section 2(1), under the Ordinance, relating to-</p> <ul style="list-style-type: none"> <li>(a) the issue of a licence or permit;</li> <li>(b) the refusal to issue a licence or permit;</li> <li>(c) the cancellation or suspension of a licence or permit;</li> <li>(d) the cancellation or variation of any condition or the specification of a new condition in a licence or permit.</li> </ul>   |
| 10. Gambling Ordinance (Cap 148)   | The decision under section 22 of the Commissioner for Television and Entertainment Licensing as to the grant of a licence, the renewal of a licence, the imposition of conditions of a licence or the cancellation of a licence.  |
| 11. Chinese Temples Ordinance (Cap 153)  | <ul style="list-style-type: none"> <li>(a) The refusal by the Chinese Temples Committee under section 4 to grant an exemption from section 4(1).</li> <li>(b) The withdrawal by the Chinese Temples Committee under section 4 of an exemption granted under section 4(1).</li> </ul>  |
| 12. Weapons Ordinance (Cap 217)  | A decision of the Commissioner of Police under section 9(1) to order the delivery up to him or seizure of any martial arts weapon.  |

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| 13. Travel Agents Ordinance (Cap 218)                             | A decision of the Registrar of Travel Agents- <ul style="list-style-type: none"> <li>(a) to refuse to grant a licence under section 12(1);</li> <li>(b) to impose conditions on a licence under section 11(1) or 18;</li> <li>(c) to refuse consent to a change of ownership or control under section 18(c);</li> <li>(d) to suspend or revoke a licence under section 19.</li> </ul>   |
| 14. Firearms and Ammunition Ordinance (Cap 238)                   | <ul style="list-style-type: none"> <li>(a) A decision of the Commissioner of Police refusing to grant a licence under section 30 or to renew a licence under section 32.</li> <li>(b) A decision of the Commissioner of Police, under section 33, cancelling a licence or varying or revoking any condition attached thereto or adding any further condition or deleting any premises from a dealer's licence at which business may be carried on.</li> <li>(c) The imposition of a condition of licence which is considered to be unreasonable.</li> <li>(d) A decision of the Commissioner referred to in section 34(1AA). (Added 14 of 2000 s. 33)</li> <li>(e) The imposition of a term or condition under section 4(3), 12(4), 12A(3), 27A(1), 29 or 46C(3), which is considered to be unreasonable. (Added 14 of 2000 s. 33)</li> </ul> |
| 15. Massage Establishments Ordinance (Cap 266)                    | A decision of the licensing authority under section 6, 7, 8 or 9.   |
| 16. Grant Schools Provident Fund Rules (Cap 279 sub. leg. C)      | A question of interpretation or application of the Rules.   |
| 17. Subsidized Schools Provident Fund Rules (Cap 279 sub. leg. D) | A decision of the Board under the Rules.  |
| 18. Mining Ordinance (Cap 285)                                    | The cancellation of an Authorized Buyer's Licence under section 41.   |
| 19. Mining (General) Regulations (Cap 285 sub. leg. A)            | A decision of the Commissioner of Mines under regulation 30(4A)(a) specifying the rate per tonne at which royalty shall be payable in respect of minerals and the period for which it shall be payable.   |
| 20. Dangerous Goods Ordinance (Cap 295)                           | A decision under section 9 of an officer authorized under the Ordinance to issue a licence- <ul style="list-style-type: none"> <li>(a) to refuse to grant a licence;</li> <li>(b) to refuse to renew a licence; or</li> <li>(c) to revoke a licence.</li> </ul>   |
| 21. Dangerous Goods (General) Regulations (Cap 295 sub. leg. B)   | Prohibiting or imposing conditions on the continued use of a storage tank under regulation 127.   |

22. Business Registration Ordinance (Cap 310)
- (a) The service of a notice under section 3(4) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business.
  - (b) The service of a notice under section 3(4AA) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business at a branch of a business.
  - (c) The service of a notice under section 6(4D) by the Commissioner of Inland Revenue requesting a person to notify a change to a different name. (Replaced 13 of 2010 s. 28)
  - (d) The service of a notice under section 9(5) by the Commissioner of Inland Revenue that an exemption is not granted. (Added 23 of 2002 s. 14)
23. Motor Vehicles (First Registration Tax) Ordinance (Cap 330)
- A decision of the Commissioner for Transport under the Ordinance.
24. Animals (Control of Experiments) Ordinance (Cap 340)
- A refusal to issue a licence, endorsement or permit under section 7, 8, 9, 10 or 14.
25. Chinese Permanent Cemeteries Rules (Cap 1112 sub. leg. A)
- A decision of the Board of Management of the Chinese Permanent Cemeteries not to withdraw a notice in rule 12(2) regarding reversion of a subscriber lot to the Board.
- Note: The Board of Management of the Chinese Permanent Cemeteries is specified for the purpose of section 22(5) of this Ordinance.
26. Sewage Services Ordinance (Cap 463)
- A decision of the Drainage Authority under the Ordinance. (Added 105 of 1994 s. 15)
27. Timber Stores Ordinance (Cap 464)
- A decision of the Director relating to-
- (a) an application for a licence under section 4;
  - (b) an application for transfer of a licence under section 5;
  - (c) the revocation, suspension, refusal to renew or transfer; amendment or variation of conditions of a licence under section 8. (Added 11 of 1995 s. 23)
28. Marine Parks Ordinance (Cap 476)
- A decision of the Country and Marine Parks Authority under section 11 or 22 of the Ordinance. (Added 37 of 1995 s. 36)
29. Personal Data (Privacy) Ordinance (Cap 486)
- A decision of the Privacy Commissioner for Personal Data-
- (a) to impose conditions on his consent to the carrying out of a matching procedure under section 32(1)(b)(i);
  - (b) to refuse to consent to the carrying out of a matching procedure under section 32(1)(b)(ii);

- (c) to refuse under section 39(3) to carry out or continue an investigation initiated by a complaint;
  - (d) not to delete under section 46(5) a matter from a report under the Ordinance;
  - (e) not to serve an enforcement notice under section 47;
  - (f) to serve an enforcement notice under section 50. (Added 81 of 1995 s. 73)
30. Dutiable Commodities Ordinance (Cap 109) A decision of the Commissioner of Customs and Excise under section 7, 26, 26A or 29. (Added 46 of 1996 s. 43)
31. Dogs and Cats Ordinance (Cap 167)
- (a) A decision by a police officer or an authorized officer under section 6(1)(c)(i) or (ii) to destroy a dog.
  - (b) A decision by an authorized officer under section 9 in specifying the place or period of detention of a dog or cat or any other thing under this Ordinance.
  - (c) A decision by an authorized officer under section 10 to vary the period of detention of a dog or cat or any other thing under this Ordinance.
  - (d) A decision by an authorized officer under section 11(1) to refuse an application for the removal from detention under this Ordinance of a dog or cat or any other thing.
  - (e) A decision by the Director under section 11(2) to order the forfeiture of a dog or cat or any other thing.
  - (f) A decision by the Director under section 17(2) to impose any condition in granting an exemption under section 17. (Added 97 of 1997 s. 11)
32. Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap 374 sub. leg. E) A decision of the Commissioner for Transport under regulation 12L(1). (Added 25 of 2005 s. 40)
33. Child Care Services Ordinance (Cap 243) A decision of the Director of Social Welfare-
- (a) under section 7(2), refusing an application for registration;
  - (b) under section 9, cancelling a registration;
  - (c) under section 11B(3), refusing an application for exemption from registration;
  - (d) under section 11D, revoking an exemption from registration;
  - (e) under section 15B(2), determining a person to be unsuited to act as a childminder;
  - (f) under section 15C(4), refusing a request for the issue of a certificate;
  - (g) under section 15D(4), refusing to make a declaration that a person should no longer be deemed unsuited to act as a childminder. (Added 38 of 1997 s. 19)

34. Wild Animals Protection Ordinance (Cap 170) A decision of the Director in relation to-
- (a) the granting of or the refusal to grant a permit or a special permit pursuant to section 13 or 15; or
  - (b) the cancellation of a permit or a special permit under section 15A. (Added 77 of 1996 s. 22)
35. Occupational Safety and Health Ordinance (Cap 509) A decision of the Commission for Labour under Part III. (Added 39 of 1997 s. 49)
36. Ozone Layer Protection Ordinance (Cap 403) A decision of the Director of Environmental Protection under section 5, 6 or 7 or under provisions of the regulations that may be specified to be subject to an appeal under section 8. (Added 6 of 1997 s. 10)
37. Human Reproductive Technology Ordinance (Cap 561) (a) A determination of the Council on Human Reproductive Technology referred to in section 28(5) to which section 28(6) applies.  
(b) The suspension of a licence under section 29. (Added 47 of 2000 s. 48)
38. Freight Containers (Safety) Ordinance (Cap 506) A decision of the Director-
- (a) (Repealed 14 of 2006 s. 20)
  - (b) under section 9, that an approval shall no longer be valid;
  - (c) under section 12 or 13, in an application for approval of an examination procedure;
  - (d) under sections 14 to 16, in relation to control of the use of a container;
  - (e) under section 23, in relation to an application for the review of a decision of an authorized person;
  - (f) under section 25, in relation to any request for exemption under that section. (Added 32 of 1997 s. 29)
39. Volunteer and Naval Volunteer Pensions Ordinance (Cap 202) A decision in a review under section 22. (Added 56 of 1997 s. 7)
40. Child Care Services Regulations (Cap 243 sub. leg. A) A decision of the Director of Social Welfare under regulation 4 refusing an application for inclusion in a register or removing the name of a person from a register. (Added L.N. 272 of 1997. Amended 32 of 2000 s. 37)
41. Prevention of Copyright Piracy Ordinance (Cap 544) A decision of the Commissioner of Customs and Excise under section 11 or 12 of the Ordinance. (Added 22 of 1998 s. 43)
42. Education Ordinance (Cap 279) (a) An attendance order made under section 74(1).  
(b) A variation of an attendance order made under section 74(2). (Added 8 of 2001 s. 31)

43. Merchant Shipping (Local Vessels) Ordinance (Cap 548)
- A decision of the Director of Marine-
- (a) to refuse to authorize under section 7 a person as a surveyor;
  - (b) to attach conditions to an authorization under section 7;
  - (c) to revoke an authorization under section 7;
  - (d) to serve a detention order;
  - (e) to give a direction under section 53(1)(a);
  - (f) to refuse to comply with a request under section 54(2);
  - (g) to refuse to grant permission under section 66;
  - (h) to attach conditions to a permission under section 66;
  - (i) to revoke a permission under section 66;
  - (j) to give a direction specified in an improvement notice under section 73(1). (Added 43 of 1999 s. 91)
44. Dangerous Dogs Regulation (Cap 167 sub. leg. D)
- A direction by an authorized officer under section 14 of the Regulation. (Added L.N. 185 of 2000)
45. Factories and Industrial Undertakings (Safety Management) Regulation (Cap 59 sub. leg. AF)
- (a) A decision of the Commissioner for Labour to refuse to register a person under section 6 or to register a person under that section subject to conditions.
  - (b) A decision of the Commissioner for Labour under section 24(1) to require the appointment of a new safety review officer.
  - (c) A decision of the disciplinary board under section 29(2) to reprimand a registered person, cancel the registration of a registered person or suspend the registration of a registered person. (Added L.N. 298 of 1999)
46. Port Control (Cargo Working Areas) Regulations (Cap 81 sub. leg. A)
- A decision of the Director or the supervisor under regulation 4A(4), 5B, 6AA, 7, 7A, 7B, 7C, 7D, 7E, 13 or 21. (Added L.N. 280 of 1999)
47. Karaoke Establishments Ordinance (Cap 573)
- A decision of the Secretary for Home Affairs or the Director of Food and Environmental Hygiene (as the case may be) under section 5, 6, 8, 9 or 10. (Added 22 of 2002 s. 22)
48. Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap 566)
- A determination or decision of the Director of Social Welfare under section 6(2)(b), 8(3)(b), 9(3)(b) or 14. (Added 10 of 2001 s. 33)

49. Road Traffic Ordinance (Cap 374) A decision of the Commissioner of Police under section 55(3). (Added 3 of 2002 s. 17)
50. Dutiable Commodities Regulations (Cap 109 sub. leg A) A forfeiture of security under regulation 27(2). (Added 23 of 2002 s. 14)
51. Security and Guarding Services Ordinance (Cap 460) A decision under section 14(5), 15(3), 16(4), 18(4), 21(2), 23(4), 24(4), 24A(13) or 25(4). (Added 23 of 2002 s. 14)
52. Merchant Shipping (Seafarers) Ordinance (Cap 478) A decision of the Superintendent of the Mercantile Marine Office-
- (a) to refuse to grant a permit;
  - (b) to impose any condition under section 52(3);
  - (c) to refuse to approve any person for the purposes of section 57(1); or
  - (d) to cancel a permit. (Added 23 of 2002 s. 14)
53. Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap 478 sub. leg. J) A decision of the Seafarers' Authority under section 8(2) or 10(2) to refuse to issue a certificate or licence. (Added 23 of 2002 s. 14)
54. Merchant Shipping (Seafarers) (Tankers-Officers and Ratings) Regulation (Cap 478 sub. leg. K) A decision of the Seafarers' Authority to refuse to make an entry referred to in section 5(2) or (3) in an employment registration book, service record book or discharge book. (Added 23 of 2002 s. 14)
55. Merchant Shipping (Seafarers) (Engine Room Watch Ratings) Regulation (Cap 478 sub. leg. V) A decision of the Seafarers' Authority to refuse to issue an Engine Room Watch Rating Certificate under section 5(1). (Added 23 of 2002 s. 14)
56. Merchant Shipping (Seafarers) (Navigational Watch Ratings) Regulation (Cap 478 sub. leg. W) A decision of the Seafarers' Authority to refuse to issue a Navigational Watch Rating Certificate under section 5(1). (Added 23 of 2002 s. 14)
57. Merchant Shipping (Seafarers) (Certificates of Competency as A.B.) Rules (Cap 478 sub. leg. Y) A decision of the Seafarers' Authority-
- (a) under section 6(3) to refuse an application for the grant of a certificate of competency as A.B.; or
  - (b) under section 10 (whether to confirm, vary or reverse the decision concerned of the examiner or to substitute another decision for that decision). (Added 23 of 2002 s. 14)
58. Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats and Fast Rescue Boats) Rules (Cap 478 sub. leg. Z) A decision of the Seafarers' Authority-
- (a) to refuse to issue a certificate of proficiency in survival craft and rescue boats under section 4;
  - (b) to refuse to issue a certificate of proficiency in fast rescue boats under section 4A; or
  - (c) to cancel a certificate of proficiency in survival craft and rescue boats or a certificate of proficiency in fast rescue boats under section 7(2). (Added 23 of 2002 s. 14)
59. Marine Fish Culture Ordinance (Cap 353) A decision of the Director of Agriculture, Fisheries and Conservation-
- (a) to refuse to grant or renew a licence under

- section 8(6);
  - (b) to refuse to approve the transfer of a licence under section 8A(3)(b);
  - (c) to cancel a licence under section 9(1);
  - (d) to refuse to grant a permit under section 14(1);
  - (e) to cancel or refuse to renew a permit under section 14(2). (Added 10 of 2005 s. 230)
  
- 60. Land (Miscellaneous Provisions) Ordinance (Cap 28) A decision of the Director of Highways under section 10M(13) relating to an assessment made under section 10M(1)(d), (g), (h) or (i). (Added 17 of 2003 s. 15)
  
- 61. Adoption Ordinance (Cap 290) A decision of the Director of Social Welfare-
  - (a) on the assessment of a person's suitability to be an adoptive parent;
  - (b) to terminate a placement;
  - (c) on a person's application to become or continue to be an accredited body; or
  - (d) to suspend or revoke a person's status as an accredited body,
 as referred to in section 30. (Added 28 of 2004 s. 35)
  
- 62. Medical Clinics Ordinance (Cap 343)
  - (a) A refusal by the Registrar of Clinics under section 8 to grant or renew an exemption in respect of a clinic.
  - (b) A cancellation by the Registrar of Clinics under section 8 of an exemption granted in respect of a clinic.
  - (c) An order by the Registrar of Clinics under section 11 to refuse an application for the registration of a clinic or to cancel the registration of a clinic. (Added 10 of 2005 s. 7)
  
- 63. Protection of Endangered Species of Animals and Plants Ordinance (Cap 586) A decision of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation relating to-
  - (a) the refusal to issue a licence under section 23;
  - (b) an application to extend or renew a licence under section 24;
  - (c) an application to vary a licence under section 24;
  - (d) any condition specified in a licence issued under section 23 or extended, renewed or varied under section 24; or
  - (e) the cancellation of a licence under section 26. (Added 3 of 2006 s. 58)
  
- 64. Merchant Shipping (Security of Ships and Port Facilities) Ordinance (Cap 582) A decision of the Director of Marine under section 7(1)(a) or (c) or 8(2). (Added 13 of 2004 s. 18)
  
- 65. Merchant Shipping (Security of Ships and Port Facilities) Rules (Cap 582 sub. leg. A) A decision of the Director of Marine under rule 27(1). (Added L.N. 130 of 2004)

66. Accreditation of Academic and Vocational Qualifications Ordinance (Cap 592) A decision of the Secretary for Education- (Amended L.N. 130 of 2007)
- (a) not to re-appoint an assessment agency under section 8(1);
  - (b) on the length of a term of re-appointment specified under section 8(1)(b);
  - (c) to impose any conditions or restrictions under section 8(1)(c) in re-appointing an assessment agency; and
  - (d) to cancel an appointment or re-appointment under section 8(5). (Added 6 of 2007 s. 51)
67. Genetically Modified Organisms (Control of Release) Ordinance (Cap 607)
- (a) A decision of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation—
    - (i) under section 10(1)(a) on an application for approval of a genetically modified organism;
    - (ii) under section 11(5)(a) on a request to vary a prior decision on an application for approval of a genetically modified organism;
    - (iii) under section 12(1) to vary a prior decision on an application for approval of a genetically modified organism or on a request to vary such a prior decision.
  - (b) A direction of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation—
    - (i) under section 12(7) on the safekeeping or disposal of a genetically modified organism or a container containing the organism;
    - (ii) under section 41(2) to dispose of a forfeited thing through repatriation or destruction.
  - (c) A decision of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation under section 16(3)(a) to enter certain information submitted for the approval of a genetically modified organism in the register. (Added 7 of 2010 s. 55)
68. Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap 605)
- (a) A decision of the Director of Marine or a person authorized under section 25(1) to refuse to issue an insurance certificate under section 16.
  - (b) A decision of the Director of Marine or a person authorized under section 25(1) to impose any condition under section 16.
  - (c) A decision of the Director of Marine or a person authorized under section 25(1) to cancel an insurance certificate under section 17.
  - (d) A decision of the Director of Marine to refuse to

- grant an exemption under section 23.
- (e) A decision of the Director of Marine to impose any condition under section 23. (Added 14 of 2009 s. 40)

(Enacted 1994)

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**Note:**

- The following enactments also give a right of appeal to the Administrative Appeals Board -
- s. 19 of the Merchant Shipping (Local Vessels)(Dwelling Vessels) Regulation (Cap 548 sub. leg. A).
  - s. 53 of the Merchant Shipping (Local Vessels)(Certification and Licensing) Regulation (Cap 548 sub. leg. D).
  - s. 11 of the Merchant Shipping (Local Vessels)(Typhoon Shelters) Regulation (Cap 548 sub. leg. E).
  - s. 47 of the Merchant Shipping (Local Vessels)(General) Regulation (Cap 548 sub. leg. F).
  - s. 86 of the Merchant Shipping (Local Vessels)(Safety and Survey) Regulation (Cap 548 sub. leg. G).
  - s. 10 of the Merchant Shipping (Local Vessels)(Compulsory Third Party Risks Insurance) Regulation (Cap 548 sub. leg. H).
  - s. 72 of the Merchant Shipping (Local Vessels)(Works) Regulation (Cap 548 sub. leg. I).
  - s. 42 of the Hazardous Chemicals Control Ordinance (Cap 595).

## **Implications of the Proposals**

### Financial and Civil Service Implications

Implementation of additional/enhanced regulatory measures set out in the Bill will have financial and staffing implications. With existing resources, the Office of the PCPD may be able to take forward measures such as the issue of codes of practice or guidelines on matters related to direct marketing. However, it would require additional resources for handling enquiries and investigating complaints relating to the new regulatory measures on direct marketing, sale of personal data and disclosure of personal data obtained without data user's consent, providing legal assistance to data subjects and other measures such as regulation of data processors through contractual means. Since the PCPD will refer suspected criminal cases under the amended PDPO to the Police for investigation, the Police will require additional resources to handle investigations arising from these new criminal offences and additional/enhanced regulatory measures. The Department of Justice and the Judiciary may require more resources to handle prosecution cases arising from the additional/enhanced regulatory measures. The Constitutional and Mainland Affairs Bureau will assess the resources requirement in consultation with the PCPD and the relevant bureaux / departments in accordance with the established mechanism.

2. In terms of government-wide compliance with the more stringent PDPO requirements, it is expected that bureaux and departments in general should be able to cope with their existing resources.

### Economic Implications

3. The proposals, especially those relating to direct marketing activities and regulation of data processors, will incur additional compliance costs for business operations. It is however difficult to quantify the magnitude of such compliance costs.

4. On the other hand, enhancing the protection of personal data privacy would not only safeguard the free flow of personal data involved in financial and economic activities, which would be in the interest of business operations of Hong Kong, but also enhance Hong Kong's image

and strengthen its attractiveness to talents and investments, thereby maintaining the competitiveness of Hong Kong in the long run.

### Sustainability Implications

5. The proposals would enhance the protection of personal data privacy and help foster a culture of respect for privacy. It is conducive to the sustainability principle of fostering an ethical and progressive society.