

Panel on Constitutional Affairs

**Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance
("the Consultation Report")**

**Summary of the views and suggestions of the deputations
attending the special meeting on 20 November 2010**

- * proposal to be taken forward by the Administration
proposal not to be taken forward by the Administration

No.	Deputation [LC Paper No. of submission]	Views and suggestions
1.	Hong Kong Human Rights Monitor	<p>*<u>Proposal 1: Collection and use of personal data in direct marketing</u></p> <p>(a) An opt-in mechanism should be adopted for affording better protection to consumers as data users will need to state clearly the purposes for the collection and use of the data for the consideration of data subjects.</p> <p>(b) A blanket refusal to adopt the opt-in mechanism is not justified as there can be different modes to implement the opt-in mechanism which does not have to be applied across-the-board.</p> <p>*<u>Proposal 6: Personal data security breach notification</u></p> <p>(c) A mandatory personal data security breach notification system should apply to government organizations/public bodies and a voluntary system to the private sector.</p>

No.	Deputation [LC Paper No. of submission]	Views and suggestions
		<p data-bbox="757 244 2089 323">#Proposal 39: Granting criminal investigation and prosecution power to the Privacy Commissioner for Personal Data ("PCPD")</p> <hr/> <p data-bbox="757 376 2089 499">(d) A statutory obligation should be imposed on government organizations and public bodies to provide professional/technical assistance to PCPD in order to strengthen his investigation power.</p> <p data-bbox="757 552 2089 627"><u>Prohibition against transfer of personal data to place outside Hong Kong except in specified circumstances</u></p> <hr/> <p data-bbox="757 679 2089 802">(e) Section 33 of the Personal Data (Privacy) Ordinance (Cap.486) ("PDPO") should be brought into operation to prohibit the transfer of data by data users to another territory where comparable privacy protection is lacking.</p> <p data-bbox="757 855 1081 882"><u>Register of data users</u></p> <p data-bbox="757 935 1865 978">(f) PCPD should compile the Register of Data Users as soon as possible.</p> <p data-bbox="757 1031 1081 1058"><u>Application of PDPO</u></p> <p data-bbox="757 1110 2089 1233">(g) The Administration should clarify whether PDPO will be applicable to the offices set up by the Central People's Government ("CPG") in the Hong Kong Special Administrative Region ("HKSAR").</p>

No.	Deputation [LC Paper No. of submission]	Views and suggestions
2.	Young Democratic Alliance for Betterment of Hong Kong [LC Paper No. CB(2)443/10-11(01)]	<p>*<u>Proposal 2: Unauthorized sale of personal data by data user</u></p> <p>*<u>Proposal 3: Disclosure for profits or malicious purposes of personal data obtained without the data user's consent</u></p> <p>(a) Serious contravention of PDPO such as unauthorized sale of personal data or disclosure for profits or malicious purposes of personal data obtained without the data user's consent should be made a criminal offence. However, defense provisions should be included in the legislation such as public interest defense, and the intent of the accused for profit-making or malicious purposes should be proved for the constitution of an offence.</p> <p>*<u>Proposal 7: Legal assistance to data subjects under section 66 of PDPO</u></p> <p>(b) PCPD should be empowered to provide legal assistance to an aggrieved data subject to institute legal proceedings to seek compensation under section 66 of PDPO.</p> <p>#<u>Proposal 39: Granting criminal investigation and prosecution Power to PCPD</u></p> <p>(c) PCPD should not be conferred with the power to carry out criminal investigations and prosecutions as it is important to retain the existing arrangement under which the criminal investigation and prosecution are undertaken respectively by the Police and Department of Justice in order to maintain checks and balances.</p>
3.	Democratic Party [LC Paper No. CB(2)379/10-11(01)]	<p>*<u>Proposal 1: Collection and use of personal data in direct marketing</u></p> <p>(a) An "opt-in" mechanism should be adopted for direct marketing activities.</p>

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		<p>(b) When carrying out direct marketing activities, data users should have the responsibility to inform data subjects of the source of their personal data.</p> <p>(c) A central Do-not-call register on person-to-person telemarketing should be established.</p> <p><u>*Proposal 6: Personal data security breach notification</u></p> <p>(d) A mandatory personal data security breach notification system should be put in place in phases which can be applied initially to high-risk private business sectors such as the finance and banking sector which involve frequent use of personal data. The application can be further extended to other business sectors having regard to the level of sensitivity of personal data involved.</p> <p><u>*Proposal 7: Legal assistance to data subjects under section 66 of PDPO</u></p> <p>(e) PCPD should be empowered to provide legal assistance to an aggrieved data subject to institute legal proceedings to seek compensation under section 66 of PDPO but mediation services should be provided to solve the disputes before resorting to legal actions.</p> <p><u>#Proposal 38: Sensitive personal data</u></p> <p>(f) The Administration should discuss with the information technology industry with a view to classifying sensitive personal data into different categories and drawing up clear guidance for more stringent regulation.</p>

No.	Deputation [LC Paper No. of submission]	Views and suggestions
		<p>#<u>Proposal 39: Granting criminal investigation and prosecution power to PCPD</u></p> <p>(g) PCPD should be granted criminal investigation power.</p> <p><u>Internet protocol ("IP") address as personal data</u></p> <p>(h) IP address per se should be regarded as personal data within the definition of PDPO.</p> <p><u>Prohibition against transfer of personal data to place outside Hong Kong except in specified circumstances</u></p> <hr/> <p>(i) Section 33 of PDPO should be brought into operation to prohibit the transfer of data by data users to another territory where comparable privacy protection is lacking.</p> <p><u>Register of data users</u></p> <p>(j) PCPD should compile register of data users as soon as possible to cover the Octopus Holdings Limited and other industries such as banking, insurance, and telecommunications and require these registered data users to submit returns (on their collection, usage and disclosure of personal data) and compliance reports.</p> <p><u>Application of PDPO</u></p> <p>(k) The Administration should clarify whether PDPO will be applicable to the CPG offices in HKSAR.</p>

No.	Deputation [LC Paper No. of submission]	Views and suggestions
4.	Society for Community Organization [LC Paper No. CB(2)317/10-11(01)]	<p><u>*Proposal 1: Collection and use of personal data in direct marketing</u></p> <p>(a) An opt-in mechanism should be adopted for direct marketing activities.</p> <p>(b) The direct marketing industry should come up with proposals on how the personal data of consumers could be better protected if an "opt-out" mechanism is to be adopted.</p> <p><u>*Proposal 6: Personal data security breach notification</u></p> <p>(c) A mandatory personal data security breach notification system should be applied to government organizations at an initial stage and be further extended to other business sectors in phases.</p> <p><u>#Proposal 38: Sensitive personal data</u></p> <p>(d) The Administration should introduce a categorization system for sensitive personal data with a view to affording better protection of such data.</p> <p><u>#Proposal 39: Granting criminal investigation and prosecution Power to PCPD</u></p> <p>(e) Criminal investigation and prosecution power should be granted to PCPD.</p> <p><u>#Proposal 43: Parents' right to access personal data of minors</u></p> <p>(f) Data users should be given the legal right to deny access to the personal data of the minors by their parents or guardians in order to strike a balance between respecting parents' right to have reasonable access to the personal data of their children and respecting the children's privacy right.</p>

No.	Deputation [LC Paper No. of submission]	Views and suggestions
		<p><u>#Proposal 44: Fee charging for handling data access requests</u></p> <p>(g) A data user should be required not to charge fees in excess of the prescribed maximum as set out in the fee schedule to be provided in PDPO for the purpose of imposition of a fee for complying with a data access request.</p> <p>Prohibition against transfer of personal data to place outside Hong Kong except in specified circumstances</p> <hr/> <p>(h) Section 33 of PDPO should be brought into operation to prohibit the transfer of data by data users to another territory where comparable privacy protection is lacking.</p>
5.	<p>Hong Kong Direct Marketing Association [LC Paper No. CB(2)317/10-11(02)]</p>	<p><u>*Proposal 1: Collection and use of personal data in direct marketing</u></p> <p>(a) The direct marketing industry will be seriously affected by the adoption of an "opt-in" mechanism.</p> <p>(b) An opt-out mechanism should continue to be adopted for direct marketing purpose but more specific requirements should be added to ensure transparency and full disclosure of information to allow consumers to opt out.</p> <p>(c) A "tick-box" should be provided to make it as easy as possible for consumers to opt out and consumers should be given another opportunity to opt out if new use of the personal data is contemplated.</p> <p>(d) According to the findings of the survey conducted by the Association, there is no country where an opt-in mechanism has been adopted exclusively for direct</p>

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		<p>marketing. The opt-in mechanism has only been adopted for e-mail marketing in some overseas countries.</p> <p>Prohibition against transfer of personal data to place outside Hong Kong except in specified circumstances</p> <hr/> <p>(e) Implementation of section 33 of PDPO is supported which, in its view, will not have adverse impact on the direct marketing industry. However, enforcement of the provision can be an issue.</p> <p><u>Others</u></p> <p>(f) The proposal of imposing criminal penalties for certain crimes is supported.</p>
6.	<p>Hong Kong Telemarketer Association [LC Paper No. CB(2)354/10-11(01)]</p>	<p><u>*Proposal 1: Collection and use of personal data in direct marketing</u></p> <p>(a) It is unfair to step up regulation on direct marketing activities such as person-to-person telemarketing conducted directly by data users which are generally accepted by the general public.</p> <p>(b) An "opt-out" mechanism should be adopted for direct marketing activities.</p> <p>(c) The direct marketing sector will be seriously affected resulting in abundant job loss if an "opt-in" mechanism is adopted.</p> <p>(d) The proposed requirement of stating the intended direct marketing activities in the personal information collection statement should not be imposed as it is difficult to specify the usage of personal data amid the fast changing business environment.</p>

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		<p>(e) The proposal of raising penalty level for misuse of personal data in direct marketing is too harsh to frontline staff.</p> <p>(f) Different degrees of regulation over different types of personal information can be imposed as follows:</p> <ul style="list-style-type: none"> - basic information such as name, telephone number and address of data subjects, which can be easily obtained through existing available channels (i.e. name cards, internet, telephone company) should not be subjected to any regulation; - consent of data subjects should be sought for collection and usage of their bank account/credit card/identity card numbers etc; and - transfer of information such as bank account balances, transactions records and credit ratings of data subjects should not be allowed under any circumstances.
7.	Hong Kong Exhibition and Convention Industry Association [LC Paper No. CB(2)317/10-11(03)]	<p><u>*Proposal 1: Collection and use of personal data in direct marketing</u></p> <p>(a) An "opt-out" mechanism should be adopted to facilitate operations of exhibitions and trade fairs which target at enterprises on a business to business basis as only basic business contacts with no sensitive personal information will be collected.</p> <p>(b) The exhibition and convention industry will be at stake if an "opt-in" mechanism is adopted as trade partners or professional organizations will be reluctant to share their membership lists to avoid the risk of breaching the law.</p>

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		<p>Prohibition against transfer of personal data to place outside Hong Kong except in specified circumstances</p> <hr/> <p>(c) Implementation of section 33 of PDPO may affect the operation of the exhibition and convention industry as transfer of data to overseas countries is a frequent and common practice.</p>
8.	Teledirect Hong Kong Ltd. [LC Paper No. CB(2)354/10-11(02)]	<p><u>*Proposal 1: Collection and use of personal data in direct marketing</u></p> <p>(a) The proposals of introducing measures and imposing criminal penalties to better regulate the use of personal data is generally supported.</p>
9.	Hong Kong Call Centre Association ("HKCA") [LC Paper No. CB(2)354/10-11(02)]	<p>(b) An "opt-out" mechanism should be adopted for direct marketing activities and a "tick-box" should be provided in marketing materials to allow consumers to opt out from direct marketing promotion activities.</p>
10.	The Hong Kong Federation of Insurers	<p><u>*Proposal 1: Collection and use of personal data in direct marketing</u></p> <p>(a) The adoption of an "opt-out" mechanism for collecting personal data is supported.</p> <p>(b) A central Do-not-call register on person-to-person telemarketing should be established.</p> <p><u>*Proposal 7: Legal assistance to data subjects under section 66 of PDPO</u></p> <p>(c) PCPD should provide guidance and advice instead of legal assistance to an aggrieved data subject as the legal aid system is well-established in Hong Kong.</p>

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		<p>(d) Mediation services should be provided by PCPD whenever necessary.</p> <p><u>Others</u></p> <p>(e) The meaning of some terms in the proposed amendments to PDPO such as "Intentional", "Repeated contravention" and "Indicated disagreement" is too general and should be well defined in legislation.</p> <p>(f) PCPD should step up promotion of the guidelines to raise public awareness about the protection of personal data.</p> <p>(g) The Administration should provide more resources to PCPD to promote proper business conduct and best practice in the protection of personal data instead of merely resorting to legal measures.</p>
11.	Public Services Monitoring Group [LC Paper No. CB(2)353/10-11(01)]	<p><u>*Proposal 1: Collection and use of personal data in direct marketing</u></p> <p>(a) An "opt-in" mechanism should be adopted for direct marketing activities except for membership schemes which reward consumers with promotional benefits for collection of their personal data.</p> <p>(b) PCPD should be granted the power to stipulate the scopes of personal data which can be collected from data subjects in specific trades and business sectors such as financial institutions.</p>

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		<p><u>*Proposal 2: Unauthorized sale of personal data by data user</u></p> <p>(c) The proposal of stepping up deterrent measures for intrusion of privacy and raising penalty for misuse of personal data is supported.</p> <p>(d) The proposed requirement that the presentation of information in the personal data collection statement should be reasonably readable by general public is supported.</p> <p><u>*Proposal 5: Regulation of data processors and sub-contracting activities</u></p> <p>(e) An "opt-in" mechanism should be adopted to regulate transfer of personal data from enterprises to their subsidiary companies and other offshore companies, particularly to offshore call centers.</p> <p>(f) The proposal of requiring a data user to use contractual or other means to ensure the compliance of its data processors and sub-contractors offshore with the requirements under PDPO is supported.</p> <p><u>#Proposal 39: Granting criminal investigation and prosecution power to PCPD</u></p> <p>(g) Criminal investigation and prosecution power should be granted to PCPD.</p>

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12.	Mr Roderick WOO Former Privacy Commissioner for Personal Data [LC Paper No. CB(2)353/10-11(02)]	<p><u>*Proposal 1: Collection and use of personal data in direct marketing</u></p> <p>(a) The proposal of introducing additional specific requirements to impose stricter regulation on data users in their use (including transfer) of the personal data collected for direct marketing purpose is supported.</p> <p>(b) Inclination to support the continued adoption of an "opt-out" mechanism in direct marketing activities. Data subjects should be given the "opt-out" option to choose any one or more of the direct marketing purposes that he/she disagrees and such "opt-out" option should be separately provided so that individual can clearly indicate the preferences.</p> <p>(c) A central Do-not-call register on person-to-person telemarketing should be established to facilitate individuals expressing their preferences.</p> <p><u>*Proposal 2: Unauthorized sale of personal data by data user</u></p> <p>(d) The proposals of imposing additional requirements and introducing criminal offences are supported.</p> <p><u>*Proposal 6: Personal data security breach notification</u></p> <p>(e) A mandatory personal data security breach notification system should be put in place in phases. Public sector should be required to give notifications at an initial stage and the requirement should be extended to selected classes of data users in private sector having regard to the degree of sensitivity of personal data and assessment on the impact of leakage.</p>

No.	Deputation [LC Paper No. of submission]	Views and suggestions
		<p><u>#Proposal 38: Sensitive personal data</u></p> <p>(f) Sensitive personal data should be subjected to more stringent regulation.</p> <p>(g) A list of sensitive personal data should be compiled in consultation with the public with a view to applying different degrees of regulation according to the categorization of sensitive personal data in future.</p> <p><u>#Proposal 39: Granting criminal investigation and prosecution power to PCPD</u></p> <p>(h) Criminal investigation and prosecution power should be granted to PCPD as PCPD is more proficient in interpreting and applying the provisions of PDPO and time to refer cases to the Police can be saved.</p> <p><u>#Proposal 40: Empowering PCPD to award compensation to aggrieved data subjects</u></p> <p>(i) PCPD should be empowered to award compensation to aggrieved data subjects.</p> <p><u>The power to conduct hearing in public</u></p> <p>(j) PCPD should be empowered under section 43 of PDPO to conduct public hearing for cases of great public concern.</p> <p><u>Time limit for responding to PCPD's investigation or inspection report</u></p> <p>(k) The existing requirement under section 46 of PDPO of allowing a data user a period of 28 days to object to the disclosure of any personal data in the</p>

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		inspection/investigation report that are exempted from the provisions of data protection principle 6 should be removed for reports which do not contain personal data.
13.	Professor John Bacon-Shone Former Chairman of the Law Reform Commission [LC Paper No. CB(2)363/10-11(01)]	<p><u>*Proposal 1: Collection and use of personal data in direct marketing</u></p> <p>(a) If an "opt-out" mechanism is adopted, it is suggested that data subjects should be offered an opt-out option specific to each purpose of the personal data collected.</p> <p>(b) In addition to the right to be informed of the sources of their personal data, data subjects should have the right to retain control over their personal data such as the right to know about transfer destinations of their personal data, the right to correct or delete their personal data.</p> <p><u>*Proposal 6: Personal data security breach notification</u></p> <p>(c) Voluntary notification is inadequate.</p> <p>(d) PCPD should be notified of cases where there is serious potential damage arising from leaked personal data such as disclosure of financial and medical data with personal identifiers so that PCPD will be in the best position to access the risks and decide whether notifications should be issued to the affected data subjects.</p> <p>(e) It should be mandatory for the data users to notify the affected data subjects in cases when there is chance of leakage of personal data and potential damage of data subjects is also expected.</p>

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		<p data-bbox="752 244 1323 284">#<u>Proposal 38: Sensitive Personal Data</u></p> <p data-bbox="752 323 2098 403">(f) Classes of sensitive data should be defined in legislation for additional protection as follows :</p> <ul data-bbox="831 451 2098 770" style="list-style-type: none"> <li data-bbox="831 451 1733 491">- authentication/identification data (e.g. biometric features) <li data-bbox="831 531 1384 571">- reputational data (e.g. HIV status) <li data-bbox="831 611 2098 691">- group membership that could be discriminated against (e.g. homosexuality/ethnic origins) <li data-bbox="831 730 1917 770">- location of people for the protection against spousal abuse or stalking. <p data-bbox="752 810 2018 850">#<u>Proposal 40: Empowering PCPD to award compensation to aggrieved data subjects</u></p> <p data-bbox="752 890 2098 970">(g) The proposal to empower PCPD to award compensation to aggrieve data subjects is the most efficient mechanism to address damages of data subjects.</p> <p data-bbox="752 1010 2098 1225">(h) If the proposal to empower the PCPD to award compensation to data subjects is not pursued, the two privacy civil torts (i.e. the tort of intrusion upon another's solitude or seclusion and the tort of unwarranted publicity) proposed by the Law Reform Commission should be enacted to allow data subjects to seek damages for unfair collection and unfair release of personal data.</p>