

**Response to the submission from the Office of the Privacy
Commissioner for Personal Data**

I. The public inspection of contract or memorandum containing personal data

The Privacy Commissioner for Personal Data enquires about the requirement under the proposed sections 38D(3A) and 342C(3A) for the company to make available for public inspection material contracts (or a memorandum of the terms of such contracts) specified in the prospectus for not less than 14 days from the date of publication of the prospectus.

The requirement to place material contracts on display and available for inspection by the public (whether on file with a regulator or at another convenient location) is a common practice in offers of securities - this is a requirement of the Listing Rules of the Stock Exchange of Hong Kong. The existing sections 38D(3)(b)(i) and 342C(3)(b)(i) of the Companies Ordinance require material contracts (or a memorandum of the terms of such contracts) to be registered with the prospectus at the Registrar of Companies. The purpose of this arrangement is to enhance information disclosure for better investor protection.

II. The collection of personal particulars of director and secretary

We confirm that the data subjects affected by the proposed sections 14A, 158(4), 158(5), 333(2)(d) and 334(3)(g) will be explicitly informed of the matters mentioned in Data Protection Principle (“DPP”) 1(3) by means of a Personal Information Collection Statement (“PICS”) which is included in the Notes for Completion on the reverse of each relevant specified forms.

In addition to the PICS included in the specified forms, a copy of the same PICS is posted in the public search area of the Companies Registry (“CR”) and shown on the CR’s website and contained in diskettes of all specified forms.

A copy of the PICS is also attached to the following documents –

- Application forms for company particulars reports;

- Application forms for hard copies or copies of microfilm company records;
- Application forms for microfiches for inspection of the registered file or a document which is not microfilmed;
- Companies particulars reports;
- Directorships' reports such as the Register of Disqualification Orders, and
- Notices displayed on the CR's On-Line Public Search System

III. The public register

The collection of personal particulars of individuals who are not officers of a company e.g. a receiver, mortgagee, provisional liquidator or liquidator could come within the meaning of "enabling any member of the public to ascertain whether he is dealing with a specified corporation or its directors or other officers in matters of or connected with any act of such specified corporation" under the proposed Section 305(1A). Given that a receiver, mortgagee or liquidator is appointed, whether by Order of the Court or pursuant to the terms of a deed, specifically to take action in relation to the affairs of a specified corporation and that individual is required pursuant to a specified provision in the Companies Ordinance ("CO") to provide his personal data, we believe that the wording of the purpose statement laid down in the proposed section 305(1A) is sufficiently wide to apply to data subjects other than directors or other officers of the company as his personal data is supplied pursuant to a statutory provision in the CR.

As regards the imposition of sanctions, we consider it more appropriate to deal with this issue pursuant to the Personal Data (Privacy) Ordinance ("PD(P)O") rather than the CO. The sentence "Any person who uses such personal data for any purpose other than the purposes in paragraph 1 of the PICS above or in contravention of the requirements under PD(P)O is liable to pay compensation and may be subject to action under the PD(P)O" will be added to the CR's PICS to make it clear that this notice sets out the purposes for which the data are to be used and the fact that subsequent use of the data should also be limited to those purposes. Use of Data in contravention of the stated purposes or any of the requirements of the PD(P)O is liable to render the data user to action under the PD(P)O.

Please rest assured that adequate administrative measures have already been put in place in the CR to ensure that all persons accessing the register are aware of the specified purposes and the need to confine

the subsequent usage of the data to such purposes.

IV. Inspection of company records by shareholders

We note the Commissioner's confirmation that rights, redress and remedies conferred and available under the Ordinance are unaffected.

Financial Services Branch
Financial Services and the Treasury Bureau
September 2003