

**Memorandum of Administrative Arrangements between the
Government of the Hong Kong Special Administrative Region and
the Privacy Commissioner for Personal Data**

1. Preamble

- 1.1 This Memorandum of Administrative Arrangements (MAA) has been worked out between the Secretary for Constitutional and Mainland Affairs (SCMA) and the Privacy Commissioner for Personal Data (Privacy Commissioner). It provides a framework for the working relationship between the Government of the Hong Kong Special Administrative Region (the Government) and the Office of the Privacy Commissioner for Personal Data (PCPD). This MAA supersedes the previous MAA signed on 18 November 1997.
- 1.2 The provisions of the MAA are based on the principle that the PCPD should have autonomy and flexibility in utilizing its funds as is compatible with the provisions of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO).
- 1.3 In the event of any inconsistency between the provisions of this MAA and the provisions of the PDPO, the relevant legislation will prevail.
- 1.4 Both the SCMA and the Privacy Commissioner may, having taken into account the changed circumstances and new matters, propose amendments to the MAA. Any amendments, which are agreed by both parties, will form part of the MAA.
- 1.5 This MAA does not preclude the Government from issuing

directions as provided for in the PDPO.

2. Relationship between the Government and the PCPD

- 2.1 The Constitutional and Mainland Affairs Bureau (CMAB) acts as the focal point of contact between the Government and the PCPD.
- 2.2 The Government provides funding support for the PCPD's activities in the light of overall policies and priorities.
- 2.3 The Permanent Secretary for Constitutional and Mainland Affairs (PSCMA) is the Controlling Officer for the government subvention to the PCPD.
- 2.4 The PCPD is autonomous in the management and control of its activities. It has the responsibility to ensure that its operation, administrative and management systems and practices, including financial control, recruitment, remuneration and training, procurement procedures and information systems, reflect the cost-effective and prudent use of the government subvention.
- 2.5 The Privacy Commissioner and his/her staff will provide relevant information and statistics to the SCMA to enable him/her to answer questions from the Legislative Council (LegCo) concerning the PCPD as appropriate.

3. Regular Reviews

- 3.1 The SCMA may require the PCPD to hold regular meetings with the CMAB and to submit quarterly progress review reports to the CMAB to report on the financial position and operational performance in regard to its objectives and aims. Performance

measures to be reported and the format of the report are to be set out by the SCMA in consultation with the Privacy Commissioner (a model format is at the Appendix). The format of the report will be reviewed as and when required.

- 3.2 The PCPD will, upon request, submit regular reports to the SCMA on the review of the number, ranking and remuneration of the top three tiers of executives of the PCPD. The SCMA will assess the appropriateness of the number, ranking and remuneration packages of the top three tiers of executives, having regard to prevailing government guidelines in respect of senior executives in subvented bodies and make arrangements for public disclosure of the outcome.

4. Budgeting

4.1 Level of Subvention

Each year, the SCMA will allocate a provision for the PCPD to meet its operating expenditure. The level of the Government's annual subvention for the PCPD is determined by the SCMA having regard to the following –

- (a) the overall government budgetary situation, and that of the CMAB;
- (b) the operating expenditure of the PCPD and changes to the cost of existing services;
- (c) the recurrent consequences of capital works scheduled to come on stream in that year;
- (d) approved funding for new and improved services, if any;
- (e) the additional cost to the PCPD of complying with new

statutory requirements;

- (f) surplus of income over expenditure in the previous year; and
- (g) the viability of covering the expenditure with the PCPD's reserve, taking into account the committed and/or designated expenditure of the PCPD.

4.2 New and Improved Services

The PCPD should endeavour to meet the requirement of new and improved services from its existing resources through redeployment and re-prioritisation. Where the PCPD requires additional funds for introducing new or improved services, the PCPD could submit the proposals to the SCMA for consideration. Such proposals will be considered by the SCMA along with other proposals under his/her policy purview.

4.3 Draft Estimates of Expenditure

- (a) The PCPD will, upon invitation, submit to the PSCMA its draft estimates of expenditure for the next financial year. Draft estimates of expenditure will show, with reference to the PCPD's programme of activities and performance targets agreed between the PCPD and the PSCMA, for the ensuing financial year, personal emoluments, recurrent expenditure other than personal emoluments and capital expenditure.
- (b) The draft estimates will provide details of the PCPD's estimated income from other sources (including interest income and donations) and requirements for the next financial year.
- (c) The PCPD will be informed, normally by March each year, of the amount of government subvention provisionally approved

for the coming financial year. In so doing, the PSCMA will draw the PCPD's attention to any areas where approval is conditional or withheld and to any difference between the amount requested and the amount provided. This subvention will be included in the Government's annual budget and presented in the Draft Estimates for the CMAB. The amounts of recurrent and capital subventions will be confirmed after the enactment of the relevant Appropriation Ordinance.

5. The Estimates

5.1 The PCPD's statement of accounts should comprise two separately identifiable parts –

- (I) subvention account covering income and expenditure items financed by government subvention;
- (II) self-financing account covering income and expenditure items financed by the PCPD's own revenue.

(I) Subvention Account

5.2 The PCPD's subvention account comprises two components –

(a) Recurrent Subvention

- (i) Personal emoluments, including salary, allowances, gratuity and personnel-related expenses (including staff on-costs) for staff in the PCPD.
- (ii) Recurrent expenditure other than personal emoluments such as general departmental expenses, office rents and rates, etc. Fixed assets costing more than \$150,000 per item should not be included.

(b) Capital Subvention

Any non-recurrent item with expenditure exceeding \$150,000, including non-recurrent expenditure for specific purposes and fixed assets, except for motor vehicles and motor cycles which will be charged to the Capital Account irrespective of their cost.

5.3 No virement between recurrent subvention (Component 5.2(a)) and capital subvention (Component 5.2(b)) is allowed, except with the approval of the Secretary for Financial Services and the Treasury (SFST) or the appropriate authority as necessary via the PSCMA.

5.4 Virement between Component 5.2(a)(i) and Component 5.2(a)(ii) is permissible. The PCPD will inform the PSCMA of any virement made between Components 5.2(a)(i) and 5.2(a)(ii) as soon as possible.

5.5 The provision for recurrent subvention will not normally be increased during the course of the financial year. However, the PCPD may request additional funds to meet specific needs such as –

- (a) upward price adjustment in the course of the year to reflect latest decision on civil service pay adjustment;
- (b) new statutory obligations, including those arising from the commencement of a new PDPO provision;
- (c) new or additional services requested by the Government; and
- (d) unforeseen contingencies beyond the control of the PCPD.

The factors in paragraph 4.1, where appropriate, will be taken into account when considering whether the request will be approved.

- 5.6 The subvention of the PCPD may be clawed back under the following circumstances –
- (a) downward price adjustment in the course of the year to reflect latest decision on civil service pay adjustment; and
 - (b) curtailment/cessation of agreed services/activities in the course of the year, as appropriate.
- 5.7 Recurrent subvention will be released in 12 equal monthly instalments in advance to the PCPD's bank account. This arrangement may be varied on the request of the PCPD in circumstances where the PCPD can demonstrate that it is causing cash-flow problems. The PCPD will keep the PSCMA informed where it appears that significant deviations from the approved estimates will result.
- 5.8 The PCPD may set aside its unspent recurrent subvention in the form of a reserve for meeting operational contingencies. Funds from the government subvention should not be injected into the reserve at the expense of other worthy causes. The ceiling of this reserve should not at any one point in time exceed \$5 million. If the level of reserve at the end of the previous financial year exceeds the reserve ceiling (i.e. \$5 million), the PCPD should return the amount in excess to the Government in the current financial year, except with the approval of the PSCMA or when the ceiling of reserve is raised by the PSCMA in accordance with paragraph 5.12 below.
- 5.9 The reserve may be spent at the discretion of the PCPD within the reserve ceiling and should be spent on activities as are necessary for, or incidental or conducive to, the better performance of the Privacy Commissioner's statutory functions. It may be used on operational grounds for procurement of capital assets or office improvement

works but shall not be spent for purposes that will advance staff interests unrelated to operational needs. The PCPD will absorb all financial consequences arising from the use of this reserve. Prior approval from the PSCMA is required if the PCPD foresees its intended spending of the reserve money would generate consequential expenditure which is unlikely to be absorbed within the PCPD's subvention.

- 5.10 Separate accounts are to be maintained for the reserve resulted from the subvention account and the surplus of income over expenditure in respect of the self-financing account (see paragraph 5.17 below), if any.
- 5.11 The PCPD will inform the PSCMA of the position of its reserve account in its quarterly progress review report.
- 5.12 The PCPD may propose and the PSCMA may raise the ceiling of the reserve following consultation with the SFST.

(II) Self-Financing Account

- 5.13 The PCPD will keep a self-financing account, for revenue and expenditure items covering activities that are not covered by the government subvention for the PCPD, subject to the principle that there is no cross-subsidization of self-financing activities by the subvented programmes in money or in kind.
- 5.14 The estimated budget for the self-financing account will be submitted to the PSCMA for information at least three months before the beginning of a financial year.
- 5.15 Income items under the self-financing account will be categorized by

nature of income source, for example, bank interest, dividend income and fees collected by the PCPD. In preparing the estimated budget, the actual revenue for the previous financial year (if any), the revised estimate of income for the current financial year and the estimated income for the following financial year should be stated. The basis for determining any scale of fees should be explained.

5.16 Expenditure items under the self-financing account should comprise two components –

(a) Recurrent expenditure

(i) personal emoluments;

(ii) recurrent expenditure other than personal emoluments;

(b) Capital charges

The coverage of each component is similar to that under the subvention account (see paragraph 5.2 above).

5.17 The surplus of income over expenditure in the self-financing account for the previous financial year (if any) will be determined with reference to the audited accounts of the PCPD, which will also be available in any case not later than eight months after the expiry of a financial year. Any surplus of income over expenditure in the self-financing account will be kept wholly by the PCPD and may be spent at the discretion of the PCPD on activities conducive to the better performance of the Privacy Commissioner's functions as laid down in the PDPO.

5.18 No virement of funds from the subvention account to the self-financing account or vice versa is allowed without the approval of the PSCMA.

6. Attendance at the Legislative Council Meetings

The principal officers of the PCPD may be invited to attend meetings of the Finance Committee, the Public Accounts Committee or other committees/panels of the LegCo.

7. Governance

The PCPD will ensure that it is operated in a transparent and accountable manner, and that its governance framework will include the following features –

- (a) clear delineation of accountability and clear division of responsibilities;
- (b) adequate information systems and management practices, including financial control, recruitment, remuneration and training, and procurement procedures; and
- (c) robust internal control and reporting/monitoring systems.

8. Conditions of Service for the Privacy Commissioner and Staff of the PCPD

- 8.1 The remuneration and the terms and conditions of appointment of the Privacy Commissioner will be determined by the SCMA, under authority delegated by the Chief Executive.
- 8.2 The Privacy Commissioner may determine his/her staffing structure and appoint his/her own staff on terms and conditions of service determined by him/her.
- 8.3 The PCPD will observe the principle of fairness and transparency in

its rules and procedures on human resources management.

- 8.4 The PSCMA will provide, where appropriate and for reference purpose, to the PCPD on an annual basis updated information on cash allowance of civil servants of comparable ranks.

9. Outside Work Undertaken by Privacy Commissioner and Staff of the PCPD

- 9.1 The Privacy Commissioner is required to submit to the SCMA for approval under authority delegated by the Chief Executive, any request for the Privacy Commissioner to hold any office of profit other than his/her office as the Privacy Commissioner or engage in any occupation for reward outside the function of his/her office.
- 9.2 The PCPD will formulate its own policy governing outside work undertaken by its full-time staff during or outside working hours with a view to ensuring that its staff devote the whole of their time and attention during working hours to the work of the PCPD and that any approved outside work will not result in conflict of interest.

10. Access to Records and Accounts

- 10.1 The PSCMA will have unhindered access to the records and accounts of the PCPD in relation to fulfilling his/her functions as the Controlling Officer, save those records which are subject to the secrecy requirements of Section 46 of the PDPO and privileged matters as defined and/or governed by the rule of law. The PCPD will be obliged to explain to the PSCMA any matters relating to the receipt, expenditure or custody of any money derived from the subvention.

- 10.2 The PCPD will transmit to the PSCMA the finalized accounts and the audited accounts for each financial year within six and eight months respectively after the close of that financial year. The PSCMA may pass the accounts onto other bureaux/departments of the Government for examination.

11. Donation

- 11.1 The Privacy Commissioner may accept and use donations for the better performance of his/her statutory functions. If the PCPD receives any non-designated donations, the donations should be spent on its operational activities relating to the performance of statutory functions of the PCPD as stated in the PDPO.
- 11.2 Funds to meet additional commitments arising from the donations to the PCPD will not be provided by the Government.
- 11.3 Donations and income derived therefrom will be separately identified in the accounts of the PCPD.
- 11.4 The PCPD will keep proper records in the receipt and use of each donation.

12. Insurance

The PCPD will take out insurance cover in respect of its property such as vehicles and will take out third party liability and any other insurance cover which it is required by law to take out.

13. Leave and Duty Visit Arrangements

- 13.1 In respect of any intended duty visit(s) outside Hong Kong, the

Privacy Commissioner will confirm to the Personal Data (Privacy) Advisory Committee (PDPAC) that such duty visit(s) are consistent with the discharge of his/her functions under the PDPO and seek the PDPAC's advice. The Privacy Commissioner will forward all relevant information on such duty visit(s) to the PDPAC (including the purpose of the visit, its duration, and schedule of activities). The Privacy Commissioner will not proceed with the duty visit(s) if the majority of the members of the PDPAC advise that such duty visit(s) are inconsistent with the discharge of his/her functions under the PDPO. The Privacy Commissioner will inform the SCMA of the PDPAC's advice, as far as practicable, at least two weeks before the commencement of such duty visit(s). The Privacy Commissioner will confirm to the SCMA that the operation of the PCPD will not be adversely affected during such visit(s) outside Hong Kong. The period of absence should be kept to the minimum as required by the duty visit concerned.

13.2 The Privacy Commissioner will inform the SCMA in writing if he/she intends to take any leave.

13.3 In notifying the SCMA of his/her intended duty visit(s) outside Hong Kong or his/her intention to take leave, the Privacy Commissioner will state whether he/she proposes any acting appointment in the post of the Privacy Commissioner during the period of his/her absence. Any proposal for acting appointment is required to be submitted to the SCMA at least two weeks or as soon as practicable before the commencement of the proposed acting appointment.

14. Membership of or Affiliation to International Body

The Privacy Commissioner is required to submit a request to the SCMA for prior approval if he/she or the PCPD wants to become a

member of, or affiliate to, any international body concerned with the privacy of individuals in relation to personal data.



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Privacy Commissioner for
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