

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

**Responses to Issues on Section 46
raised by Bills Committee**

This paper provides responses to the issues on the proposed amendments to section 46 raised at the meeting on 26 March 2012.

2. At the meeting on 26 March 2012, in relation to the proposed new section 46(7) to (9), the Administration was asked to consider restricting further the proposed exemption from the secrecy provision under section 46 to which the Privacy Commissioner for Personal Data (“PCPD”) is subject to or providing further safeguards by, for example:

- (a) including a schedule in the Personal Data (Privacy) (Amendment) Bill 2011 listing the authorities in jurisdictions outside Hong Kong which had entered into reciprocal agreements with PCPD in information sharing and the relevant agreements; and
- (b) publicising information on cases where PCPD had provided information to authorities in jurisdictions outside Hong Kong under the reciprocal agreements.

3. We have considered the matter and now propose to restrict the proposed exemption and provide safeguards by moving a Committee Stage Amendment to, among other things, permit disclosure to an authority of a place outside Hong Kong to enable or assist that authority in investigation into suspected contravention and enforcement of legal or regulatory requirements concerning personal data privacy only if, among other conditions, there is in force in that place any law which is substantially similar to, or serves the same purposes as, the Personal Data (Privacy) Ordinance.

4. The relevant revised provisions are at Annex.

**Constitutional and Mainland Affairs Bureau
Department of Justice
April 2012**

Annex

46. Commissioner, etc. to maintain secrecy (*amendments to existing provision*)

(7) The Commissioner may, for the purpose of enabling or assisting an authority of a place outside Hong Kong to perform a relevant function of that authority, disclose matters to that authority, if—

- (a) that authority has undertaken to be bound by the secrecy requirements imposed by the Commissioner; and
- (b) 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.

(8) The Commissioner may, for the proper performance of the Commissioner's functions or the proper exercise of the Commissioner's powers under this Ordinance, disclose matters to an authority of a place outside Hong Kong that performs a relevant function, if-

- (a) that authority has undertaken to be bound by the secrecy requirements imposed by the Commissioner; and
- (b) any of the conditions specified in subsection (9) is satisfied.

(8A) In subsections (7) and (8)—

relevant function (有關職能), in relation to an authority of a place outside Hong Kong, means a function relating to investigation into a suspected contravention, and enforcement, of legal or regulatory requirements in that place concerning the protection of privacy of individuals in relation to personal data.

(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.