

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

**Response to Submission of
the Hong Kong Bar Association**

On 18 May 2012, the Hong Kong Bar Association (“HKBA”) made a submission on a few proposed Committee Stage Amendments to the Personal Data (Privacy) (Amendment) Bill 2011 set out in LC Paper No. CB(2) 1864/11-12(01) and LC Paper No. CB(2) 1788/11-12(01). Our responses are at Annex.

**Constitutional and Mainland Affairs Bureau
May 2012**

Annex

Section No.	HKBA's Views	Responses of Constitutional and Mainland Affairs Bureau
New sections 35D(1) and 35J(4)	- HKBA considers that while “readability” is capable of an objective determination, it would be rather difficult to decide objectively if information is “easily understandable”. It calls into question the literacy skills of both the author and the reader, and where courts are called upon to decide on this question, there is the undesirable likelihood of a variety of standards.	- It is likely that the court will apply the same “reasonable man test” when deciding whether the information is “easily readable” and “easily understandable”.
Section 26 and new sections 35G(5), (6) and 35L(7), (8)	- HKBA suggests that given the terms of the defences in new sections 35G and 35L (i.e. 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), consideration should be given to revising the proposed amendment to section 26(2)(a) to require a data user to “take all <u>reasonably</u> practicable steps to”.	- Under section 2 of the Personal Data (Privacy) Ordinance, “practicable” means “reasonably practicable”.
New section 64	- HKBA considers that the references to a similar expression used in section 2(1) of the Organized and Serious Crimes Ordinance (Cap. 455) and Schedule 1 to the Child Abduction and Custody Ordinance (Cap. 512) are not entirely helpful and that the use of the vague expression “psychological harm” as an element of offence with serious penal consequences is inappropriate. HKBA also points out that since the provision does not require proof of intention to cause “psychological harm”, that is all the more reason for it to be properly defined.	- Psychological harm is a term which is not uncommonly used and it is more likely than not that expert evidence will be relied on to prove whether the disclosure of information has caused psychological harm.