

LEGISLATIVE COUNCIL BRIEF

Personal Data (Privacy) Ordinance
(Chapter 486)

PERSONAL DATA (PRIVACY) (AMENDMENT) BILL 2021

INTRODUCTION

At the meeting of the Executive Council on 13 July 2021, the Council ADVISED and the Chief Executive ORDERED that the Personal Data (Privacy) (Amendment) Bill 2021 (“**the Bill**”) at **Annex** should be introduced into the Legislative Council so as to (a) criminalise doxxing acts as an offence under the Personal Data (Privacy) Ordinance; (b) empower the Privacy Commissioner for Personal Data (“**Commissioner**”) to carry out criminal investigations and institute prosecution; (c) confer on the Commissioner statutory powers to serve notices to demand actions to cease or restrict disclosure of doxxing contents (“**cessation notices**”) and apply for injunctions; and (d) make a consequential amendment to the Administrative Appeals Board Ordinance to allow for appeals against the Commissioner’s decision to serve a cessation notice.

JUSTIFICATIONS

Existing Regulatory Regime

2. Despite the Government and the Office of the Privacy Commissioner for Personal Data’s (“**PCPD**”) proactive efforts in carrying out enforcements under the Personal Data (Privacy) Ordinance (Cap. 486) (“**PDPO**”), the offences under the existing section 64 of the PDPO regulate disclosure of personal data obtained from a data user¹ without the data user’s consent and is not intended for addressing the doxxing acts committed in recent years. Specifically, sections 64(1) and (2) of the existing PDPO provides that:

*“(1) A person commits an offence if the person discloses any personal data of a data subject **which was obtained from a data user without the data user’s consent, with an intent**—*

¹ A data user is defined as a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data.

(a) *to obtain gain in money or other property, whether for the benefit of the person or another person; or*

(b) *to cause loss in money or other property to the data subject.*

(2) *A person commits an offence if—*

(a) *the person discloses any personal data of a data subject **which was obtained from a data user without the data user’s consent**; and*

(b) *the disclosure causes psychological harm to the data subject.”*
[emphasis added]

3. One of the conviction thresholds of the above offences is “without the data user’s consent”, covering circumstances such as improper disclosure of the medical record of a data subject² without the consent of the hospital as a data user. At present, the personal data involved in doxxing cases is often dispensed and reposted repeatedly on online platforms, making it extremely difficult if not impossible for the PCPD or the Police to trace the sources of the doxxing contents and ascertain the identity of the data users concerned or whether the personal data concerned is obtained from the data user “without the data user’s consent”. Therefore, the PCPD or Police is often unable to take further follow-up actions under section 64 of the existing PDPO.

4. Separately, while the PCPD has requested the online platforms to remove web links related to doxxing contents and some online platforms have complied with PCPD’s requests, such requests are not mandatory from the legal perspective. As a result, only about 70% of such links to doxxing contents have been removed. It is considered necessary to amend the PDPO to provide the PCPD with the statutory power to demand cessation of disclosure of doxxing contents.

OTHER OPTIONS

5. Legislative amendment is the only way to criminalise doxxing acts and provide the Commissioner with statutory powers to carry out criminal investigations and institute prosecution, as well as to serve cessation notices and apply for injunctions.

THE BILL

6. Major aspects of the Bill are as follows -

(I) Create offences to curb doxxing acts

7. We propose replacing the existing offence under section 64(2) of the PDPO³

² A data subject is defined as the individual who is the subject of the data.

³ We do not propose to amend the existing section 64(1) of the PDPO. The reason is section 64(1)

by two new offences under a two-tier structure. The first tier offence is a summary offence for disclosing personal data without the data subject's consent (instead of data user's consent as in the existing section 64(2) of the PDPO), and the discloser has an intent or is being reckless as to the causing of any specified harm to the data subject or any family member of the data subject by that disclosure. The second tier offence is an indictable offence, which is committed if specified harm is caused to the data subject or his or her family member as a result of disclosure of personal data. The indictable offence has a heavier penalty under the two-tier structure. The aim of the new offences is not only to protect the data subject, but also to offer protection to any family member of the data subject. Proposed provisions are under the **new sections 64(3A) to (3D)**.

8. To reflect the severity of doxxing cases, we propose any person who commits the second tier doxxing offence (**new section 64(3C)**) is liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 5 years. Any person who commits the first tier doxxing offence (**new section 64(3A)**) is liable on summary conviction to a fine at level 6 (i.e. \$100,000) and to imprisonment for 2 years. To expedite the handling of doxxing cases, the Commissioner will be vested with new powers to prosecute certain offences triable summarily in the Magistrates' Courts (**new section 64C**).

9. The existing defences available to the person charged for an offence under section 64 of the PDPO will remain intact (**section 64(4)**⁴), save for a consequential change to cover "data subject" in section 64(4)(c) of the PDPO, and, for clarify sake, a technical amendment to section 64(4)(d)(i)⁵ of the PDPO to echo with the wordings in the injunction against doxxing acts targeted at the Police. No amendment will be made to section 61 of the PDPO on news activity.

(II) Empower the Commissioner to carry out criminal investigation and institute prosecution

10. The PCPD currently lacks criminal investigation and prosecution powers in handling criminal cases under the PDPO, and has to refer all such cases to the Police,

covers a completely different scenario where personal data is disclosed "without data user's consent", e.g. where an employee of a data company (a data user) obtains personal data of the company's customers without the consent of the company for sale to third parties.

⁴ PDPO section 64(4): in any proceedings for an offence under subsection (1) or (2), it is a defence for the person charged to prove that – (a) the person reasonably believed that the disclosure was necessary for the purpose of preventing or detecting crime; (b) the disclosure was required or authorised by or under any enactment, by any rule of law or by an order of a court; (c) the person reasonably believed that the data user had consented to the disclosure; or (d) the person – (i) disclosed the personal data for the purpose of a news activity as defined by section 61(3) or a directly related activity; and (ii) had reasonable grounds to believe that the publishing or broadcasting of personal data was in the public interest.

⁵ Amendments to section 64(4)(d) in **bold font**– it is a defence for a person charged under section 64 offence to prove that the person (i) disclosed the personal data **solely** for the purpose of a **lawful** news activity as defined by section 61(3) or a directly related activity; and (ii) had reasonable grounds to believe that the publishing or broadcasting of the personal data was in the public interest.

and to the Department of Justice (“**DoJ**”) to institute prosecution. To step up enforcement against the doxxing offences, we propose adding new provisions to empower the Commissioner to carry out criminal investigation (**new sections 66D, 66G and 66H**) and institute prosecution for summary offences under the amended section 64 of the PDPO as well as certain relevant offences in the Magistrates’ Courts (**new section 64C**). Depending on the severity of the cases, the Commissioner will decide whether to exercise the prosecution power in his or her own name, or refer more serious cases or cases involving suspected commission of other offences to the Police or the DoJ for following up.

11. On criminal investigation powers, we propose that the Commissioner may request relevant documents, information or things from any person, or require any person to answer relevant questions to facilitate an investigation into certain offences (including offences under the amended section 64 of the PDPO) (“**specified investigation**”) (**new section 66D**). It will be an offence for the person to (a) without reasonable excuse fail to comply with the Commissioner’s request for documents, information or things (**new section 66E(1)**); or (b) with intent to defraud, fail to comply with such a request, or give any answer or make any statement that is false or misleading (**new section 66E(5)**)⁶. The Commissioner (or a person authorized by the Commissioner) will also be able to stop, search and arrest a person without warrant, if the person is reasonably suspected to have committed certain offences (including offences under the amended section 64 of the PDPO) (**new section 66H**). Providing the Commissioner with such criminal investigation and arrest powers will effectively expedite the handling of doxxing-related cases by the PCPD.

12. In addition, to ensure the Commissioner will be able to investigate doxxing-related cases effectively, we consider that the Commissioner should be empowered to apply for a warrant to enter and search premises and seize materials for the purposes of a specified investigation (**new sections 66G(1) and (2)**). The Commissioner may also apply for a warrant to access and search (and decrypt information stored in) an electronic device, such as a mobile phone (**new sections 66G(1) and (3)**). In urgent circumstances where it is not reasonably practicable to obtain such warrant, the Commissioner may access an electronic device without a warrant (**new section 66G(8)**). It will also be an offence for a person without lawful excuse to obstruct, hinder or resist the persons who exercise (or assist in the exercise of) the powers under the warrant, or the powers to stop, search and arrest persons (**new section 66I(1)**)⁷.

13. The above proposal can streamline the PCPD’s handling of doxxing cases starting off with criminal investigation, and collection of evidence and through to taking prosecution action, without the need to refer the cases to the Police, or the DoJ to institute prosecution, which would greatly help expedite enforcement actions against doxxing cases.

⁶ A person who commits an offence under the new section 66E(1) is liable on summary conviction to a fine at level 5 (i.e. \$50,000) and to imprisonment for 6 months, or on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year. A person who commits an offence under the new section 66E(5) is liable on summary conviction to a fine at level 6 (i.e. \$100,000) and to imprisonment for 6 months, or on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years.

⁷ A person who commits an offence under the new section 66I(1) is liable on conviction to a fine at level 3 (i.e. \$10,000) and to imprisonment for 6 months.

(III) Confer on the Commissioner statutory powers to demand the cessation of doxxing contents

14. With the advancement of technology, doxxing contents can be spread and reposted in a click. It is therefore necessary to wipe out the doxxing contents in an expeditious manner.

15. We propose the Commissioner may serve a cessation notice where there is a disclosure of personal data without the data subject's consent, the discloser has an intent or is being reckless as to the causing of any specified harm to the data subject or any family member of the data subject by that disclosure, and the data subject is a Hong Kong resident or is present in Hong Kong when the disclosure is made. Given the boundless nature of the Internet, an extra-territorial effect is also introduced such that a cessation notice can be served by the Commissioner regardless of whether the disclosure is made in Hong Kong or not (**new section 66K**). To ensure cessation actions are taken, a cessation notice may be served on a person in Hong Kong (e.g. an individual in Hong Kong and an internet service provider having a place of business in Hong Kong) or, in relation to an electronic message, a service provider outside Hong Kong (e.g. an overseas social media platform) that is able to take a cessation action. A cessation notice will require cessation actions to be taken within a designated timeframe to reflect the urgency of doxxing cases. The Commissioner will identify in the cessation notice the concerned doxxing content, notify the person what specific cessation actions to take for removal of the doxxing content, as well as the deadline for complying with the cessation notice, etc. (**new section 66M**). If the person who receives the cessation notice fails to comply with the notice, that person commits an offence unless the person can establish a defence (e.g. a reasonable excuse for such failure) (**new section 66O**)⁸.

16. For a cessation notice, we also propose to set up an appeal mechanism, i.e. an appeal may be made to the Administrative Appeals Board ("AAB") against a cessation notice by any person affected by the notice not later than 14 days after the notice is served⁹. However, the appeal process does not affect the operation of the cessation notice (**new section 66N**) and therefore the person on whom the notice is served must still comply with the notice within the designated timeframe pending AAB's final decision. The Commissioner may cancel the cessation notice by serving a notice in writing (**new section 66M(4)**).

17. Besides, as there have been doxxing acts targeting specific persons or groups in the society, we propose to add a new provision to empower the Commissioner to

⁸ It is an offence to contravene a cessation notice, and we propose to largely model on the penalties for the contravention of enforcement notice under section 50A of the PDPO, that is (a) on a first conviction – to a fine at level 5 (i.e. \$50,000) and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$1,000 for every day during which the offence continues; and (b) on each subsequent conviction – to a fine at level 6 (\$100,000) and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.

⁹ The appeal mechanism of cessation notice is similar to the appeal mechanism against the Commissioner's enforcement notices under the existing section 50 of the PDPO.

apply to the court for injunctions. In practice, an injunction may be useful if there are or are likely to be large-scaled or repeated commissions of offences under section 64 of the PDPO in the society. Such injunction is an act of precaution to prevent the future recurrence of doxxing incidents targeted at specific persons or groups (**new section 66P**).

LEGISLATIVE TIMETABLE

18. The legislative timetable will be –

Publication in the Gazette	16 July 2021
First reading and commencement of Second reading debate	21 July 2021
Resumption of Second reading debate, committee stage and Third reading	To be notified

IMPLICATIONS OF THE PROPOSAL

19. The proposal has no civil service, economic, productivity, family, gender, environmental and sustainability implications. It is also in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the binding effect of the existing legislation.

20. As for financial implications, the PCPD will deploy internal resources to handle the additional workload arising upon passage of the Bill. The PCPD has also applied for additional resources supported by relevant justifications according to the established mechanism.

PUBLIC CONSULTATION

21. We have consulted the Legislative Council Panel on Constitutional Affairs on 17 May 2021. Members are largely supportive of our proposed amendments to the PDPO. Some Panel members felt strongly that the threshold of “the disclosure causes psychological harm” would be hard to be established and should be taken out as it would add to the difficulties of prosecution. We have therefore introduced the two-tier doxxing offences, with the threshold of “the disclosure causes psychological harm” removed for the summary offence, to correspond to a lower penalty level of up to a fine at level 6 (i.e. \$100,000) and imprisonment to 2 years (**new sections 64(3A) and (3B)**). Also, in the case of an electronic message, Panel members sought assurance that the cessation notices may cover blocking of access to overseas websites with doxxing content. In this regard, the Bill allows, a cessation notice to be served on a person in Hong Kong (e.g. an individual in Hong Kong and an internet service provider having a place of business in Hong Kong) setting out the cessation action (e.g. blocking access to overseas websites with doxxing content by an internet service provider if necessary)

or on a service provider outside Hong Kong (e.g overseas social media platforms) that is able to take a cessation action (**new section 66M**).

22. The PCPD also consulted the Personal Data (Privacy) Advisory Committee on 25 May 2021, as well as the Standing Committee on Technology Developments on 3 June 2021. Members of the two Committees are also supportive of amending the PDPO to combat doxxing. The PCPD also exchanged views with the Asia Internet Coalition. While the Coalition agreed that doxxing is a matter of serious concern and that it is necessary to combat doxxing in order to protect personal data privacy, it urged the Government to define doxxing clearly in the Bill and consider the possible legal liability of employees of Hong Kong subsidiaries or offices of overseas intermediaries in future.

PUBLICITY

23. We will issue a press release, and a spokesperson will be available to handle enquiries. Publicity and education efforts will be stepped up to promote public awareness on the new doxxing offence and the need to comply with the cessation notice. In this connection, PCPD will use TV API, radio API, posters, pamphlets with infographics, etc. to promote the legislative amendments.

BACKGROUND

24. The Government has repeatedly indicated its commitment to combatting doxxing acts. As announced by CE at the Legislative Council Q&A session on 4 February 2021, the Government aims to complete the drafting of the PDPO legislative amendments and introduce the Bill for Legislative Council's scrutiny within this legislative year.

ENQUIRIES

25. Enquires related to this brief can be directed to Mr Jacky LUM, Principal Assistant Secretary for Constitutional and Mainland Affairs, at 2810 2681.

Constitutional and Mainland Affairs Bureau
14 July 2021

Personal Data (Privacy) (Amendment) Bill 2021

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A BILL

To

Amend the Personal Data (Privacy) Ordinance to amend and create offences for disclosing personal data without consent; to confer on the Privacy Commissioner for Personal Data investigative and enforcement powers for those offences and related matters, including powers to require provision of materials and assistance, to enter and search premises, to access and search electronic devices, to stop, search and arrest persons, to serve cessation notices and to apply for injunctions; to enable the Commissioner to prosecute certain offences in the Commissioner's name; and to provide for related matters and minor amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Personal Data (Privacy) (Amendment) Ordinance 2021.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendments to Personal Data (Privacy) Ordinance (Cap. 486)

3. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *investigation*, after “means”—

Add

“(except in Part 9A)”.

- (2) Section 2(1)—

Add in alphabetical order

“*family member* (家人), in relation to a person, means another person who is related to the person by blood, marriage, adoption or affinity;”.

4. Section 39 amended (restrictions on investigations initiated by complaints)

- (1) Section 39(1)(d)(iii)—

Repeal

“; or”

Substitute a semicolon.

- (2) Section 39(1)(e)—

Repeal

“complaint.”

Substitute

“complaint; or”.

- (3) After section 39(1)(e)—

Add

“(f) the Commissioner is of the opinion that the complaint relates to an offence under section 64(1), (3A) or (3C) and decides to carry out a specified investigation (as defined by section 66C).”.

5. Section 63C amended (emergency situations)

- (1) Section 63C(1)(b), English text—

Repeal

“immediate”.

- (2) Section 63C—

Repeal subsection (2).

6. Section 64 amended (offences for disclosing personal data obtained without consent from data users)

- (1) Section 64, heading—

Repeal

“obtained without consent from data users”

Substitute

“without consent”.

- (2) Section 64—

Repeal subsection (2).

- (3) Section 64(3)—

Repeal

“or (2)”.

- (4) After section 64(3)—

Add

- “(3A) A person commits an offence if the person discloses any personal data of a data subject without the relevant consent of the data subject—
- (a) with an intent to cause any specified harm to the data subject or any family member of the data subject; or
 - (b) being reckless as to whether any specified harm would be, or would likely be, caused to the data subject or any family member of the data subject.
- (3B) A person who commits an offence under subsection (3A) is liable on conviction to a fine at level 6 and to imprisonment for 2 years.
- (3C) A person commits an offence if—
- (a) the person discloses any personal data of a data subject without the relevant consent of the data subject—
 - (i) with an intent to cause any specified harm to the data subject or any family member of the data subject; or
 - (ii) being reckless as to whether any specified harm would be, or would likely be, caused to the data subject or any family member of the data subject; and
 - (b) the disclosure causes any specified harm to the data subject or any family member of the data subject.
- (3D) A person who commits an offence under subsection (3C) is liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 5 years.”.
- (5) Section 64(4)—
- Repeal**

- “subsection (1) or (2), it is a defence for the person charged to prove”
- Substitute**
- “subsection (1), (3A) or (3C), it is a defence for the person charged to establish”.
- (6) Section 64(4)(c)—
- Repeal**
- everything after “believed that”
- Substitute**
- “the disclosure was made with—
- (i) for an offence under subsection (1)—the data user’s consent; or
 - (ii) for an offence under subsection (3A) or (3C)—the relevant consent of the data subject; or”.
- (7) Section 64(4)(d)(i)—
- Repeal**
- “for the purpose of a”
- Substitute**
- “solely for the purpose of a lawful”.
- (8) After section 64(4)—
- Add**
- “(5) A person is taken to have established a matter that needs to be established for the purpose of a defence under subsection (4) if—
- (a) there is sufficient evidence to raise an issue with respect to the matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

(6) In this section—

relevant consent (相關同意), in relation to a data subject, means—

- (a) if the data subject is an individual described in paragraph (a), (b) or (c) of the definition of **relevant person** in section 2(1)—the consent of a relevant person of the individual on the individual’s behalf; or

- (b) otherwise—the consent of the data subject;

specified harm (指明傷害), in relation to a person, means—

- (a) harassment, molestation, pestering, threat or intimidation to the person;
- (b) bodily harm or psychological harm to the person;
- (c) harm causing the person reasonably to be concerned for the person’s safety or well-being; or
- (d) damage to the property of the person.”.

7. Section 64A amended (miscellaneous offences)

- (1) Section 64A(2)(b)—

Repeal

“64(1) or (2)”

Substitute

“64(1), (3A) or (3C)”.

- (2) Section 64A(2)(c), after “Part 6A”—

Add

“or 9A”.

8. Section 64B substituted

Section 64B—

Repeal the section

Substitute

“64B. Prosecution deadline for summary offences

- (1) A prosecution for a summary offence under this Ordinance may only be started before the end of 2 years after the date on which the offence is committed.

Note—

This replaces the time limit under section 26 of the Magistrates Ordinance (Cap. 227).

- (2) In this section—

summary offence (簡易程序罪行) means an offence triable summarily only.”.

9. Section 64C added

After section 64B—

Add

“64C. Prosecution of offences by Commissioner

- (1) The Commissioner may prosecute in the name of the Commissioner—
 - (a) an offence under section 64(1) or (3A), 66E(1) or (5), 66I(1) or 66O(1); or
 - (b) an offence of conspiracy to commit such an offence.
- (2) Any offence prosecuted under subsection (1) must be tried before a magistrate as an offence that is triable summarily.
- (3) This section does not derogate from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.”.

10. Part 9A added

After Part 9—

Add

“Part 9A

**Offences under Section 64 and Related Matters—
Investigations and Enforcement Powers**

Division 1—Interpretation

66C. Interpretation of Part 9A

In this Part—

material (材料) means any document, information or thing;

specified investigation (指明調查) means an investigation into an offence under section 64(1), (3A) or (3C), 66E(1) or (5), 66I(1) or 66O(1).

Division 2—Requirement for Materials and Assistance

66D. Commissioner’s powers to require materials and assistance

- (1) This section applies if the Commissioner reasonably suspects that, in relation to a specified investigation, a person—
 - (a) has or may have possession or control of any material relevant to that investigation; or
 - (b) may otherwise be able to assist the Commissioner in relation to that investigation.

- (2) The Commissioner may, by written notice given to the person, require the person—
 - (a) to provide the Commissioner with any material in the person’s possession or control relating to a matter that the Commissioner reasonably believes to be relevant to the specified investigation;
 - (b) to attend before the Commissioner at a specified time and place, and answer any question relating to a matter that the Commissioner reasonably believes to be relevant to the specified investigation;
 - (c) to answer any written question relating to a matter that the Commissioner reasonably believes to be relevant to the specified investigation;
 - (d) to make a statement relating to a matter that the Commissioner reasonably believes to be relevant to the specified investigation; or
 - (e) to give the Commissioner all the assistance that the Commissioner reasonably requires for the specified investigation.
- (3) A notice under subsection (2) must—
 - (a) be in the specified form;
 - (b) be signed by the Commissioner or a prescribed officer; and
 - (c) indicate the subject matter and purpose of the specified investigation.
- (4) The Commissioner may also specify in the notice—
 - (a) the time and place at which the material is to be provided; and
 - (b) the way and form in which it is to be provided.

- (5) The power under subsection (2)(a) to require a person to provide material includes—
- (a) if the material is recorded otherwise than in a legible form, the power to require the production of its copy—
 - (i) in a visible and legible form; or
 - (ii) in a form from which it can readily be produced in a visible and legible form; and
 - (b) if the material is stored electronically, the power to require the person—
 - (i) to give directions on the operation of the equipment containing the material; and
 - (ii) to provide the appropriate system for reducing the material into a written form on paper.
- (6) The power under subsection (2)(a) to require a person to provide material includes—
- (a) if the material is provided, the power—
 - (i) to make copies of, or to take extracts from, the material;
 - (ii) to retain the material for a period reasonably required for the specified investigation; or
 - (iii) to require the person, or another person whom the Commissioner reasonably believes is able to do so, to give an explanation of, or further particulars about, the material; and
 - (b) if the material is not provided, the power to require the person to state, to the best of the person's knowledge and belief, where it is.
- (7) If the Commissioner exercises the power under subsection (2)(a) to require a person to provide the

Commissioner with an electronic device, the power may only be exercised subject to section 66G.

66E. Offences in relation to section 66D

- (1) A person commits an offence if the person fails to comply with a requirement of a notice given to the person under section 66D(2).
- (2) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction—to a fine at level 5 and to imprisonment for 6 months; or
 - (b) on conviction on indictment—to a fine of \$200,000 and to imprisonment for 1 year.
- (3) It is a defence for a person charged with an offence under subsection (1) to establish that the person had a reasonable excuse for failing to comply with the requirement.
- (4) A person is taken to have established that the person had a reasonable excuse referred to in subsection (3) if—
 - (a) there is sufficient evidence to raise an issue that the person had such a reasonable excuse; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (5) A person commits an offence if the person, with intent to defraud—
 - (a) fails to comply with a requirement of a notice given to the person under section 66D(2); or
 - (b) in purported compliance with such a requirement, provides any material, gives any answer, directions, explanation or particulars, or makes any statement, that is or are false or misleading in a material particular.

- (6) A person who commits an offence under subsection (5) is liable—
 - (a) on summary conviction—to a fine at level 6 and to imprisonment for 6 months; or
 - (b) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 2 years.
- (7) A person is not excused from complying with a requirement of a notice given to the person under section 66D(2) only on the ground that to do so might tend to incriminate the person.

66F. Use of incriminating evidence in proceedings

- (1) Subsection (2) applies if—
 - (a) the Commissioner imposes a requirement on a person to give an answer to a question, to give directions, explanation or particulars, or to make a statement, under section 66D(2);
 - (b) the answer, directions, explanation, particulars or statement (*required matter*) might tend to incriminate the person; and
 - (c) the person claims, before giving or making the required matter, that it might so tend.
- (2) The requirement, question and required matter are not admissible in evidence against the person in criminal proceedings other than those in which the person is charged in respect of the required matter with—
 - (a) an offence under section 66E(5); or
 - (b) an offence under Part V of the Crimes Ordinance (Cap. 200).
- (3) Subsection (2) does not apply if, in the criminal proceedings, evidence relating to the required matter is

adduced, or a question relating to it is asked, by the person who gives or makes the required matter or on that person's behalf.

- (4) On or before imposing a requirement on a person to give or make the required matter under section 66D(2), the Commissioner must ensure that the person is informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement, question and required matter.

Division 3—Powers Exercisable in relation to Premises, Electronic Devices and Suspected Offenders

66G. Powers exercisable in relation to premises and electronic devices

- (1) If a magistrate is satisfied by information on oath by the Commissioner or any prescribed officer that there are reasonable grounds for suspecting—
 - (a) that an offence under section 64(1), (3A) or (3C), 66E(1) or (5), 66I(1) or 66O(1) has been, is being or is about to be committed; and
 - (b) that—
 - (i) there is in any premises any material that is or contains evidence for the purposes of a specified investigation; or
 - (ii) any material that is or contains evidence for the purposes of a specified investigation is stored in an electronic device,

the magistrate may issue a warrant (*warrant*) authorizing the Commissioner or any prescribed officer, together with

- any person (whether or not a police officer) who may be necessary to assist the Commissioner or the prescribed officer so authorized, to exercise the powers referred to in subsection (2) or (3), as the case may be.
- (2) The powers that may be exercised in relation to premises mentioned in subsection (1)(b)(i) are—
- (a) to enter and search the premises (by using any force that is reasonable in the circumstances if necessary);
 - (b) to carry out the specified investigation in the premises; and
 - (c) to seize, remove and detain any material in the premises that the Commissioner or any prescribed officer reasonably suspects to be or to contain evidence for the purposes of the specified investigation.
- (3) The powers that may be exercised in relation to an electronic device mentioned in subsection (1)(b)(ii) are—
- (a) to access the device;
 - (b) to seize and detain the device;
 - (c) to decrypt any material stored in the device;
 - (d) to search for any material stored in the device that the Commissioner or any prescribed officer reasonably suspects to be or to contain evidence for the purposes of the specified investigation (*relevant material*);
 - (e) to reproduce the relevant material in visible and legible form;
 - (f) to reduce the relevant material into a written form on paper; and

- (g) to make copies of, or take extracts from, the relevant material and take away such copies or extracts.
- (4) The warrant must be in the form set out in Part 3 of Schedule 6.
- (5) The warrant continues in force until the expiry of 14 days after the date on which it is issued.
- (6) When powers are exercised under the warrant, a specified person must, without charge, afford facilities and assistance reasonably required by the Commissioner or any prescribed officer for the purposes of the specified investigation.
- (7) When powers are exercised under the warrant, the Commissioner or any prescribed officer must produce the warrant for inspection by a specified person who questions the authority to exercise the powers.
- (8) If the Commissioner or any prescribed officer—
- (a) reasonably suspects that an offence under section 64(1), (3A) or (3C), 66E(1) or (5), 66I(1) or 66O(1) has been, is being or is about to be committed;
 - (b) reasonably suspects that any material that is or contains evidence for the purposes of a specified investigation is stored in an electronic device; and
 - (c) is satisfied that a delay caused by an application for a warrant under subsection (1) is likely to defeat the purpose of accessing the device, or for any reason it is not reasonably practicable to make the application,
- the Commissioner or any prescribed officer may, without warrant, access the device.
- (9) Subsections (1) and (8) do not affect any power that may be exercised under the common law in relation to an

electronic device by a person who has made an arrest (whether or not under section 66H).

- (10) In exercising the power under subsection (8), the Commissioner or prescribed officer must have regard to the safeguards under the common law to protect the privacy of a person in the circumstances in which a power to access an electronic device is exercised.

- (11) In this section—

premises (處所) has the meaning given by section 42(11);

specified person (指明人士) means—

- (a) in the case of a warrant being issued in relation to premises mentioned in subsection (1)(b)(i)—a person in the premises; or
- (b) in the case of a warrant being issued in relation to an electronic device mentioned in subsection (1)(b)(ii)—a person in possession or control of the device.

66H. Powers to stop, search and arrest persons

- (1) An authorized officer may, without warrant, stop, search and arrest any person whom the officer reasonably suspects of having committed an offence under section 64(1), (3A) or (3C), 66E(1) or (5), 66I(1) or 66O(1).
- (2) If any person resists, or attempts to evade, a search or arrest effected under subsection (1), the authorized officer may use any force that is reasonable in the circumstances to effect the search or arrest.
- (3) If an authorized officer has arrested a person (*arrested person*) under subsection (1), the officer may search for and take possession of any thing that—

- (a) may be found on the arrested person or in or about the place at which the person has been arrested; and
- (b) the officer reasonably suspects—
 - (i) is related to the offence for which the person has been arrested; or
 - (ii) may throw light on the character or activities of the person.

- (4) The authorized officer must take the arrested person to—

- (a) an office of the Commissioner for further inquiries; or
- (b) a police station to be dealt with in accordance with the Police Force Ordinance (Cap. 232).

- (5) The authorized officer may require the arrested person to—

- (a) state the person's name and correspondence address; and
- (b) produce the person's proof of identity for inspection.

- (6) The arrested person must not be detained for more than 48 hours after the time the person is arrested without being charged and brought before a magistrate.

- (7) In this section—

authorized officer (獲授權人員) means—

- (a) the Commissioner; or
- (b) a person authorized by the Commissioner for the purposes of this section;

proof of identity (身分證明文件) has the meaning given by section 17B(1) of the Immigration Ordinance (Cap. 115).

66I. Offence in relation to sections 66G and 66H

- (1) A person commits an offence if, when any power is being exercised under section 66G or 66H, the person, without lawful excuse, obstructs, hinders or resists—
 - (a) the Commissioner;
 - (b) a prescribed officer;
 - (c) a person authorized by the Commissioner for the purposes of section 66H; or
 - (d) a person assisting the Commissioner or a prescribed officer.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (3) In criminal proceedings for an offence under subsection (1)—
 - (a) the burden of establishing that a person has a lawful excuse referred to in subsection (1) lies on the person; and
 - (b) the person is taken to have established that the person had such a lawful excuse if—
 - (i) there is sufficient evidence to raise an issue that the person had such a lawful excuse; and
 - (ii) the contrary is not proved by the prosecution beyond reasonable doubt.

Division 4—Cessation Notices**66J. Interpretation of Division 4 of Part 9A**

In this Division—

cessation action (停止披露行動)—see section 66L;

cessation notice (停止披露通知) means a notice served under section 66M(1) or (2);

electronic message (電子訊息) includes—

- (a) a text, voice, sound, image or video message in electronic form; and
- (b) a message in electronic form combining text, voice, sound, images or video;

subject disclosure (標的披露)—see section 66K;

subject message (標的訊息) means a written message or electronic message by means of which a subject disclosure is made (whether or not the message exists in Hong Kong);

written message (書面訊息) includes—

- (a) a text or image message in writing; and
- (b) a message in writing combining text and images.

66K. Meaning of subject disclosure

- (1) For the purposes of this Division, a disclosure (whether or not in Hong Kong) of personal data of a data subject by a person is a subject disclosure if—
 - (a) when the disclosure is made, the data subject—
 - (i) is a Hong Kong resident; or
 - (ii) is present in Hong Kong; and
 - (b) the person discloses the personal data without the relevant consent of the data subject—
 - (i) with an intent to cause any specified harm to the data subject or any family member of the data subject; or

- (ii) being reckless as to whether any specified harm would be, or would likely be, caused to the data subject or any family member of the data subject.

(2) In this section—

relevant consent (相關同意) has the meaning given by section 64(6);

specified harm (指明傷害) has the meaning given by section 64(6).

66L. Meaning of *cessation action*

- (1) For the purposes of this Division, a cessation action, in relation to a subject message, is any action to cease or restrict the subject disclosure made by means of the message, including the removal of the message.
- (2) For subsection (1), a cessation action, in relation to a subject message that is an electronic message, includes an action to—
 - (a) remove the message from the electronic platform on which the message is published (**relevant platform**);
 - (b) cease or restrict access by any person to—
 - (i) the message via the relevant platform;
 - (ii) the part of the relevant platform on which the message is published; or
 - (iii) the whole of the relevant platform; or
 - (c) discontinue the hosting service for—
 - (i) the part of the relevant platform on which the message is published; or
 - (ii) the whole of the relevant platform.
- (3) In this section—

access (接達) includes—

- (a) access that is subject to a pre-condition (including the use of a password);
- (b) access by way of push technology; and
- (c) access by way of a standing request;

carriage service (傳輸服務) means a service for carrying communications by means of guided or unguided electromagnetic energy or both;

electronic platform (電子平台) means a platform for intermediary service that is provided in an electronic system;

Example—

- (a) a website; and
- (b) an online application.

hosting service (主機服務) means a service of hosting stored material that has been posted on an electronic platform where the person who hosts such material, or another person, provides an intermediary service for the platform;

intermediary service (中介服務) means—

- (a) a service that allows end-users to access materials originating from third parties through a carriage service;
- (b) a service of transmitting such materials to end-users through a carriage service; or
- (c) a service of displaying, to an end-user who uses the service to make a search through a carriage service, an index of search results, each of which links that end-user to content hosted or stored at a location that is separate from the location of the index of search results.

66M. Service of cessation notice

- (1) If the Commissioner has reasonable ground to believe that—
 - (a) there is a subject message; and
 - (b) a Hong Kong person is able to take a cessation action (whether or not in Hong Kong) in relation to the message,
 the Commissioner may serve a written notice on the person directing the person to take the cessation action.
- (2) In addition, if the Commissioner has reasonable ground to believe that—
 - (a) there is a subject message that is an electronic message; and
 - (b) a non-Hong Kong service provider is able to take a cessation action (whether or not in Hong Kong) in relation to the message,
 the Commissioner may serve a written notice on the provider directing the provider to take the cessation action.
- (3) The cessation notice must—
 - (a) state the Commissioner's belief mentioned in subsection (1) or (2) and the ground for that belief;
 - (b) identify, in so far as reasonably practicable, the subject message in a way that is sufficient to enable the cessation action to be taken;
 - (c) specify the cessation action that must be taken;
 - (d) specify the date on or before which the cessation action must be taken; and
 - (e) be accompanied by a copy of this section and sections 66N and 66O.

- (4) The Commissioner may cancel a cessation notice by serving a written notice on the person on whom the cessation notice is served.

- (5) In this section—

Hong Kong person (香港人士) means—

- (a) an individual who is present in Hong Kong; or
- (b) a body of persons that—
 - (i) is incorporated, established or registered in Hong Kong; or
 - (ii) has a place of business in Hong Kong;

non-Hong Kong service provider (非港人服務提供者) means a person (not being a Hong Kong person) that has provided or is providing any service (whether or not in Hong Kong) to any Hong Kong person.

66N. Appeal against cessation notice

- (1) Within 14 days after the date on which a cessation notice is served on a person, an appeal may be made to the Administrative Appeals Board against the notice by—
 - (a) that person; or
 - (b) any other person who is affected by the notice.
- (2) The appeal does not affect the operation of the cessation notice.

66O. Offence relating to cessation notice

- (1) If a person on whom a cessation notice is served contravenes the notice, the person commits an offence and is liable—
 - (a) on a first conviction—to a fine at level 5 and to imprisonment for 2 years and, in the case of a

- continuing offence, to a further fine of \$1,000 for every day during which the offence continues; and
- (b) on each subsequent conviction—to a fine at level 6 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$2,000 for every day during which the offence continues.
- (2) It is a defence for a person charged with an offence under subsection (1) in respect of a cessation notice to establish that—
- (a) the person had a reasonable excuse for contravening the cessation notice; or
- (b) without limiting paragraph (a), it was not reasonable to expect the person to comply with the cessation notice—
- (i) having regard to the nature, difficulty or complexity of the cessation action concerned;
- (ii) because the technology necessary for complying with the cessation notice was not reasonably available to the person;
- (iii) because there was a risk of incurring substantial loss to, or otherwise substantially prejudicing the right of, a third party; or
- (iv) because there was a risk of incurring a civil liability arising in contract, tort, equity or otherwise.
- (3) The person is taken to have established a matter that needs to be established for the purpose of a defence under subsection (2) if—
- (a) there is sufficient evidence to raise an issue with respect to the matter; and

- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

Division 5—Injunctions

66P. Injunctions

- (1) The Court of First Instance (*Court*) may, on application by the Commissioner, grant an injunction, in any terms that the Court considers appropriate, if it is satisfied that a person (or any person falling within a category or description of persons) has engaged, is engaging or is likely to engage, in conduct that constitutes an offence under section 64(1), (3A) or (3C).
- (2) The power of the Court to grant an injunction against a person (or any person falling within a category or description of persons) under subsection (1) may be exercised—
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of a kind referred to in that subsection;
- (b) whether or not the person has previously engaged in conduct of that kind; or
- (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (3) If an application is made under subsection (1), the Court may, if it considers it desirable to do so, grant an interim injunction pending the determination of the application.
- (4) The Court may vary or discharge an injunction that it has granted under subsection (1) or (3).

- (5) The Rules of the High Court (Cap. 4 sub. leg. A) apply in relation to an application made to, and an injunction granted by, the Court under this section.

Division 6—Miscellaneous

66Q. Commissioner and others to maintain secrecy

- (1) Subject to subsections (2) and (3), the following person (*person concerned*) must maintain secrecy in respect of any matter that comes to the person's actual knowledge in performing the functions or exercising the powers under this Part—
- (a) the Commissioner;
 - (b) a prescribed officer;
 - (c) a person authorized by the Commissioner for the purposes of section 66H; or
 - (d) a person assisting the Commissioner or a prescribed officer.
- (2) Subsection (1) does not operate to prevent the person concerned from—
- (a) subject to subsection (3), disclosing any matter to any person (including the Secretary for Justice and the Commissioner of Police) if the disclosure is necessary for the proper performance of the Commissioner's functions or the proper exercise of the Commissioner's powers under this Ordinance;
 - (b) disclosing in the course of proceedings—
 - (i) for an offence under this Ordinance; and
 - (ii) before any court or magistrate, any matter relevant to those proceedings;

- (c) reporting evidence of any crime to such authority as the person concerned considers appropriate; or
 - (d) if the person concerned is one mentioned in subsection (1)(a), (b) or (c)—disclosing any matter referred to in subsection (1) that, in the opinion of the person concerned, may be a ground for a complaint by a person (*prospective complainant*) to the prospective complainant.
- (3) Section 46(7), (8), (9) and (10) applies in relation to the matter mentioned in subsection (1).
- (4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

66R. Complainant to be informed of result of specified investigation

After having completed a specified investigation initiated by a complaint, the Commissioner must, in the manner and at the time that the Commissioner considers appropriate, inform the complainant of—

- (a) the result of that investigation; and
- (b) any other matters arising from that investigation that the Commissioner considers appropriate.”.

11. Section 68 amended (service of notices)

- (1) Section 68(a)(ii), after “Hong Kong”—
- Add**
- “or elsewhere”.
- (2) Section 68(a)(iii)—
- Repeal**

“; or”

Substitute

“or elsewhere;”.

- (3) Section 68(a)(iv)—

Repeal the semicolon

Substitute

“or elsewhere; or”.

- (4) After section 68(a)(iv)—

Add

“(v) sent by electronic mail transmission to the individual’s last known electronic mail address, or by any similar method of electronic transmission to the individual;”.

- (5) Section 68(b)(ii), after “Hong Kong”—

Add

“or elsewhere”.

- (6) Section 68(b)(iii)—

Repeal

“; or”

Substitute

“or elsewhere;”.

- (7) Section 68(b)(iv)—

Repeal the semicolon

Substitute

“or elsewhere; or”.

- (8) After section 68(b)(iv)—

Add

“(v) sent by electronic mail transmission to the company’s last known electronic mail address, or by any similar method of electronic transmission to the company;”.

12. Sections 74 and 75 added

Before Schedule 1—

Add

“74. Use of forms in Schedule 6

A warrant required to be in a form set out in Schedule 6 may be in a form to the like effect with such modifications or variations as the circumstances may require.

75. Transitional provision for Personal Data (Privacy) (Amendment) Ordinance 2021

- (1) The pre-amended Ordinance continues to apply in relation to an offence under section 64(1) or (2) of the pre-amended Ordinance committed before the commencement date as if the 2021 Amendment Ordinance had not been enacted.

- (2) In this section—

2021 Amendment Ordinance (《2021 年修訂條例》) means the Personal Data (Privacy) (Amendment) Ordinance 2021 (of 2021);

commencement date (生效日期) means the commencement date of the 2021 Amendment Ordinance;

pre-amended Ordinance (《原有條例》) means this Ordinance as in force immediately before the commencement date.”.

13. Schedule 6 amended

- (1) Schedule 6—

Repeal**“Schedule 6**[ss. 42(6), (7) & (11) &
71]”**Substitute****“Schedule 6**[ss. 42(6), (7) & (11),
66G, 71 & 74]**Forms of Warrants”.**

- (2) Schedule 6, Part 1—

Repeal

“upon oath/declaration*”

Substitute

“on oath/by affirmation*”.

- (3) Schedule 6, Part 1—

Repeal

“19”.

- (4) Schedule 6, Part 2—

Repeal

“upon oath/declaration*”

Substitute

“on oath/by affirmation*”.

- (5) Schedule 6, Part 2—

Repeal

“19”.

- (6) Schedule 6, after Part 2—

Add**“Part 3****Warrant Authorizing Exercise of Powers in
relation to Premises or Electronic Device for
Specified Investigation**To the Privacy Commissioner for Personal Data/..... ,
a prescribed officer*

Having been satisfied by information on oath/by affirmation* that there are reasonable grounds for suspecting that an offence under section 64(1), (3A) or (3C), 66E(1) or (5), 66I(1) or 66O(1) of the Personal Data (Privacy) Ordinance (Cap. 486) has been, is being or is about to be committed, and that there is material that is or contains evidence for the purposes of a specified investigation as defined by section 66C of that Ordinance in the premises at
 [address
 of the premises]/stored in an electronic device described as follows: [description
 of the electronic device]*:

YOU ARE HEREBY AUTHORIZED, together with any person (whether or not a police officer) who may be necessary to assist you, to exercise the powers referred to in section 66G(2)/66G(3)* of that Ordinance in relation to the premises/electronic device*, provided that those powers are exercised before the expiry of 14 days after the date on which this warrant is issued.

Dated this day of

.....
(Signature) Magistrate

* Delete whichever is inapplicable.”.

Part 3

Consequential Amendments to Administrative Appeals Board Ordinance (Cap. 442)

14. Schedule amended

(1) The Schedule, item 29, column 3, paragraph (f)—

Repeal the full stop

Substitute a semicolon.

(2) The Schedule, item 29, column 3, after paragraph (f)—

Add

“(g) to serve a cessation notice under section 66M.”.

Explanatory Memorandum

The main object of the Bill is to amend the Personal Data (Privacy) Ordinance (Cap. 486) (*Ordinance*) to—

- (a) amend and create offences for disclosing personal data without consent;
 - (b) confer on the Privacy Commissioner for Personal Data (*Commissioner*) investigative and enforcement powers for those offences and related matters, including powers to require provision of materials or assistance, to enter and search premises, to access and search electronic devices, to stop, search and arrest persons, to serve cessation notices and to apply for injunctions; and
 - (c) enable the Commissioner to prosecute certain offences in the Commissioner's name.
2. Clause 1 sets out the short title.
3. Clause 6 amends section 64 of the Ordinance to replace the existing offence under section 64(2) of the Ordinance by 2 new offences. One of them is a summary offence for disclosing personal data without the data subject's consent with an intent to cause certain harm, or recklessness as to whether certain harm would be or likely be caused, to the data subject or his or her family member. If such harm occurs as a result of the disclosure, the disclosure constitutes an indictable offence.
4. Clause 9 adds a new section 64C to the Ordinance to enable the Commissioner to prosecute certain offences in the name of the Commissioner.
5. Clause 10 adds a new Part 9A to the Ordinance (*new Part 9A*) to provide for investigations into the offences under section 64 of the Ordinance and certain offences under the new Part 9A (*specified*

investigations) and enforcement powers for those offences and related matters.

6. Division 2 of the new Part 9A (new sections 66D to 66F of the Ordinance) empowers the Commissioner to require a person to provide materials, answer questions or give assistance for the purposes of a specified investigation, and provides for related matters (including creating related offences).
7. Division 3 of the new Part 9A (new sections 66G to 66I of the Ordinance) provides for certain powers (including those of entry, access, search and seizure) exercisable in relation to premises and electronic devices. The Division also provides for the powers to stop, search and arrest persons, and creates a related offence.
8. Division 4 of the new Part 9A (new sections 66J to 66O of the Ordinance) empowers the Commissioner to serve a cessation notice if the Commissioner has reasonable ground to believe that there is a written or electronic message by which personal data is disclosed without the data subject's consent in some circumstances, and that a certain person (which may be a service provider outside Hong Kong in the case of an electronic message) is able to take action to cease or restrict such disclosure. The decision to serve a cessation notice is subject to appeal to the Administrative Appeals Board. It is an offence to contravene the cessation notice.
9. Division 5 of the new Part 9A (new section 66P of the Ordinance) enables the Commissioner to apply to the Court of First Instance for an injunction, which may be granted if the Court is satisfied that a person (or any person falling within a category or description of persons) has engaged, is engaging or is likely to engage, in conduct that constitutes an offence under section 64 of the Ordinance.
10. Division 6 of the new Part 9A contains the new section 66Q of the Ordinance, which requires the Commissioner and certain other persons to maintain secrecy, and also the new section 66R of the

Ordinance, which requires a complainant to be informed of the result of the specified investigation.

11. The Bill also contains the following related amendments—

- (a) clause 4 amends section 39 of the Ordinance so that the Commissioner may choose not to carry out an investigation under Part 7 of the Ordinance in response to a complaint if the Commissioner decides to carry out a specified investigation instead;
- (b) clause 8 amends section 64B of the Ordinance to provide that a prosecution for a summary offence under the Ordinance may only be started before the end of 2 years after the date on which the offence is committed;
- (c) clause 11 amends section 68 of the Ordinance to allow service of notices to addresses outside Hong Kong or by electronic transmission;
- (d) clause 12 adds new sections 74 and 75 to the Ordinance to provide for matters relating to the forms of warrants and transitional matters;
- (e) clause 13 amends Schedule 6 to the Ordinance to set out the form of a warrant to be issued for the purposes of the new section 66G of the Ordinance;
- (f) clause 14 amends the Administrative Appeals Board Ordinance (Cap. 442) consequentially.