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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 20 February 2023**

Work of the Office of the Privacy Commissioner for Personal Data

Purpose

This paper summarizes previous discussions held by the Panel on Constitutional Affairs (“the Panel”) regarding the work of the Office of the Privacy Commissioner for Personal Data (“PCPD”).

Background

2. The Office of PCPD is a statutory body responsible for overseeing the enforcement of the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”) which protects the privacy of individuals in relation to personal data. The Office of PCPD is headed by PCPD appointed by the Chief Executive. According to section 5(4) of PDPO, PCPD shall hold office for a period of five years and shall be eligible for reappointment for not more than one further period of five years. Ms Ada CHUNG Lai-ling was appointed in July 2020 as the new PCPD with effect from 4 September 2020 for a term of five years, succeeding Mr Stephen WONG Kai-yi, the former PCPD.

The Personal Data (Privacy) (Amendment) Ordinance 2021

3. In September 2021, the Personal Data (Privacy) (Amendment) Bill 2021 was passed by the Legislative Council (“LegCo”). The Personal Data (Privacy) (Amendment) Ordinance 2021 (“Amendment Ordinance”) came into effect on 8 October 2021. The Amendment Ordinance aims to combat unlawful doxxing acts in three aspects: (1) criminalize doxxing acts as new offences targeting malicious acts of disclosing personal data of the data subject

without his/her consent, with an intent or being reckless as to whether specified harm would be caused to the data subject or his/her family member; (2) empower PCPD to carry out criminal investigations and institute prosecution towards doxxing-related offences; and (3) confer on PCPD statutory powers to serve notices to those who are able to take a cessation action, directing them to cease disclosure of doxxing contents (cessation notices).

Major issues discussed at Panel meetings

4. It is the usual practice of the Panel to receive a briefing by PCPD on the work of the Office of PCPD in each legislative session.¹ The major issues raised at the relevant meetings are summarized below.

Review of the Personal Data (Privacy) Ordinance

5. The Panel expressed the view that the regulation of data protection should be enhanced through amendments to PDPO in the wake of a few major incidents of personal data leakage in late 2018. Members were particularly concerned that there was no mandatory requirement under PDPO for an organization to file data breach notifications whether to the Office of PCPD or to its affected clients.

6. The former PCPD advised that the Office of PCPD had drawn up initial recommendations on the review of PDPO regarding the enhancement of data breach notification arrangements, retention and disposal of personal data by data users, penalties for non-compliance with PDPO, and regulation of data processing activities by data processors (such as cloud service providers), etc. The Administration subsequently embarked on a review and studied possible amendments to be made to PDPO jointly with the Office of PCPD, with a view to strengthening the protection for personal data. In June 2019, PCPD put forward to the Government its preliminary recommendations on PDPO amendments. The Administration then consulted the Panel on the preliminary amendment directions. The proposed directions encompassed issues relating to the definition of personal data, conferring on PCPD criminal investigation and prosecution powers (including enhanced powers to deal with offences like doxxing), instituting a mandatory data breach notification system, empowering PCPD to administer administrative fines and increasing the maximum level of criminal fines, as well as requiring organizational data users to formulate a clear retention policy which should include stipulating the maximum retention period for personal data, etc.

¹ In the 2022 legislative session, the Panel received a briefing by PCPD on an update of the work of the Office of PCPD on 16 May 2022.

7. Members noted that since June 2019, there had been an upsurge of doxxing activities. In order to curb doxxing behaviours more effectively, the Administration in July 2021 submitted to LegCo the Personal Data (Privacy) (Amendment) Bill 2021 which introduced new offences under Cap. 486 as well as new enforcement powers of PCPD as detailed in paragraph 3 above.

8. When the Panel received a briefing by the Secretary for Constitutional and Mainland Affairs on the 2022 Policy Address on 28 October 2022, members enquired about the progress of the Administration's review of PDPO. Members requested the Administration to make necessary amendments as soon as possible in order to develop a digital economy and promote a more effective development and application of big data by the Government and society. The Administration advised that to curb the rampant doxxing problem, PCPD had accorded priority to working on the legislative amendment proposals on combating doxxing acts. In light of the challenges that information technology development posed to personal data protection, the Administration would keep an open mind and, after drawing reference from relevant legislation in other jurisdictions as well as the actual circumstances in Hong Kong, work out the specific legislative amendment proposals with PCPD and introduce them into LegCo for scrutiny to ensure that PDPO would keep up with the times. PCPD advised that the Office of PCPD supported the Government in developing a digital economy, and would fully cooperate with the Government in the PDPO review and continue to offer professional advice to the Government in a timely manner.

Enforcement of the Personal Data (Privacy) (Amendment) Ordinance 2021

9. Members were concerned about the enforcement of the Amendment Ordinance after it had come into operation on 8 October 2021. At the meeting on 16 May 2022, members were informed that from 8 October 2021 to end of April 2022, the Office of PCPD had received a total of 368 complaints relating to the new doxxing offences, which was six times of that before the Amendment Ordinance came into effect. The Office of PCPD had initiated criminal investigation into 66 cases. Besides, the Office of PCPD and the Police had made arrests in seven doxxing-related cases and six persons were arrested. PCPD further advised that the Office of PCPD had issued 689 cessation notices to 13 online platforms, requesting them to remove over 3 500 doxxing messages, and around 80% of such messages had been removed.

10. Members enquired about the difficulties encountered by the Office of PCPD in requiring the online platforms concerned to remove the remaining 20% of the doxxing messages and what further action the Office of PCPD

could take against those uncooperative online platforms. PCPD advised that the Office of PCPD had been closely monitoring the situation through online patrol and, if necessary, had repeatedly issued cessation notices to the platforms concerned to request the removal of doxxing messages. If the online platforms failed to remove the doxxing messages, the Office of PCPD would issue warning letters to the platforms and would also liaise with its overseas counterparts to pursue the matter. PCPD further advised that she was empowered under section 66L introduced by the Amendment Ordinance to request the cessation or restriction of access by any person to the part of the relevant platform on which the doxxing message was published, or the whole of the relevant platform.

11. Members enquired how the Office of PCPD sought removal of doxxing messages from online platforms which were based outside Hong Kong. PCPD advised that pursuant to section 66M introduced by the Amendment Ordinance, she was empowered to serve a cessation notice on a Hong Kong person and/or a non-Hong Kong service provider directing the person or the provider to take cessation action in respect of a doxxing message. Contravention of a cessation notice would constitute a criminal offence. PCPD further advised that as section 66M had an extra-territorial effect, the Office of PCPD would seek assistance and cooperation from its overseas counterparts in ensuring compliance with the cessation notices whenever necessary. The platforms were normally given two working days to remove the doxxing messages.

Public education on privacy protection

12. Some members considered that many of the promotion and education activities conducted by the Office of PCPD could hardly arouse the interest of the general public in personal data protection. They suggested that efforts should be targeted at promoting public awareness of the legal responsibility of doxxing acts and the importance of personal data protection in new and innovative ways.

13. The former PCPD advised that the Office of PCPD had launched new accounts and revamped its page/channel on various social media platforms (e.g. Instagram, Twitter, Facebook and YouTube) in early April 2020, with a view to enhancing the dissemination of updated information on protection of personal data privacy to the general public, particularly the younger generation and those who preferred mobile devices to conventional media channels. Through these platforms, the latest privacy issues of public concern would be explained to the public in a plain language and with the help of visual illustrations and videos.

14. At the meeting on 16 May 2022, members raised concern that many students had fallen victim to cyber-bullying and doxxing activities in schools. They asked whether the amended PDPO outlawed such activities, and called on the Office of PCPD to work with the Education Bureau to review the “Information Literacy for Hong Kong Students” learning framework to include information about the Amendment Ordinance.

15. PCPD advised that it was a criminal offence under the amended PDPO to disclose, with the requisite criminal intent (including recklessness), the personal data (including intimate photos and videos) of a data subject without his/her consent. PCPD further advised that the Office of PCPD had launched a series of publicity and education campaigns to enhance the education sector’s awareness of the Amendment Ordinance, including distributing leaflets and posters, as well as organizing seminars/webinars for students and school principals. The Office of PCPD also launched a mobile game applications design competition, a one-stop online resource platform and educational animations to boost students’ awareness to respect and protect personal data privacy.

Implementation of section 33 of the Personal Data (Privacy) Ordinance

16. Some members expressed grave concern about the slow progress in bringing section 33 of PDPO into operation to regulate the transfer of data outside Hong Kong. PCPD advised that his Office had submitted recommendations to the Government in 2014 and remained in close communication with the Administration on the matter. The Administration explained that the implementation of section 33 could bring about significant and substantive impact on businesses. The Administration had commissioned a consultant to study the compliance measures that data users would have to adopt in order to fulfil the requirements under section 33.

17. At the meeting on 15 May 2017, the Panel received a briefing by the Administration on the preliminary findings of the business impact assessment on the implementation of section 33 of PDPO. Some members relayed the concerns expressed by the industrial and commercial sectors about the potential impacts of the implementation of section 33 of PDPO, especially on small and medium enterprises (“SMEs”), such as the high compliance cost that might be involved as a result of adopting measures to fulfil the requirements under section 33, as well as impacts on their operations and their online business.

18. The Administration advised that the consultant would first consolidate the final business impact assessment report, which was expected to be completed before the end of 2017. The representative of the Office of PCPD

informed members that, upon receipt of the business impact assessment report, the Office of PCPD would study a number of issues relating to section 33 of PDPO, such as the Office of PCPD's mechanism for reviewing and updating the "white list" of jurisdictions with privacy protection standards comparable to that of Hong Kong, whether the industries already subject to stringent regulations could be regarded as having met the requirements of section 33 by means of compliance with the data protection requirements of their regulatory authorities, and the support measures required by SMEs to comply with the relevant requirements. The study would take at least a year's time to complete. The Administration advised that it would then formulate the steps forward in the light of the outcome of the Office of PDPO's study.

19. At the briefing by the former PCPD on 20 April 2020, members were informed that the Office of PCPD engaged a consultant in November 2018 to provide specialist views on the implementation of section 33. The consultant recommended that the Office of PCPD should, amongst others, revise the recommended model clauses in the "Guidance on Personal Data Protection in Cross-border Data Transfer" ("the Guidance"),² in order to enhance practicability and user-friendliness of the Guidance and facilitate organizational data users, including SMEs, to directly adopt the relevant clauses in data transfer agreements according to their business needs. The Office of PCPD had engaged the consultant to also review the Guidance, including to update the recommended model clauses in the Guidance for industries' reference, and to revise the Guidance, including updating the recommended good practices for cross-border data transfer agreements for better protection of personal data.

Recent development

20. PCPD will brief the Panel on an update of the work of the Office of PCPD at the next meeting on 20 February 2023.

Relevant papers

21. A list of relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
15 February 2023

² The Guidance was issued by the Office of PCPD in December 2014 to strengthen privacy protection for cross-border personal data transfer.

**Relevant documents on the Work of
the Office of the Privacy Commissioner for Personal Data**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	15.5.2017 (Item IV)	Agenda Minutes
	14.2.2018 (Item IV)	Agenda Minutes
	18.3.2019 (Item IV)	Agenda Minutes
	20.4.2020 (Item V)	Agenda Minutes
	18.1.2021 (Item IV)	Agenda Minutes
	18.10.2021 (Item II)	Agenda Minutes
	10.2.2022 (Item III)	Agenda Minutes
	16.5.2022 (Item III)	Agenda Minutes
	28.10.2022 (Item III)	Agenda Minutes