
Personal Data (Privacy) (Amendment) Ordinance 2012

Contents

Section	Page
Part 1	
Preliminary	
1. Short title and commencement	A2129
2. Enactments amended	A2129
Part 2	
Amendments to Personal Data (Privacy) Ordinance (Cap. 486)	
Division 1	
Amendments Relating to Provisions on Preliminary Matters	
3. Section 2 amended (Interpretation)	A2131
Division 2	
Amendments Relating to Provisions on Administration	
4. Section 8 amended (Functions and powers of Commissioner).....	A2135
5. Section 11A added	A2137
11A. Immunity.....	A2137

Section	Page
---------	------

Division 3

Amendments Relating to Provisions on Codes of Practice

6.	Section 13 amended (Use of approved codes of practice in proceedings under this Ordinance).....	A2137
----	---	-------

Division 4

Amendments Relating to Provisions on Data User Returns and Register of Data Users

7.	Section 14 amended (Data user returns).....	A2139
8.	Section 14A added	A2141
	14A. Verification of data user returns.....	A2141
9.	Section 15 amended (Register of data users)	A2145

Division 5

Amendments Relating to Provisions on Access to and Correction of Personal Data

10.	Part V, Division 1 heading and section 17A added.....	A2147
-----	---	-------

Division 1

Access to Personal Data

	17A. Interpretation of Part V	A2149
11.	Section 18 amended (Data access request).....	A2149
12.	Section 19 amended (Compliance with data access request)...	A2151
13.	Section 20 amended (Circumstances in which data user shall or may refuse to comply with data access request).....	A2153

Section	Page
14.	Part V, Division 2 heading added A2155

Division 2

Correction of Personal Data

15.	Section 22 amended (Data correction request) A2157
16.	Part V, Division 3 heading added A2159

Division 3

Miscellaneous

17.	Section 26 amended (Erasure of personal data no longer required)..... A2159
-----	---

Division 6

Amendments Relating to Provisions on Matching Procedures and Transfers of Personal Data, etc.

18.	Section 31 amended (Matching procedure request) A2161
19.	Section 32 amended (Determination of matching procedure request) A2161
20.	Section 34 repealed (Use of personal data in direct marketing)..... A2163

Division 7

Addition of Provisions on Sale and Use of Personal Data

21.	Part VIA added..... A2163
-----	---------------------------

Section

Page

Part VIA

Use of Personal Data in Direct Marketing and Provision of Personal Data for Use in Direct Marketing

Division 1

Interpretation

35A. Interpretation of Part VIA..... A2163

Division 2

Use of Personal Data in Direct Marketing

35B. Application..... A2167

35C. Data user to take specified action before using personal data in direct marketing..... A2169

35D. Circumstances under which section 35C does not apply..... A2171

35E. Data user must not use personal data in direct marketing without data subject's consent..... A2175

35F. Data user must notify data subject when using personal data in direct marketing for first time..... A2177

35G. Data subject may require data user to cease to use personal data in direct marketing..... A2179

35H. Prescribed consent for using personal data in direct marketing under data protection principle 3 A2179

Section	Page
---------	------

Division 3

Provision of Personal Data for Use in Direct Marketing

35I.	Application.....	A2181
35J.	Data user to take specified action before providing personal data.....	A2181
35K.	Data user must not provide personal data for use in direct marketing without data subject's consent	A2185
35L.	Data subject may require data user to cease to provide personal data for use in direct marketing	A2187
35M.	Prescribed consent for providing personal data for use in direct marketing under data protection principle 3.....	A2191

Division 8

Amendments to Provisions on Inspections, Complaints and Investigations

22.	Section 39 amended (Restrictions on investigations initiated by complaints).....	A2191
23.	Section 44 amended (Evidence)	A2195
24.	Section 45 amended (Protection of witnesses, etc.).....	A2195
25.	Section 46 amended (Commissioner, etc. to maintain secrecy).....	A2195
26.	Section 47 amended (Persons to be informed of result of inspection or investigation)	A2203

Section	Page
27. Section 48 amended (Reports by Commissioner).....	A2205
28. Section 50 amended (Enforcement notices)	A2205
29. Sections 50A and 50B added	A2209
50A. Offences relating to enforcement notices	A2209
50B. Offences relating to failure to comply with requirements of Commissioner etc.	A2211

Division 9

Amendments to Provisions on Exemptions

30. Section 51A added	A2213
51A. Performance of judicial functions	A2213
31. Section 58 amended (Crime, etc.).....	A2213
32. Section 59 amended (Health).....	A2215
33. Section 59A added	A2217
59A. Care and guardianship of minors	A2217
34. Sections 60A and 60B added	A2219
60A. Self incrimination.....	A2219
60B. Legal proceedings etc.	A2219
35. Sections 63B, 63C and 63D added.....	A2219
63B. Due diligence exercise.....	A2221
63C. Emergency situations.....	A2223
63D. Transfer of records to Government Records Service	A2225

Section	Page
---------	------

Division 10

Amendments Relating to Provisions on Offences and Compensation

36.	Section 64 substituted	A2225
	64. Offences for disclosing personal data obtained without consent from data users	A2227
37.	Sections 64A and 64B added	A2229
	64A. Miscellaneous offences	A2229
	64B. Time limit for laying of information etc.	A2231
38.	Section 66 amended (Compensation).....	A2231
39.	Sections 66A and 66B added	A2231
	66A. Help for aggrieved persons in obtaining information, etc.	A2233
	66B. Commissioner may grant assistance in respect of proceedings.....	A2235

Division 11

Amendments Relating to Provisions in Schedules

40.	Schedule 1 amended (Data protection principles).....	A2239
41.	Schedule 3 amended (Prescribed information).....	A2251
42.	Schedule 5 amended (Prescribed matters).....	A2253

Section Page

Part 3

Related and Consequential Amendments

Division 1

Amendment to District Court Ordinance (Cap. 336)

43.	Section 73F added	A2255
	73F. Rules in relation to jurisdiction under Personal Data (Privacy) Ordinance.....	A2255

Division 2

Amendments to Administrative Appeals Board Ordinance (Cap. 442)

44.	Schedule amended.....	A2261
Schedule	A2263

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 18 OF 2012

L.S.

C. Y. LEUNG
Chief Executive
5 July 2012

An Ordinance to amend the Personal Data (Privacy) Ordinance to provide for the regulation of the sale of personal data and the use of personal data in direct marketing; to create a new offence for the disclosure of personal data obtained without consent; to empower the Privacy Commissioner for Personal Data to assist data subjects in bringing proceedings to seek compensation from data users under the Ordinance; to empower the Commissioner to verify the accuracy of data user returns and to impose certain charges; to give the person appointed to be the Commissioner and persons employed or engaged by the Commissioner immunity from civil liability in respect of certain actions or omissions; to impose a heavier penalty for repeated contravention of enforcement notices and to create a new offence for repeated contravention of the requirements under the Ordinance for which enforcement notices have been served; to introduce new exemptions in respect of certain requirements under the Ordinance; to make new provisions relating to data protection principles; to make technical amendments to improve the operation and presentation of the Ordinance; and to provide for related and consequential matters.

[1 October 2012]

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Personal Data (Privacy) (Amendment) Ordinance 2012.
- (2) Subject to subsection (3), this Ordinance comes into operation on 1 October 2012.
- (3) Sections 20, 21, 38(2), 39 and 43 come into operation on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice published in the Gazette.

2. Enactments amended

- (1) The enactments specified in Parts 2 and 3 are amended as set out in those Parts.
 - (2) The provisions of the Personal Data (Privacy) Ordinance (Cap. 486) set out in an item in column 1 of the Schedule are amended by repealing the words set out in column 2 of that item and substituting the words set out in column 3 of that item.
-

Part 2

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

Division 1

Amendments Relating to Provisions on Preliminary Matters

3. Section 2 amended (Interpretation)

(1) Section 2(1)—

Repeal the definition of *data user return*

Substitute

“*data user return* (資料使用者申報表) means a return submitted to the Commissioner under section 14(4) and, if applicable, corrected under section 14A(5);”.

(2) Section 2(1), English text, definition of *matching procedure*—

Repeal

“are compared”

Substitute

“is compared”.

(3) Section 2(1), definition of *relevant person*—

Repeal paragraph (c)

Substitute

“(c) where the individual is mentally incapacitated within the meaning of section 2 of the Mental Health Ordinance (Cap. 136)—

- (i) a person appointed under section 44A, 59O or 59Q of that Ordinance to be the guardian of that individual; or
 - (ii) if the guardianship of that individual is vested in, or the functions of the appointed guardian are to be performed by, the Director of Social Welfare or any other person under section 44B(2A) or (2B) or 59T(1) or (2) of that Ordinance, the Director of Social Welfare or that other person;”.
- (4) Section 2(1), Chinese text, definition of **諮詢委員會**—

Repeal

“會。”

Substitute

“會；”.

- (5) Section 2(1)—

Add in alphabetical order

“*change notice* (變更通知) means a notice served on the Commissioner under section 14(8) and, if applicable, corrected under section 14A(5);

prescribed information (訂明資訊) means any information specified in Schedule 3;

rule of law (法律規則) means—

- (a) a rule of common law or a rule of equity; or
- (b) customary law;”.

- (6) Section 2—

Repeal subsection (2).

- (7) Section 2(4)—

Repeal

“64(10)”

Substitute

“64”.

Division 2

Amendments Relating to Provisions on Administration

4. Section 8 amended (Functions and powers of Commissioner)

(1) Section 8(1)(f)—

Repeal

“computer”

Substitute

“information”.

(2) After section 8(2)(e)—

Add

“(ea) carry out promotional or educational activities or services; and”.

(3) After section 8(2)—

Add

“(2A) The Commissioner may impose reasonable charges for any promotional or educational activities or services carried out, or any promotional or educational publications or materials made available, by the Commissioner in the course of the performance of the Commissioner’s functions under this Ordinance.”.

(4) Section 8(5), after “data users”—

Add

“and data subjects”.

5. Section 11A added

Part II, after section 11—

Add

“11A. Immunity

- (1) No civil liability is incurred by the person appointed to be the Commissioner under section 5(3) or a prescribed officer in respect of anything done or omitted to be done by the person or officer in good faith in the performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Commissioner or officer under this Ordinance.
- (2) The protection conferred under subsection (1) on any person in respect of anything done or omitted to be done does not in any way affect the civil liability of the Commissioner as a corporation sole for that thing.”.

Division 3

Amendments Relating to Provisions on Codes of Practice

6. Section 13 amended (Use of approved codes of practice in proceedings under this Ordinance)

- (1) Section 13(4), definition of *specified body*, paragraph (b)—

Repeal

“or”.

- (2) Section 13(4), definition of *specified body*, paragraph (c)—

Repeal the full stop

Substitute

“; or”.

- (3) Section 13(4), definition of *specified body*, after paragraph (c)—

Add

“(d) the chairman of the Administrative Appeals Board.”.

Division 4

Amendments Relating to Provisions on Data User Returns and Register of Data Users

7. Section 14 amended (Data user returns)

- (1) Section 14(4)—

Repeal

“data user return”

Substitute

“return”.

- (2) Section 14(5)(b), English text—

Repeal

“be obtained by”.

- (3) Section 14(7), English text—

Repeal

“be obtained by”.

- (4) Section 14(9)(a), after the semicolon—

Add

“and”.

- (5) Section 14(9)(b)—

Repeal

“; and”

Substitute a full stop.

(6) Section 14(9)—

Repeal paragraph (c).

(7) Section 14—

Repeal subsection (10).

(8) At the end of section 14—

Add

“(11) A data user who, in purported compliance with subsection (4) or (8), knowingly or recklessly in a data user return or change notice supplies any information which is false or misleading in a material particular, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.”.

8. Section 14A added

After section 14—

Add

“14A. Verification of data user returns

(1) For the purpose of verifying the accuracy of information in a data user return or change notice, the Commissioner may, by written notice served on any of the persons specified in subsection (2), reasonably require the person—

(a) to provide any document, record, information or thing specified in the written notice; and

(b) to respond in writing to any question specified in the written notice.

- (2) The persons are—
 - (a) the data user; and
 - (b) any other person whom the Commissioner has reasonable grounds to believe may be able to assist in verifying any information in the data user return or change notice.
- (3) A person on whom a notice is served under subsection (1) may refuse to provide any document, record, information or thing, or any response to any question, specified in the notice, if the person is entitled or obliged under any other Ordinance to do so.
- (4) If, having regard to any document, record, information or thing, or any response to any question, provided under subsection (1), the Commissioner has reasonable grounds to believe that any information in a data user return or change notice is inaccurate, the Commissioner may, by written notice, require the data user to correct the information in the data user return or change notice.
- (5) Subject to subsection (3), a person on whom a notice is served under subsection (1) or (4) must comply with the requirement within such reasonable period as is specified in the notice.
- (6) A person who contravenes subsection (5) commits an offence and is liable on conviction to a fine at level 3.
- (7) A person who, in purported compliance with a notice under subsection (1), knowingly or recklessly provides any document, record, information or thing, or any response to any question, which is false or misleading in a material particular, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(8) A data user who, in purported compliance with a notice under subsection (4), knowingly or recklessly in a data user return or change notice supplies any information which is false or misleading in a material particular, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.”.

9. Section 15 amended (Register of data users)

(1) Section 15—

Repeal subsection (1)

Substitute

“(1) The Commissioner must keep and maintain a register of data users who have submitted data user returns, using information in those returns and in any change notices.”.

(2) Section 15(2)(b)—

Repeal

“under section 14(4), such particulars of the information supplied in that return”

Substitute

“, such particulars of the information supplied in that return and any change notice”.

(3) Section 15(3)—

Repeal

“prescribed form”

Substitute

“specified form”.

(4) After section 15(4)—

Add

“(4A) A data user who, in purported compliance with subsection (3) or (4), knowingly or recklessly in a notice submitted to or served on the Commissioner supplies any information which is false or misleading in a material particular, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.”.

(5) After section 15(6)—

Add

“(7) A person who, in a notice served on the Commissioner under subsection (6), supplies any information which is false or misleading in a material particular for the purpose of having the particulars contained in the register relating to that person in that person’s capacity as a data user deleted from the register, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.”.

Division 5

**Amendments Relating to Provisions on Access to and
Correction of Personal Data**

10. Part V, Division 1 heading and section 17A added

Part V, before section 18—

Add

“Division 1

Access to Personal Data

17A. Interpretation of Part V

Without limiting the definition of *relevant person* in section 2(1), in this Part—

relevant person (有關人士), in relation to an individual, also includes a person authorized in writing by the individual to make, on behalf of the individual—

- (a) a data access request; or
- (b) a data correction request.”.

11. Section 18 amended (Data access request)

- (1) Section 18(4), English text—

Repeal

“those data”

Substitute

“the data”.

- (2) After section 18(4)—

Add

“(5) A person commits an offence if the person, in a data access request, supplies any information which is false or misleading in a material particular for the purposes of having the data user—

- (a) inform the person whether the data user holds any personal data which is the subject of the request; and
- (b) if applicable, supply a copy of the data.

- (6) A person who commits an offence under subsection (5) is liable on conviction to a fine at level 3 and to imprisonment for 6 months.”.

12. Section 19 amended (Compliance with data access request)

- (1) Section 19—

Repeal subsection (1)

Substitute

“(1) Subject to subsection (2) and sections 20 and 28(5), a data user must comply with a data access request within 40 days after receiving the request by—

- (a) if the data user holds any personal data which is the subject of the request—

- (i) informing the requestor in writing that the data user holds the data; and
(ii) supplying a copy of the data; or

- (b) if the data user does not hold any personal data which is the subject of the request, informing the requestor in writing that the data user does not hold the data.

- (1A) Despite subsection (1)(b), if—

- (a) a data access request is made to the Hong Kong Police Force as to whether it holds any record of criminal conviction of an individual; and

- (b) it does not hold such record,

it must comply with the request by informing the requestor orally, within 40 days after receiving the request, that it does not hold such record.”.

- (2) Section 19(2), after “(1)”—

Add

“or (1A)”.

- (3) Section 19(3)(b), English text—

Repeal

“data have”

Substitute

“data has”.

- (4) Section 19(3)(c)(iii)(B)(I), English text—

Repeal

“data are”

Substitute

“data is”.

13. Section 20 amended (Circumstances in which data user shall or may refuse to comply with data access request)

- (1) Section 20(1)(c), after “under this”—

Add

“or any other”.

- (2) Section 20(3)(e)—

Repeal

“or”.

- (3) After section 20(3)(e)—

Add

“(ea) the data user is entitled under this or any other Ordinance not to comply with the request; or”.

- (4) After section 20(4)—

Add

“(5) Despite any provision in any relevant Ordinance or its subsidiary legislation in relation to discovery and inspection, in any proceedings under this Ordinance, a specified body—

- (a) may, for the purpose of deciding on the issue as to whether a data user is required or entitled to refuse to comply with a data access request under this section or deciding on any question related to that issue, require the personal data which is the subject of the request to be made available for its inspection; and
- (b) must not require the personal data to be disclosed to any party to the proceedings, whether by discovery or otherwise, unless it has decided that the data user must comply with the request.

(6) In subsection (5)—

proceedings under this Ordinance (根據本條例進行的法律程序) has the same meaning given by section 13(4);

relevant Ordinance (有關條例) means—

- (a) the High Court Ordinance (Cap. 4);
- (b) the District Court Ordinance (Cap. 336); or
- (c) the Administrative Appeals Board Ordinance (Cap. 442);

specified body (指明當局) has the same meaning given by section 13(4).”.

14. Part V, Division 2 heading added

After section 21—

Add

“Division 2

Correction of Personal Data”.

15. Section 22 amended (Data correction request)

(1) Section 22(1)—

Repeal

“subsection”

Substitute

“subsections (1A) and”.

(2) Section 22(1)(b), English text—

Repeal

“data are”

Substitute

“data is”.

(3) After section 22(1)—

Add

“(1A) If a person is a relevant person in relation to an individual only because the person has been authorized in writing by the individual to make a data access request on behalf of the individual, the person is not entitled to make a data correction request.”.

(4) Section 22(3)—

Repeal

“data are”

Substitute

“data is”.

(5) After section 22(3)—

Add

“(4) A person who, in a data correction request, supplies any information which is false or misleading in a material particular for the purpose of having the personal data corrected as indicated in the request, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.”.

16. Part V, Division 3 heading added

After section 25—

Add

“Division 3

Miscellaneous”.

17. Section 26 amended (Erasure of personal data no longer required)

(1) Section 26(1)—

Repeal

“shall”

Substitute

“must take all practicable steps to”.

(2) Section 26(1), English text—

Repeal

“data are”

Substitute

“data is”.

(3) Section 26(1), English text—

Repeal

“data were”

Substitute

“data was”.

(4) Section 26(2)(a)—

Repeal

“shall”

Substitute

“must take all practicable steps to”.

Division 6

Amendments Relating to Provisions on Matching Procedures and Transfers of Personal Data, etc.

18. Section 31 amended (Matching procedure request)

After section 31(3)—

Add

“(4) A data user who, in a matching procedure request made under subsection (1), supplies any information which is false or misleading in a material particular for the purpose of obtaining the Commissioner’s consent to the carrying out of the matching procedure to which the request relates, commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.”.

19. Section 32 amended (Determination of matching procedure request)

After section 32(4)—

Add

“(5) A requestor who contravenes any conditions specified in a notice under subsection (1)(b)(i) commits an offence and is liable on conviction to a fine at level 3.”.

20. Section 34 repealed (Use of personal data in direct marketing)

Section 34—

Repeal the section.

Division 7

Addition of Provisions on Sale and Use of Personal Data

21. Part VIA added

After Part VI—

Add

“Part VIA

**Use of Personal Data in Direct Marketing and
Provision of Personal Data for Use in
Direct Marketing**

Division 1

Interpretation

35A. Interpretation of Part VIA

(1) In this Part—

consent (同意), in relation to a use of personal data in direct marketing or a provision of personal data for use in direct marketing, includes an indication of no objection to the use or provision;

direct marketing (直接促銷) means—

- (a) the offering, or advertising of the availability, of goods, facilities or services; or
 - (b) the solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or other purposes,
- through direct marketing means;

direct marketing means (直接促銷方法) means—

- (a) sending information or goods, addressed to specific persons by name, by mail, fax, electronic mail or other means of communication; or
- (b) making telephone calls to specific persons;

marketing subject (促銷標的), in relation to direct marketing, means—

- (a) any goods, facility or service offered, or the availability of which is advertised; or
- (b) any purpose for which donations or contributions are solicited;

permitted class of marketing subjects (許可類別促銷標的), in relation to a consent by a data subject to an intended use or provision of personal data, means a class of marketing subjects—

- (a) that is specified in the information provided to the data subject under section 35C(2)(b)(ii) or 35J(2)(b)(iv); and
- (b) in relation to which the consent is given;

permitted class of persons (許可類別人士), in relation to a consent by a data subject to an intended provision of personal data, means a class of persons—

- (a) that is specified in the information provided to the data subject under section 35J(2)(b)(iii); and
- (b) in relation to which the consent is given;

permitted kind of personal data (許可種類個人資料), in relation to a consent by a data subject to an intended use or provision of personal data, means a kind of personal data—

- (a) that is specified in the information provided to the data subject under section 35C(2)(b)(i) or 35J(2)(b)(ii); and
- (b) in relation to which the consent is given;

response channel (回應途徑) means a channel provided by a data user to a data subject under section 35C(2)(c) or 35J(2)(c).

- (2) For the purposes of this Part, a person provides personal data for gain if the person provides personal data in return for money or other property, irrespective of whether—
 - (a) the return is contingent on any condition; or
 - (b) the person retains any control over the use of the data.

Division 2

Use of Personal Data in Direct Marketing

35B. Application

This Division does not apply in relation to the offering, or advertising of the availability, of—

- (a) social services run, subvented or subsidized by the Social Welfare Department;
- (b) health care services provided by the Hospital Authority or Department of Health; or
- (c) any other social or health care services which, if not provided, would be likely to cause serious harm to the physical or mental health of—
 - (i) the individual to whom the services are intended to be provided; or
 - (ii) any other individual.

35C. Data user to take specified action before using personal data in direct marketing

- (1) Subject to section 35D, a data user who intends to use a data subject's personal data in direct marketing must take each of the actions specified in subsection (2).
- (2) The data user must—
 - (a) inform the data subject—
 - (i) that the data user intends to so use the personal data; and
 - (ii) that the data user may not so use the data unless the data user has received the data subject's consent to the intended use;
 - (b) provide the data subject with the following information in relation to the intended use—
 - (i) the kinds of personal data to be used; and
 - (ii) the classes of marketing subjects in relation to which the data is to be used; and

- (c) provide the data subject with a channel through which the data subject may, without charge by the data user, communicate the data subject's consent to the intended use.
- (3) Subsection (1) applies irrespective of whether the personal data is collected from the data subject by the data user.
- (4) The information provided under subsection (2)(a) and (b) must be presented in a manner that is easily understandable and, if in written form, easily readable.
- (5) Subject to section 35D, a data user who uses a data subject's personal data in direct marketing without taking each of the actions specified in subsection (2) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.
- (6) In any proceedings for an offence under subsection (5), it is a defence for 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.
- (7) In any proceedings for an offence under subsection (5), the burden of proving that this section does not apply because of section 35D lies on the data user.

35D. Circumstances under which section 35C does not apply

- (1) If, before the commencement date—
 - (a) a data subject had been explicitly informed by a data user in an easily understandable and, if informed in writing, easily readable manner of the intended use or use of the data subject's personal data in direct marketing in relation to a class of marketing subjects;
 - (b) the data user had so used any of the data;

(c) the data subject had not required the data user to cease to so use any of the data; and

(d) the data user had not, in relation to the use, contravened any provision of this Ordinance as in force as at the time of the use,

then section 35C does not apply in relation to the intended use or use, on or after the commencement date, of the data subject's relevant personal data, as updated from time to time, in direct marketing in relation to the class of marketing subjects.

(2) If—

(a) a data subject's personal data is provided to a data user by a person other than the data subject (*third person*); and

(b) the third person has by notice in writing to the data user—

(i) stated that sections 35J and 35K have been complied with in relation to the provision of data; and

(ii) specified the class of marketing subjects in relation to which the data may be used in direct marketing by the data user, as consented to by the data subject,

then section 35C does not apply in relation to the intended use or use by the data user of the data in direct marketing in relation to that class of marketing subjects.

(3) In this section—

commencement date (本部生效日期) means the date on which this Part comes into operation;

relevant personal data (有關個人資料), in relation to a data subject, means any personal data of the data subject over the use of which a data user had control immediately before the commencement date.

35E. Data user must not use personal data in direct marketing without data subject's consent

- (1) A data user who has complied with section 35C must not use the data subject's personal data in direct marketing unless—
 - (a) the data user has received the data subject's consent to the intended use of personal data, as described in the information provided by the data user under section 35C(2)(b), either generally or selectively;
 - (b) if the consent is given orally, the data user has, within 14 days from receiving the consent, sent a written confirmation to the data subject, confirming—
 - (i) the date of receipt of the consent;
 - (ii) the permitted kind of personal data; and
 - (iii) the permitted class of marketing subjects; and
 - (c) the use is consistent with the data subject's consent.
- (2) For the purposes of subsection (1)(c), the use of personal data is consistent with the data subject's consent if—
 - (a) the personal data falls within a permitted kind of personal data; and

- (b) the marketing subject in relation to which the data is used falls within a permitted class of marketing subjects.
- (3) A data subject may communicate to a data user the consent to a use of personal data either through a response channel or other means.
- (4) A data user who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.
- (5) In any proceedings for an offence under subsection (4), it is a defence for 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.

35F. Data user must notify data subject when using personal data in direct marketing for first time

- (1) A data user must, when using a data subject's personal data in direct marketing for the first time, inform the data subject that the data user must, without charge to the data subject, cease to use the data in direct marketing if the data subject so requires.
- (2) Subsection (1) applies irrespective of whether the personal data is collected from the data subject by the data user.
- (3) A data user who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.
- (4) In any proceedings for an offence under subsection (3), it is a defence for 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.

35G. Data subject may require data user to cease to use personal data in direct marketing

- (1) A data subject may, at any time, require a data user to cease to use the data subject's personal data in direct marketing.
- (2) Subsection (1) applies irrespective of whether the data subject—
 - (a) has received from the data user the information required to be provided in relation to the use of personal data under section 35C(2); or
 - (b) has earlier given consent to the data user or a third person to the use.
- (3) A data user who receives a requirement from a data subject under subsection (1) must, without charge to the data subject, comply with the requirement.
- (4) A data user who contravenes subsection (3) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.
- (5) In any proceedings for an offence under subsection (4), it is a defence for 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.
- (6) This section does not affect the operation of section 26.

35H. Prescribed consent for using personal data in direct marketing under data protection principle 3

Despite section 2(3), where a data user requires, under data protection principle 3, the prescribed consent of a data subject for using any personal data of the data subject in direct marketing, the data user is to be taken to have obtained the consent if the data user has not contravened section 35C, 35E or 35G.

Division 3

Provision of Personal Data for Use in Direct Marketing

35I. Application

- (1) This Division does not apply if a data user provides, otherwise than for gain, personal data of a data subject to another person for use by that other person in offering, or advertising the availability, of—
 - (a) social services run, subvented or subsidized by the Social Welfare Department;
 - (b) health care services provided by the Hospital Authority or Department of Health; or
 - (c) any other social or health care services which, if not provided, would be likely to cause serious harm to the physical or mental health of—
 - (i) the individual to whom the services are intended to be provided; or
 - (ii) any other individual.
- (2) This Division does not apply if a data user provides personal data of a data subject to an agent of the data user for use by the agent in carrying out direct marketing on the data user's behalf.

35J. Data user to take specified action before providing personal data

- (1) A data user who intends to provide a data subject's personal data to another person for use by that other person in direct marketing must take each of the actions specified in subsection (2).
- (2) The data user must—

- (a) inform the data subject in writing—
 - (i) that the data user intends to so provide the personal data; and
 - (ii) that the data user may not so provide the data unless the data user has received the data subject's written consent to the intended provision;
 - (b) provide the data subject with the following written information in relation to the intended provision—
 - (i) if the data is to be provided for gain, that the data is to be so provided;
 - (ii) the kinds of personal data to be provided;
 - (iii) the classes of persons to which the data is to be provided; and
 - (iv) the classes of marketing subjects in relation to which the data is to be used; and
 - (c) provide the data subject with a channel through which the data subject may, without charge by the data user, communicate the data subject's consent to the intended provision in writing.
- (3) Subsection (1) applies irrespective of whether the personal data is collected from the data subject by the data user.
 - (4) The information provided under subsection (2)(a) and (b) must be presented in a manner that is easily understandable and easily readable.
 - (5) A data user who provides personal data of a data subject to another person for use by that other person in direct marketing without taking each of the actions specified in subsection (2) commits an offence and is liable on conviction—

- (a) if the data is provided for gain, to a fine of \$1,000,000 and to imprisonment for 5 years; or
 - (b) if the data is provided otherwise than for gain, to a fine of \$500,000 and to imprisonment for 3 years.
- (6) In any proceedings for an offence under subsection (5), it is a defence for 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.

35K. Data user must not provide personal data for use in direct marketing without data subject's consent

- (1) A data user who has complied with section 35J must not provide the data subject's personal data to another person for use by that other person in direct marketing unless—
- (a) the data user has received the data subject's written consent to the intended provision of personal data, as described in the information provided by the data user under section 35J(2)(b), either generally or selectively;
 - (b) if the data is provided for gain, the intention to so provide was specified in the information under section 35J(2)(b)(i); and
 - (c) the provision is consistent with the data subject's consent.
- (2) For the purposes of subsection (1)(c), the provision of personal data is consistent with the data subject's consent if—
- (a) the personal data falls within a permitted kind of personal data;

- (b) the person to whom the data is provided falls within a permitted class of persons; and
 - (c) the marketing subject in relation to which the data is to be used falls within a permitted class of marketing subjects.
- (3) A data subject may communicate to a data user the consent to a provision of personal data either through a response channel or other written means.
- (4) A data user who contravenes subsection (1) commits an offence and is liable on conviction—
 - (a) if the data user provides the personal data for gain, to a fine of \$1,000,000 and to imprisonment for 5 years; or
 - (b) if the data user provides the personal data otherwise than for gain, to a fine of \$500,000 and to imprisonment for 3 years.
- (5) In any proceedings for an offence under subsection (4), it is a defence for 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.

35L. Data subject may require data user to cease to provide personal data for use in direct marketing

- (1) A data subject who has been provided with information by a data user under section 35J(2)(b) may, at any time, require the data user—
 - (a) to cease to provide the data subject's personal data to any other person for use by that other person in direct marketing; and
 - (b) to notify any person to whom the data has been so provided to cease to use the data in direct marketing.

- (2) Subsection (1) applies irrespective of whether the data subject has earlier given consent to the provision of the personal data.
- (3) A data user who receives a requirement from a data subject under subsection (1) must, without charge to the data subject, comply with the requirement.
- (4) If a data user is required to notify a person to cease to use a data subject's personal data in direct marketing under a requirement referred to in subsection (1)(b), the data user must so notify the person in writing.
- (5) A person who receives a written notification from a data user under subsection (4) must cease to use the personal data in direct marketing in accordance with the notification.
- (6) A data user who contravenes subsection (3) commits an offence and is liable on conviction—
 - (a) if the contravention involves a provision of personal data of a data subject for gain, to a fine of \$1,000,000 and to imprisonment for 5 years; or
 - (b) in any other case, to a fine of \$500,000 and to imprisonment for 3 years.
- (7) A person who contravenes subsection (5) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 3 years.
- (8) In any proceedings for an offence under subsection (6) or (7), it is a defence for the data user or person charged to prove that the data user or person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (9) This section does not affect the operation of section 26.

35M. Prescribed consent for providing personal data for use in direct marketing under data protection principle 3

Despite section 2(3), where a data user requires, under data protection principle 3, the prescribed consent of a data subject for providing any personal data of the data subject to another person for use in direct marketing, the data user is to be taken to have obtained the consent if the data user has not contravened section 35J, 35K or 35L.”.

Division 8

Amendments to Provisions on Inspections, Complaints and Investigations

22. Section 39 amended (Restrictions on investigations initiated by complaints)

(1) Section 39(1)—

Repeal

“continue”

Substitute

“decide to terminate”.

(2) Section 39(1)(a)—

Repeal

“continue”

Substitute

“not to terminate”.

(3) Section 39(2)—

Repeal

“continue”.

Substitute

“decide to terminate”.

- (4) Section 39(2)(c)—

Repeal

“faith; or”.

Substitute

“faith;”.

- (5) After section 39(2)(c)—

Add

“(ca) the primary subject matter of the complaint, as shown by the act or practice specified in it, is not related to privacy of individuals in relation to personal data; or”.

- (6) Section 39(3)—

Repeal

“or continue”.

- (7) After section 39(3)—

Add

“(3A) If the Commissioner decides to terminate an investigation initiated by a complaint before its completion, the Commissioner must, as soon as practicable by notice in writing served on the complainant accompanied by a copy of subsection (4), inform the complainant—

(a) of the decision; and

(b) of the reasons for the decision.”.

- (8) Section 39(4)(a)—

Repeal

“specified in a notice under subsection (3)”

Substitute

“or termination specified in a notice under subsection (3) or (3A)”.

- (9) Section 39(4)(b), Chinese text, after “拒絕”——

Add

“或終止而提出”.

23. Section 44 amended (Evidence)

- (1) Section 44(2)(d)(i), English text——

Repeal

“those data were”

Substitute

“that data was”.

- (2) After section 44(9)——

Add

“(10) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.”.

24. Section 45 amended (Protection of witnesses, etc.)

Section 45(1), after “but any”——

Add

“enactment or”.

25. Section 46 amended (Commissioner, etc. to maintain secrecy)

- (1) Section 46(1)——

Repeal

“and (3)”

Substitute

“, (3), (7) and (8)”.

- (2) Section 46(2)—

Renumber paragraphs (a), (b) and (c) as paragraphs (b), (c) and (d) respectively.

- (3) Before section 46(2)(b)—

Add

“(a) subject to subsection (8), disclosing any matter 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;”.

- (4) Section 46(3), English text—

Repeal

“are exempt”

Substitute

“is exempt”.

- (5) Section 46(4)—

Repeal

“The Commissioner shall not publish a report under this Ordinance after completing an inspection or investigation”

Substitute

“If a report is made by the Commissioner on an inspection or investigation, and the report contains personal data, the Commissioner must not publish the report”.

- (6) Section 46(4)(b)(i), English text—

Repeal

“are exempt”

Substitute

“is exempt”.

(7) After section 46(6)—

Add

“(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 (10) is satisfied.

(9) 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.

- (10) 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.
- (11) 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.”.

26. Section 47 amended (Persons to be informed of result of inspection or investigation)

(1) Section 47(2)(d)—

Repeal

“proposes”

Substitute

“has decided”.

(2) After section 47(2)—

Add

“(2A) If the Commissioner decides to serve an enforcement notice on a data user in consequence of an investigation, the Commissioner may serve the notice at the same time when informing the data user of the information relating to the investigation under subsection (2).”.

(3) Section 47(3)(e)—

Repeal

“proposes”

Substitute

“has decided”.

(4) Section 47(3)(f)—

Repeal

“does not propose”

Substitute

“has decided not”.

(5) After section 47(3)—

Add

“(3A) Subsection (3) does not apply if the complainant has withdrawn the complaint.”.

(6) Section 47(4)(a)—

Repeal

“does not propose”

Substitute

“has decided not”.

27. Section 48 amended (Reports by Commissioner)

Section 48(3), English text—

Repeal

“as to the”

Substitute

“as to”.

28. Section 50 amended (Enforcement notices)

(1) Section 50—

Repeal subsection (1)

Substitute

“(1) If, following the completion of an investigation, the Commissioner is of the opinion that the relevant data user is contravening or has contravened a requirement under this Ordinance, the Commissioner may serve on the data user a notice in writing, directing the data user to remedy and, if appropriate, prevent any recurrence of the contravention.

(1A) An enforcement notice under subsection (1) must—

- (a) state that the Commissioner is of the opinion referred to in subsection (1) and the reason for that opinion;
 - (b) specify—
 - (i) the requirement which, in the opinion of the Commissioner, is being or has been contravened; and
 - (ii) the act or omission that constitutes the contravention;
 - (c) specify the steps that the data user must take (including ceasing any act or practice) to remedy and, if appropriate, prevent any recurrence of the contravention;
 - (d) specify the date on or before which the steps must be taken; and
 - (e) be accompanied by a copy of this section.
- (1B) The date specified in subsection (1A)(d) must be a date which is not earlier than the expiry of the period specified in subsection (7) within which an appeal against the notice may be made.”.
- (2) Section 50(2)—
- Repeal**
- “or matter to which”
- Substitute**
- “to which”.
- (3) Section 50(2)—
- Repeal**
- “or matter, as the case may be,”.
- (4) Section 50—

Repeal subsection (3)

Substitute

- “(3) The steps specified in an enforcement notice to remedy and, if appropriate, prevent any recurrence of any contravention to which the notice relates may be framed—
- (a) to any extent by reference to any approved code of practice; and
 - (b) so as to afford the relevant data user a choice between different ways of remedying and, if appropriate, preventing any recurrence of the contravention.”.

29. Sections 50A and 50B added

Part VII, after section 50—

Add

“50A. Offences relating to enforcement notices

- (1) A data user who contravenes an enforcement notice commits an offence and is liable—
 - (a) on a first conviction—
 - (i) to a fine at level 5 and to imprisonment for 2 years; and
 - (ii) if the offence continues after the conviction, to a daily penalty of \$1,000; and
 - (b) on a second or subsequent conviction—
 - (i) to a fine at level 6 and to imprisonment for 2 years; and
 - (ii) if the offence continues after the conviction, to a daily penalty of \$2,000.

- (2) In any proceedings for an offence under subsection (1), it is a defence for the data user charged to show that the data user exercised all due diligence to comply with the enforcement notice.
- (3) A data user who, having complied with an enforcement notice, intentionally does the same act or makes the same omission in contravention of the requirement under this Ordinance, as specified in the enforcement notice under section 50(1A)(b), commits an offence and is liable on conviction—
 - (a) to a fine at level 5 and to imprisonment for 2 years; and
 - (b) if the offence continues after the conviction, to a daily penalty of \$1,000.

50B. Offences relating to failure to comply with requirements of Commissioner etc.

- (1) A person commits an offence if the person—
 - (a) without lawful excuse, obstructs, hinders or resists the Commissioner or a prescribed officer in performing the functions or exercising the powers of the Commissioner or the officer under this Part;
 - (b) without lawful excuse, fails to comply with any lawful requirement of the Commissioner or a prescribed officer under this Part; or
 - (c) in the course of the performance or exercise by the Commissioner or a prescribed officer of functions or powers under this Part—
 - (i) makes to the Commissioner or the officer a statement which the person knows to be false or does not believe to be true; or

(ii) otherwise knowingly misleads the Commissioner or the 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.”.

Division 9

Amendments to Provisions on Exemptions

30. Section 51A added

After section 51—

Add

“51A. Performance of judicial functions

(1) Personal data held by a court, a magistrate or a judicial officer in the course of performing judicial functions is exempt from the provisions of the data protection principles and Parts IV and V and sections 36 and 38(b).

(2) In this section—

judicial officer (司法人員) has the same meaning given by section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92).”.

31. Section 58 amended (Crime, etc.)

(1) Section 58(1), English text—

Repeal

“are exempt”

Substitute

“is exempt”.

(2) Section 58(2), English text—

Repeal

“are exempt”

Substitute

“is exempt”.

(3) Section 58(2)(a), English text—

Repeal

“data are”

Substitute

“data is”.

(4) After section 58(5)—

Add

“(6) In this section—

crime (罪行) means—

(a) an offence under the laws of Hong Kong; or

(b) if personal data is held or used in connection with legal or law enforcement cooperation between Hong Kong and a place outside Hong Kong, an offence under the laws of that place;

offender (犯罪者) means a person who commits a crime.”.

32. Section 59 amended (Health)

(1) Section 59—

Renumber the section as section 59(1).

(2) Section 59(1), English text—

Repeal

“are exempt”

Substitute

“is exempt”.

(3) After section 59(1)—

Add

“(2) Personal data relating to the identity or location of a data subject is exempt from the provisions of data protection principle 3 if the application of those provisions to the data would be likely to cause serious harm to the physical or mental health of—

- (a) the data subject; or
- (b) any other individual.”.

33. Section 59A added

After section 59—

Add

“59A. Care and guardianship of minors

Personal data in relation to a minor transferred or disclosed by the Hong Kong Police Force or Customs and Excise Department to a relevant person of the minor is exempt from the provisions of data protection principle 3 if—

- (a) the purpose of the transfer or disclosure is to facilitate the relevant person to exercise proper care and guardianship of the minor;
- (b) the transfer or disclosure is in the interest of the minor; and
- (c) the application of those provisions in relation to such transfer or disclosure would be likely to prejudice the exercise of proper care and guardianship of the minor by the relevant person or the interest of the minor.”.

34. Sections 60A and 60B added

After section 60—

Add

“60A. Self incrimination

- (1) If, as a result of complying with a request under a provision of data protection principle 6 or section 18(1)(b) in relation to any personal data, a data user might be incriminated in any proceedings for any offence other than an offence under this Ordinance, the data is exempt from that provision or section.
- (2) Information disclosed by a data user in compliance with a request under a provision of data protection principle 6 or section 18(1)(b) is not admissible against the data user in any proceedings for an offence under this Ordinance.

60B. Legal proceedings etc.

Personal data is exempt from the provisions of data protection principle 3 if the use of the data is—

- (a) required or authorized by or under any enactment, by any rule of law or by an order of a court in Hong Kong;
- (b) required in connection with any legal proceedings in Hong Kong; or
- (c) required for establishing, exercising or defending legal rights in Hong Kong.”.

35. Sections 63B, 63C and 63D added

Part VIII, after section 63A—

Add

“63B. Due diligence exercise

- (1) Personal data transferred or disclosed by a data user for the purpose of a due diligence exercise to be conducted in connection with a proposed business transaction that involves—
 - (a) a transfer of the business or property of, or any shares in, the data user;
 - (b) a change in the shareholdings of the data user; or
 - (c) an amalgamation of the data user with another body,is exempt from the provisions of data protection principle 3 if each of the conditions specified in subsection (2) is satisfied.
- (2) The conditions are—
 - (a) the personal data transferred or disclosed is not more than necessary for the purpose of the due diligence exercise;
 - (b) goods, facilities or services which are the same as or similar to those provided by the data user to the data subject are to be provided to the data subject, on completion of the proposed business transaction, by a party to the transaction or a new body formed as a result of the transaction;
 - (c) it is not practicable to obtain the prescribed consent of the data subject for the transfer or disclosure.
- (3) Subsection (1) does not apply if the primary purpose of the proposed business transaction is the transfer, disclosure or provision for gain of the personal data.

- (4) If a data user transfers or discloses personal data to a person for the purpose of a due diligence exercise to be conducted in connection with a proposed business transaction described in subsection (1), the person—
- (a) must only use the data for that purpose; and
 - (b) must, as soon as practicable after the completion of the due diligence exercise—
 - (i) return the personal data to the data user; and
 - (ii) destroy any record of the personal data that is kept by the person.

- (5) A person who contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

- (6) In this section—

due diligence exercise (盡職審查), in relation to a proposed business transaction, means the examination of the subject matter of the transaction to enable a party to decide whether to proceed with the transaction;

provision for gain (為得益而提供), in relation to personal data, means provision of the data in return for money or other property, irrespective of whether—

- (a) the return is contingent on any condition; or
- (b) the person who provides the data retains any control over the use of the data.

63C. Emergency situations

- (1) Personal data is exempt from the provisions of data protection principle 1(3) and data protection principle 3 if the application of those provisions to the data would be likely to prejudice any of the following matters—

- (a) identifying an individual who is reasonably suspected to be, or is, involved in a life-threatening situation;
- (b) informing the individual's immediate family members or relevant persons of the individual's involvement in the life-threatening situation;
- (c) the carrying out of emergency rescue operations or provision of emergency relief services.

(2) In this section—

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

63D. Transfer of records to Government Records Service

Personal data contained in records that are transferred to the Government Records Service is exempt from the provisions of data protection principle 3 when the records are used by the Government Records Service solely for the purpose of—

- (a) appraising the records to decide whether they are to be preserved; or
- (b) organizing and preserving the records.”.

Division 10

Amendments Relating to Provisions on Offences and Compensation

36. Section 64 substituted

Section 64—

Repeal the section

Substitute

“64. Offences for disclosing personal data obtained without consent from data users

- (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—
 - (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.
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine of \$1,000,000 and to imprisonment for 5 years.
- (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 authorized 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 the personal data was in the public interest.”.

37. Sections 64A and 64B added

After section 64—

Add

“64A. Miscellaneous offences

- (1) A data user who, without reasonable excuse, contravenes any requirement under this Ordinance commits an offence and is liable on conviction to a fine at level 3.
- (2) Subsection (1) does not apply in relation to—
 - (a) a contravention of a data protection principle;
 - (b) a contravention that constitutes an offence under section 14(11), 14A(6), (7) or (8), 15(4A) or (7), 18(5), 22(4), 31(4), 32(5), 44(10), 46(11), 50A(1) or (3), 50B(1), 63B(5) or 64(1) or (2); or
 - (c) a contravention of any requirement under Part VIA.

64B. Time limit for laying of information etc.

- (1) Despite section 26 of the Magistrates Ordinance (Cap. 227), a complaint or information in respect of an offence under this Ordinance may be made to or laid before a magistrate within 2 years from the date of commission of the offence.
- (2) Subsection (1) does not apply in relation to the making of any complaint or laying of any information in respect of an offence under this Ordinance which was committed before the commencement date of section 37 of the Personal Data (Privacy) (Amendment) Ordinance 2012 (18 of 2012).”.

38. Section 66 amended (Compensation)

- (1) Section 66(3)(b) and (4), English text—

Repeal

“were inaccurate”

Substitute

“was inaccurate”.

- (2) After section 66(4)—

Add

“(5) Proceedings brought by an individual in reliance on subsection (1) are to be brought in the District Court but all such remedies are obtainable in those proceedings as would be obtainable in the Court of First Instance.”.

39. Sections 66A and 66B added

Part IX, after section 66—

Add

“66A. Help for aggrieved persons in obtaining information, etc.

- (1) With a view to helping a person (*the person aggrieved*) to decide whether to institute proceedings under section 66 and, if the person does so, to formulate and present his or her case in the most effective manner, the Commissioner may prescribe—
 - (a) forms by which the person aggrieved may question the respondent on the respondent's reasons for doing any relevant act, or on any other matter which is or may be relevant; and
 - (b) forms by which the respondent may, if he or she so wishes, reply to any questions.
- (2) If the person aggrieved questions the respondent (whether or not in accordance with a form referred to in subsection (1))—
 - (a) the question and any reply by the respondent (whether or not in accordance with such a form) are, subject to subsections (3), (4) and (5), admissible as evidence in the proceedings; and
 - (b) if it appears to the District Court that the respondent, deliberately and without reasonable excuse, omitted to reply within a reasonable period or that the respondent's reply is evasive or equivocal, the Court may draw any inference from that fact it considers just and equitable to draw.
- (3) The Commissioner may—
 - (a) prescribe the period within which questions must be served in order to be admissible under subsection (2)(a); and
 - (b) prescribe the manner in which a question and any reply by the respondent may be served.

- (4) Rules under the District Court Ordinance (Cap. 336) may empower the District Court entertaining a claim under section 66 to determine, before the date fixed for the hearing of the claim, whether a question or reply is admissible under this section or not.
- (5) This section is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before the District Court, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.
- (6) In this section—
respondent (答辯人) includes a prospective respondent.

66B. Commissioner may grant assistance in respect of proceedings

- (1) A person who may institute proceedings to seek compensation under section 66 may make an application to the Commissioner for assistance in respect of those proceedings.
- (2) The Commissioner must consider an application under subsection (1) and may grant it if the Commissioner thinks fit to do so, in particular if—
 - (a) the case raises a question of principle; or
 - (b) it is unreasonable, having regard to the complexity of the case or the applicant's position in relation to the respondent or another person involved or any other matter, to expect the applicant to deal with the case unaided.
- (3) Assistance by the Commissioner under this section may include—
 - (a) giving advice;

- (b) arranging for the giving of advice or assistance by a solicitor or counsel;
 - (c) arranging for representation by any person, including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings; and
 - (d) any other form of assistance which the Commissioner may consider appropriate.
- (4) Subsection (3)(c) does not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address a court in, any proceedings except to the extent permitted under rules made in accordance with section 73F of the District Court Ordinance (Cap. 336).
- (5) If expenses are incurred by the Commissioner in providing the applicant with assistance under this section, the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by relevant rules) constitutes a first charge for the benefit of the Commissioner—
 - (a) on any costs or expenses which are payable to the applicant by any other person (whether by virtue of a judgment or order of the District Court or an agreement or otherwise) in respect of the matter in connection with which the assistance is given; and
 - (b) on the applicant's rights (so far as those rights relate to any costs or expenses) under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(6) The charge created by subsection (5) is subject to any charge under the Legal Aid Ordinance (Cap. 91) and to any provision in that Ordinance for payment of any sum into the Supplementary Legal Aid Fund established under that Ordinance.

(7) In this section—

relevant rules (《法院規則》) means any rules made under the District Court Ordinance (Cap. 336);

respondent (答辯人) includes a prospective respondent.”.

Division 11

Amendments Relating to Provisions in Schedules

40. Schedule 1 amended (Data protection principles)

(1) Schedule 1, English text, section 1(1)(a) and (c)—

Repeal

“data are”

Substitute

“data is”.

(2) Schedule 1, English text, section 1(3)—

Repeal

“are or are to be collected”

Substitute

“is or is to be collected”.

(3) Schedule 1, English text, section 1(3)(b)(i)(A)—

Repeal

“data are”

Substitute

“data is”.

- (4) Schedule 1, English text, section 1(3)(b)(ii)—

Repeal

“they were”

Substitute

“it was”.

- (5) Schedule 1, section 1(3)(b)(ii)—

Repeal sub-subparagraph (B)

Substitute

“(B) the name or job title, and address, of the individual who is to handle any such request made to the data user.”.

- (6) Schedule 1, English text, section 1(3)—

Repeal

“data were”

Substitute

“data was”.

- (7) Schedule 1, English text, section 1(3)—

Repeal

“are exempt”

Substitute

“is exempt”.

- (8) Schedule 1, English text, section 2(1)(a)—

Repeal

“are accurate”

Substitute

“is accurate”.

- (9) Schedule 1, English text, section 2(1)(a)—

Repeal

“data are or are”

Substitute

“data is or is”.

- (10) Schedule 1, English text, section 2(1)(b)—

Repeal

“are inaccurate”

Substitute

“is inaccurate”.

- (11) Schedule 1, English text, section 2(1)(b)—

Repeal

“the data are or are”

Substitute

“the data is or is”.

- (12) Schedule 1, English text, section 2(1)(b)(i) and (ii)—

Repeal

“the data are”

Substitute

“the data is”.

- (13) Schedule 1, English text, section 2(1)(c)(i)—

Repeal

“are materially inaccurate”

Substitute

“is materially inaccurate”.

(14) Schedule 1, English text, section 2(1)(c)(i)—

Repeal

“the data are or are”

Substitute

“the data is or is”.

(15) Schedule 1, English text, section 2(1)(c)(ii)—

Repeal

“that data were”

Substitute

“that data was”.

(16) Schedule 1, English text, section 2(1)(c)(ii)(A)—

Repeal

“are inaccurate”

Substitute

“is inaccurate”.

(17) Schedule 1, section 2(2)—

Repeal

“Personal data shall not be”

Substitute

“All practicable steps must be taken to ensure that personal data is not”.

(18) Schedule 1, English text, section 2(2)—

Repeal

“the data are or are”

Substitute

“the data is or is”.

(19) Schedule 1, after section 2(2)—

Add

“(3) Without limiting subsection (2), if a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user’s behalf, the data user must adopt contractual or other means to prevent any personal data transferred to the data processor from being kept longer than is necessary for processing of the data.

(4) In subsection (3)—

data processor (資料處理者) means a person who—

- (a) processes personal data on behalf of another person; and
- (b) does not process the data for any of the person’s own purposes.”.

(20) Schedule 1—

ReNUMBER section 3 as section 3(1).

(21) Schedule 1, section 3(1)—

Repeal

everything after “used for”

Substitute

“a new purpose.”.

(22) Schedule 1, after section 3(1)—

Add

“(2) A relevant person in relation to a data subject may, on his or her behalf, give the prescribed consent required for using his or her personal data for a new purpose if—

- (a) the data subject is—

- (i) a minor;
 - (ii) incapable of managing his or her own affairs;
or
 - (iii) mentally incapacitated within the meaning of section 2 of the Mental Health Ordinance (Cap. 136);
 - (b) the data subject is incapable of understanding the new purpose and deciding whether to give the prescribed consent; and
 - (c) the relevant person has reasonable grounds for believing that the use of the data for the new purpose is clearly in the interest of the data subject.
- (3) A data user must not use the personal data of a data subject for a new purpose even if the prescribed consent for so using that data has been given under subsection (2) by a relevant person, unless the data user has reasonable grounds for believing that the use of that data for the new purpose is clearly in the interest of the data subject.
- (4) In this section—
new purpose (新目的), in relation to the use of personal data, means any purpose other than—
- (a) the purpose for which the data was to be used at the time of the collection of the data; or
 - (b) a purpose directly related to the purpose referred to in paragraph (a).”.
- (23) Schedule 1—
Renumber section 4 as section 4(1).
- (24) Schedule 1, section 4(1)—
Repeal

“or other”

Substitute

“, loss or”.

(25) Schedule 1, English text, section 4(1)(b) and (c)—

Repeal

“data are”

Substitute

“data is”.

(26) Schedule 1, after section 4(1)—

Add

“(2) Without limiting subsection (1), if a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user’s behalf, the data user must adopt contractual or other means to prevent unauthorized or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing.

(3) In subsection (2)—

data processor (資料處理者) has the same meaning given by subsection (4) of data protection principle 2.”.

(27) Schedule 1, English text, section 5(c)—

Repeal

“are or are to be”

Substitute

“is or is to be”.

41. Schedule 3 amended (Prescribed information)

(1) Schedule 3—

Repeal

“[s. 14(10)]”

Substitute

“[s. 2]”.

(2) Schedule 3, English text, item 3—

Repeal

“are or are to be”

Substitute

“is or is to be”.

(3) Schedule 3—

Repeal item 6

Substitute

“6. The name or job title, and address, of the individual who is to handle data access requests made to the data user.”.

42. Schedule 5 amended (Prescribed matters)

Schedule 5, item 4(a)—

Repeal

“any”.

Part 3

Related and Consequential Amendments

Division 1

Amendment to District Court Ordinance (Cap. 336)

43. Section 73F added

Part IV, after section 73E—

Add

“73F. Rules in relation to jurisdiction under Personal Data (Privacy) Ordinance

- (1) The Rules Committee may make rules regulating the practice of the Court in the exercise of its jurisdiction under section 66 of the Personal Data (Privacy) Ordinance (Cap. 486) and the forms of proceedings in the Court.
- (2) The power to make rules under subsection (1)—
 - (a) extends to—
 - (i) all matters of procedure or practice; and
 - (ii) matters relating to or concerning the effect or operation in law of any procedure or practice in any case within the cognizance of the Court as to which rules of the High Court have been or might be made for cases within the cognizance of the High Court; and
 - (b) includes the power to make rules—
 - (i) as to proceedings by or against the Government; and

- (ii) as to the persons who may appear in, conduct, defend and address the Court in, any proceedings in the Court.
- (3) Each party to any proceedings in the Court in the exercise of its jurisdiction under section 66 of the Personal Data (Privacy) Ordinance (Cap. 486) bears its own costs unless the Court otherwise orders on the ground that—
 - (a) the proceedings were brought maliciously or frivolously; or
 - (b) there are special circumstances which warrant an award of costs.
- (4) Without limiting subsections (1) and (2), the power to make rules under this section extends to—
 - (a) prescribing the place or places which are to be the venue or venues for proceedings to which this section relates;
 - (b) requiring the judge or judges sitting at such venue or venues to give priority, to such extent as may be specified in the rules, to hearing and disposing of proceedings to which this section relates.
- (5) The Court in the exercise of its jurisdiction under section 66 of the Personal Data (Privacy) Ordinance (Cap. 486)—
 - (a) is not bound by the rules of evidence; and
 - (b) may inform itself on any matter in such manner as it sees fit, with due regard to—
 - (i) the rights of the parties to the proceedings in the Court to a fair hearing;
 - (ii) the need to determine the substantial merits of the case; and
 - (iii) the need to achieve a prompt hearing of the matters at issue between the parties.

- (6) Subject to subsection (5), any rules made in accordance with the provisions of this section may be made so as to modify, with respect to proceedings in the Court, any rule of law or practice as to the proof of any matter or as to the reception or admissibility of any matter in evidence.
- (7) No rule made in accordance with the provisions of this section applies to any proceedings by or against the Government except in so far as it expressly purports so to do.
- (8) It is declared that—
 - (a) subject to paragraph (c), this section—
 - (i) does not of itself operate to prevent the making of any rules—
 - (A) under the provisions of any other section of this Ordinance; and
 - (B) which relate, whether in whole or in part, to the jurisdiction conferred on the Court under the Personal Data (Privacy) Ordinance (Cap. 486); and
 - (ii) does not of itself operate to prevent any rules made under the provisions of any other section of this Ordinance from applying to and in relation to such jurisdiction;
 - (b) where there is any conflict or inconsistency between—
 - (i) any rules made under subsection (2)(b); and
 - (ii) any law and practice regulating the description of persons who may appear in, conduct, defend and address the Court, in any proceedings,

then those rules, to the extent of that conflict or inconsistency, as the case may be, prevail over that law and practice;

- (c) where there is any conflict or inconsistency between any rules made under the provisions of this section and any rules made under the provisions of another section of this Ordinance, then those first-mentioned rules, to the extent of that conflict or inconsistency, as the case may be, prevail over those second-mentioned rules.
- (9) To avoid doubt, it is declared that no rule made in accordance with this section may empower the Court to hear and determine any proceedings involving any claim beyond its jurisdiction.”.

Division 2

Amendments to Administrative Appeals Board Ordinance (Cap. 442)

44. Schedule amended

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

Repeal

“or continue”.

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

Add

“(ca) to terminate under section 39(3A) an investigation initiated by a complaint;”.

Schedule

[s. 2]

Part 1

**Minor Amendments to English Text of Personal Data
(Privacy) Ordinance Relating to “Personal Data”
in Singular Form**

	Section	Repeal	Substitution
1.	2(12)	those data	the data
2.	12(8)	data which are	data which is
3.	23(1)	relates are	relates is
4.	23(1)(a) and (b)	those data	the data
5.	23(1)(c)(i)	those data have	the data has
6.	23(1)(c)(ii)	those data	the data
7.	23(1)(c)(ii)	data were	data was
8.	23(1)(c)	those data as	the data as
9.	23(3)(a)	data are	data is
10.	24(3)(b) and (c)	relates are	relates is
11.	25(2)(a)	relates are	relates is
12.	25(2)(i)(B)	those data	that data
13.	27(2)(b)	relates were	relates was
14.	28(6)(b)	those data	that data
15.	33(2)(e)	data are	data is
16.	51	are exempt	is exempt
17.	51	those data	that data
18.	52	are exempt	is exempt

Personal Data (Privacy) (Amendment) Ordinance 2012

Schedule
Part 1

A2265

Ord. No. 18 of 2012

	Section	Repeal	Substitution
19.	53	consist	consists
20.	53	are exempt	is exempt
21.	54(1) and (2)	are exempt	is exempt
22.	55(1)	are exempt	is exempt
23.	55(2), definition of <i>relevant process</i> , paragraph (a)	data are	data is
24.	56	consist	consists
25.	56	are exempt	is exempt
26.	57(1)	are exempt	is exempt
27.	57(2)	are exempt	is exempt
28.	57(2)(a)	data are	data is
29.	57(4)	data are or have	data is or has
30.	58A(1)	which are, or are	which is, or is
31.	58A(2)	which are, or are	which is, or is
32.	58A(2)	are exempt	is exempt
33.	60	are exempt	is exempt
34.	60	consist	consists
35.	61(1)	are exempt	is exempt
36.	61(1)(i)	data are	data is
37.	61(2)	are exempt	is exempt
38.	61(2)(b)	they are	it is
39.	62	are exempt	is exempt
40.	62(a) and (b)	data are	data is
41.	63	which are	which is

	Section	Repeal	Substitution
42.	63	data are	data is
434.	63	those data	that data
44.	63A(1)	consist	consists
45.	63A(1)	are exempt	is exempt
46.	63A(1)	their disclosure	its disclosure
47.	63A(2)	which are	which is
48.	63A(2)	data are	data is

Part 2

Minor Amendments to Chinese Text of Personal Data (Privacy) Ordinance Relating to “Personal Data” in Singular Form

	Section	Repeal	Substitution
1.	2(1), definition of <i>使用</i>	該等資料	該資料
2.	2(1), definition of <i>個人資料</i> , paragraphs (b) and (c)	該等資料	該資料
3.	2(1), definition of <i>核對程序</i> , paragraph (a)	某些可	可
4.	2(1), definition of <i>核對程序</i> , paragraph (b)	某些資料，而就該等資料	資料，而就該資料
5.	2(1), definition of <i>核對程序</i> , paragraph (b)	將該等資料	將該資料
6.	2(1), definition of <i>資料使用者</i>	該等資料	該資料

Personal Data (Privacy) (Amendment) Ordinance 2012

Schedule
Part 2

A2269

Ord. No. 18 of 2012

	Section	Repeal	Substitution
7.	2(1), definition of 資料當事人	該等資料	該資料
8.	2(12)	該等資料	該資料
9.	2(12)	該等個人資料	該個人資料
10.	18(1)(b)	該等資料	該資料
11.	18(4)	該等資料	該資料
12.	18(4)	某些個人資料	個人資料
13.	19(3)(a), (b) and (c)(i) and (iii)	該等資料	該資料
14.	20(1)(b)	該等資料	該資料
15.	20(3)(c)	某些個人資料	個人資料
16.	20(3)(c)(i)	該等資料	該資料
17.	20(3)(d)	該等資料	該資料
18.	22(1)	該等資料	該資料
19.	22(2)	某些個人資料	個人資料
20.	22(2)(a) and (b)	該等資料	該資料
21.	23(1)(a), (b) and (c)	該等資料	該資料
22.	23(3)	該等資料	該資料
23.	24(3)(e)	該等資料	該資料
24.	25(2)(i)	該等資料	該資料
25.	26(1)	該等資料	該資料
26.	26(2)(a)	該等資料	該資料
27.	27(1)(c)(i)	該等資料	該資料
28.	28(6)(b)	該等資料	該資料
29.	33(2)(e) and (f)	該等資料	該資料
30.	44(2)(d)(i)	該等資料	該資料

Personal Data (Privacy) (Amendment) Ordinance 2012

Schedule
Part 2

A2271

Ord. No. 18 of 2012

	Section	Repeal	Substitution
31.	54(1)	該等資料	該資料
32.	54(2)	該等資料	該資料
33.	57(1)	該等資料	該資料
34.	57(2)	該等資料	該資料
35.	58(1)(i) and (ii)	該等資料	該資料
36.	58(2)	該等資料	該資料
37.	59(1)(i) and (ii)	該等資料	該資料
38.	61(1)(i)	該等資料	該資料
39.	61(2)(a) and (b)	該等資料	該資料
40.	62(a) and (b)	該等資料	該資料
41.	63	該等資料	該資料
42.	63A(1)	該等資料	該資料
43.	63A(2)	該等資料	該資料
44.	Schedule 1, section 1(1)(a)	該等資料	該資料
45.	Schedule 1, section 1(3)	該等資料	該資料
46.	Schedule 1, section 2(1)(a)	該等個人資料	該個人資料
47.	Schedule 1, section 2(1)(b)	該等個人資料	該個人資料
48.	Schedule 1, section 2(1)(b)(i) and (ii)	該等資料	該資料
49.	Schedule 1, section 2(1)(c)	該等資料	該資料
50.	Schedule 1, section 2(2)	該等資料	該資料
51.	Schedule 1, section 4(1)	該等資料	該資料
52.	Schedule 3, item 2	該等資料	該資料
53.	Schedule 3, item 2	某些個人資料	個人資料