

The Hong Kong Personal Data (Privacy) Ordinance

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Objectives of the Ordinance

The purpose of the Ordinance is to protect the **privacy** interests of **living individuals** in relation to **personal data**. It also contributes to Hong Kong's continued economic well being by safeguarding the free flow of personal data to Hong Kong from restrictions by countries that already have data protection laws.

Our Ordinance is quite a progressive law, in that:

- i) it covers both automatic and manual data;
- ii) it covers both the public and private sectors; and
- iii) it establishes an independent statutory body which has wide-ranging investigation and enforcement powers to be exercised when and where appropriate to ensure compliance.

Data Protection Principles

Six personal data protection principles, which are in line with international practice and are based on the OECD guidelines, are enshrined in the Ordinance:

Principle 1 - Purpose and manner of collection - this provides for the lawful and fair collection of personal data and sets out the information a data user must give to a data subject when collecting personal data from that subject.

Principle 2 - Accuracy and duration of retention - this provides that personal data should be accurate, up-to-date and kept no longer than necessary.

Principle 3 - Use of personal data - this provides that unless the data subject gives consent otherwise personal data should be used for the purposes for which they were collected or a directly related purpose.

Principle 4 - Security of personal data - this requires appropriate security measures to be applied to personal data (including data in a form in which access to or processing of the data is not practicable).

Principle 5 - Information to be generally available - this provides for openness by data users about the kinds of personal data they hold and the main purposes for which personal data are used.

Principle 6 - Access to personal data - this provides for data subjects to have rights of access to and correction of their personal data.

Exemptions

The Ordinance provides for exemptions from specific requirements of the Ordinance. They include:

- a broad exemption from the provisions of the Ordinance for personal data held for domestic or recreational purposes;
- exemptions from the requirements on subject access for certain employment-related personal data; and
- exemptions from the subject access and use limitation requirements of the Ordinance where their applications is likely to prejudice certain competing public or social interests, such as: security, defence and international relations; prevention or detection of crime; assessment or collection of any tax or duty; news activities; and health.

Functions and Powers of the Privacy Commissioner for Personal Data:

The Ordinance empowers the establishment of an office by the name of the Privacy Commissioner for Personal Data.

The main functions and powers of the Privacy Commissioner are to:

- (a) monitor and supervise compliance with the provisions of the Ordinance;
- (b) approve and issue codes of practice giving practical guidance for compliance; with the provisions of the Ordinance;
- (c) specify classes of data users required to provide information concerning their personal data practices for compilation of a public register of data users;
- (d) approve the automated matching of personal data;
- (e) promote awareness and understanding of, and compliance with, the provisions of the Ordinance;
- (f) carry out inspections of personal data systems, including those of Government departments and statutory corporations; and
- (g) investigate, upon receipt of complaints from data subjects or on his own initiative, suspected breaches of requirements of the Ordinance. The Commissioner may refuse to carry out or continue an investigation initiated by a complainant if:
 - i) The complaint is made anonymously;
 - ii) The complainant cannot be identified or traced;

- iii) The act or practice specified in the complaint is trivial;
- iv) The complaint is frivolous or vexatious or is not made in good faith.

The Commissioner may in the course of an investigation, entry any premises with prior notice or a warrant. He can also summon relevant parties to attend hearings for the purpose of investigation.