

The Effect of Personal Data Privacy Ordinance on Insurance Industry

Presented by: **Christine M. Koo & Ip, Solicitors & Notaries**

Address :  n 601, Tower 1, Admiralty Centre,
18 Harcourt Road, Hong Kong

Tel. No. : (852) 2526 7666

Fax No. : (852) 2523 6922

E-mail : christinekoo@cmkoo.com.hk

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Objective of the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”)

◆ Effective date: 20th December 1996

◆ Objective

Protect the privacy interest of living individuals in relation to personal data.



6 Data Protection Principles

1. Purpose and manner of collection of personal data
2. Accuracy and duration of retention of personal data
3. Use of personal data
4. Security of personal data
5. Information to be generally available
6. Access to personal data



Definition

- ◆ Data subject:
“individual who is the subject of personal data” (see “Eastweek”)
- ◆ Data user:
“a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of personal data.”
- ◆ Personal data:
“any data – (a) relating directly or indirectly to a living individual
(b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained
(c) in a form in which access to or processing of the data is practicable”



Exemption

- ◆ Section 52:
Personal data held for domestic or recreational purposes
- ◆ Section 53:
Certain employment – related person data
- ◆ Sections 57, 58, 59 and 61:
Likely to prejudice certain competing public or social interest e.g. security, defence and international relations; prevention or detection of crime, assessment or collection of any tax or duty; news activities; and health



Transfer to Place Outside Hong Kong

Section 33 (not yet in operation) is “similar law” requirement



Offences and Compensation

◆ Section 64(7) & (8) PDPO:

Non-compliance with an enforcement notice served by the Privacy Commissioner 

fine \$50,000 imprisonment for 2 years continuing daily penalty of \$1,000

◆ Section 66 PDPO:

An individual who suffers damage, including injured feeling, by reason of a contravention of PDPO in relation to his/her personal data to obtain compensation from the data user concerned



Decided Cases

◆ Eastweek Publisher and Eastweek Limited

v.

Commissioner for Personal Data

CACV331/1999 – photo = data

- taking photograph = data collection?

◆ Jiang Enzhu v. Emily Lau

HCAL27A/1998

- data collector



Decided Cases (Con't)

Lily Tse Lai Yin and others

v.

The Incorporated Owners of Albert House and others

- witness statement
- Section 58: Apply to Civil Cases



Responsibilities of Data Users

- ◆ Adopt and distribute to all relevant personnel a statement of the organization's personal data privacy policy and practices
- ◆ Inform individuals from whom personal data are collected of the purposes for which the data are to be used, the classes of persons to whom the data may be transferred, the individuals' rights of access and correction, and the name and address of the person to whom requests for access and correction may be made



Responsibilities of Data Users (Con't)

- ◆ Operational procedure to handle personal data access and collection requests and to ensure the accuracy and security of personal data
- ◆ Control mechanisms for monitoring the effectiveness of the organization's personal data privacy policy and practices



Application of PDPO in Insurance Industry

1. Direct marketing/cold calling

Section 34(1):

If a data user obtains personal data from any source and uses the data for direct marketing purposes, the first time he uses those data after this particular provision comes into operation, he must inform the data subject that the data user is required without charge to cease to use those data if the data subject request. If the data subject does so request, he must cease to use those data.



Application of PDPO in Insurance Industry (Con't)

Action when making a cold-call

Pre-call

- ◆ Check that the number to be called does not appear on the opt-out list

During the call

- ◆ Identify the data user you represent and yourself by name
- ◆ Give an opt-out message along the following lines:
“If you do not wish to have further calls from us, please tell me and we will not call again.”

Post-call

- ◆ Log the call, including the name of the person and the telephone number called.
- ◆ If the called party has indicated that he or she does not wish to receive further calls from you, follow the procedure laid down for updating the opt-out list of the data user you represent



Application of PDPO in Insurance Industry (Con't)

2. Employers' and Principals' Liabilities

Section 65:

Anything done by an agent for another person with the authority of the other person shall be deemed to have been done by both the principal and agent.



Christine M. Koo & Ip, Solicitors & Notaries

Q & A Session

PLEASE NOTE

The law and procedure on this subject are very specialised.

This article is a general explanation for your reference only and should not be relied on as legal advice for any specific case. If legal advice is needed, please contact our solicitors.

請注意

本題目之法律及程序十分專門。此文章只屬一般性之解釋，供你參考，而不應被依賴為關於任何特定事件之法律意見。如需法律意見，請與我所律師聯絡。

Christine M. Koo & Ip, Solicitors & Notaries LLP

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