# Personal Data Protection in Hong Kong
## (with a focus on Financial Industry)
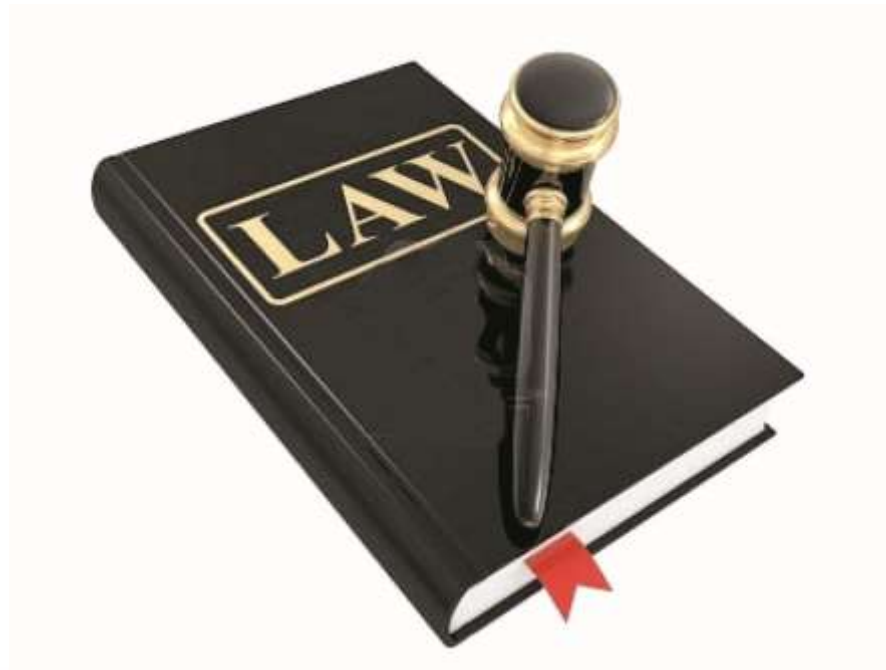# 香港的個人資料保障（以金融業為主題）



保障、尊重個人資料
Protect, Respect Personal Data

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# Personal Data (Privacy) Ordinance
# 《個人資料（私隱）條例》

# EU Directive 1995　1995年歐盟指引

**Member states, when pursuing economic activities with other countries/regions, shall consider whether there is any equivalent "personal information protection legal framework" in place locally**

會員國在與其他國家／地區進行經貿活動，須考慮當地有沒有類似的"保障個人資訊的法律體制"

# Legislative Intent 立法動機

1) **business perspective - to facilitate business environment, maintain Hong Kong as a financial and business hub**

   **經貿角度 – 利便營商環境，保持香港的經貿中心地位**

2) **human rights perspective - protect customers' personal data**

   **人權角度 – 保護客戶的個人資料**

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# Personal Data (Privacy) Ordinance
# 個人資料（私隱）條例

- **enforced by an independent statutory regulatory body, <u>Privacy Commissioner for Personal Data</u>**
  由—獨立的法定規管
  機構執法 - <u>個人資料私隱專員</u>

- **no extra-territorial jurisdiction**
  沒有域外執法權

- **came into effect on 20 December 1996**
  1996年12月20日生效

# What is "Personal Data"? 什麼是「個人資料」？

**"Personal data" must fulfill the following three criteria:**
「個人資料」須符合以下三項條件：

1. **relating directly or indirectly to a living individual;**
   直接或間接與一名在世人士有關；

2. **from which it is practicable for the <u>identity</u> of the individual to be directly or indirectly ascertained; and**
   從該等資料直接或間接地確定有關的個人的<u>身分</u>是切實可行的；及

3. **in a <u>form</u> in which access to or processing of the data is practicable**
   該等資料的<u>存在形式</u>令予以「查閱」及「處理」均是切實可行的

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# What is "Personal Data"? 什麼是「個人資料」?

**"personal data"="privacy"?**　　　**「個人資料」=「私隱」嗎？**

- **privacy: control your information, personal domain, personal liberty, freedom from monitoring in communications, etc.**

- **Hong Kong's privacy law only protect personal data**

- 私隱：管控關於自己的資料、個人領域、
人身自由、
跟外界接觸不受監控等。

- 香港的私隱條例只保障個人資料

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# Examples of Personal Data 個人資料的例子

- **Examples in our daily lives include name, telephone number, address, sex, age, religious belief, nationality, photo, identity card number, financial record, etc.**
  日常生活中的例子包括姓名、電話號碼、地址、性別、年齡、宗教信仰、國籍、相片、身分證號碼、信貸紀錄等

ID CARD
ID Card No.: A12345(6)

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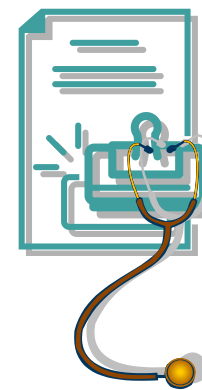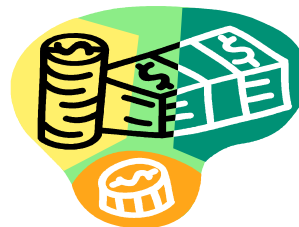
# Who is the Data Subject?
## 誰是資料當事人?

- **data subject is a living individual who is the subject of the personal data concerned**
資料當事人是指屬該個人資料的當事人的在世人士

- **under the Ordinance, a person who passed away is not a data subject**
根據條例，已故人士不是資料當事人

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# Who is the Data User? 誰是資料使用者?

- **data user is a person who, either alone or jointly with other persons, controls the collection, holding, processing or use of personal data**
**資料使用者是獨自或聯同其他人操控個人資料的收集、持有、處理或使用的人士**

- **even if personal data processing work is outsourced to a contractor, the data user shall be liable for any wrongful act of the contractor**
**即使個人資料處理程序外判,資料使用者亦須為承辦商的錯失負上法律責任**

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# Data Protection Principles under the Ordinance
# 條例訂定的保障資料原則

- **all persons who use personal data (data users) must comply with the six Data Protection Principles at the core of the Ordinance**
所有使用個人資料的人士（資料使用者）必須依從條例核心的六項保障資料原則

- **the six principles cover every item of personal data in the whole data life cycle from collection, retention, use to destruction**
該六項原則涵蓋了每項個人資料由收集、保存、使用以至銷毀的整個生命週期

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# Six Data Protection Principles Introduction Video
# 六項保障資料原則簡介短片



《個人資料(私隱)條例》下的

六項保障資料原則

**Six Data Protection Principles under the Ordinance**

# Principle 1 – Purpose and Manner of Collection
## 第1原則－收集資料的目的及方式

- **must be related to the data user's functions or activities**
  必須與資料使用者的職能或活動有關

- **data collected should be adequate but not excessive**
  收集的資料要適量而不過多

- **the means of collection must be lawful and fair**
  收集的方式必須合法及公平

- **all practicable steps to notify data subjects of collection purposes and to whom data will be transferred**
  以切實可行方法告知資料當事人收集資料的目的及資料可能轉移給哪類人士

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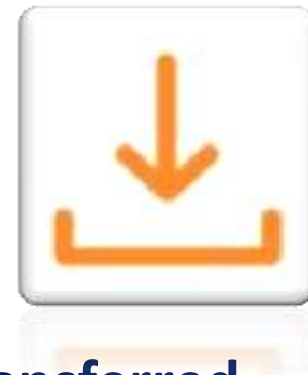
# Principle 1 – Purpose and Manner of Collection
# 第1原則 ─ 收集資料的目的及方式

**Example : opening of savings account** 例子：開立儲蓄戶口

- ✓ *name and contact information 姓名和聯絡資料*
- ✗ *marital status婚姻狀況*

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# Principle 1 – Purpose and Manner of Collection
## 第1原則 – 收集資料的目的及方式

**Case Sharing: Collection of identification document number from non-account holder**
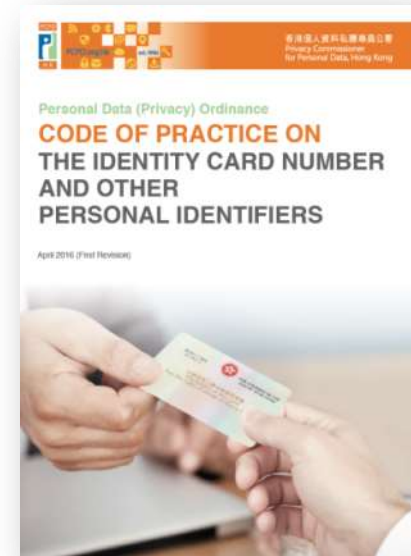**個案分享：收集非賬戶持有人的身份證明文件號碼**

- **Complainant (a non-account holder) went to a bank to change his HK$500 note into five HK$100 notes**
  **投訴人(非賬戶持有人)到銀行將$500港元紙幣兌換為5張$100港元紙幣**
- **counter officer recorded his name and HKID card number according to bank policy**
  **櫃檯職員根據銀行政策記錄他的姓名及香港身份證號碼**
- **no prima facie evidence of money laundering or terrorist financing，and the transaction value is low**
  **沒有表面證據顯示涉及洗錢或恐怖分子資金籌集，加上交易金額不高**

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# Principle 1 – Purpose and Manner of Collection
# 第1原則－收集資料的目的及方式

- **"Code of Practice on the Identity Card Number and other Personal Identifiers" (PI Code)**
  - **para. 2.2.1 – should allow the provision of other ID document, e.g. passport number**
  - **para. 2.3.1 – should not collect HKID card number unless with statutory power to do so**

  **《身份證號碼及其他身份代號實務守則》**
  - **第 2.2.1 段 – 應容許使用其他身份代號辯識，如護照號碼**
  - **第 2.3.1 段 – 除非根據法定條文而獲授權，否則不可收取身份證號碼**

- **Privacy Commissioner's findings: bank contravened PI Code and Principle 1**
  **私隱專員認為銀行違反守則及第1原則**



Personal Data (Privacy) Ordinance
**CODE OF PRACTICE ON THE IDENTITY CARD NUMBER AND OTHER PERSONAL IDENTIFIERS**
April 2016 (First Revision)

PCPD.org.hk est.1996

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# Principle 1 – Purpose and Manner of Collection
## 第1原則－收集資料的目的及方式

**Case Sharing:**

**A persons must agree to a bank's use of his contact information for direct marketing before making online enquiry**
**個案分享：查詢人士必須同意銀行使用其聯絡資料作直銷方可提交網上查詢**

- **bank failed to provide option to enquirers 沒有向查詢人士提供選項**

- **unfair data collection(bundled consent); contravene Principle1**
  **不公平地收集資料(捆綁式同意)；違反第1原則**

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# Principle 1 – Purpose and Manner of Collection
## 第1原則－收集資料的目的及方式

When collecting personal data, inform the data subject of the following five pieces of information:

收集個人資料時，須告知資料當事人以下五項資訊：

(a) the purposes of data collection;
收集資料的目的；

(b) potential classes of data transferees;
資料可能會轉移給甚麼類別的人；

**PICS 收集個人資料聲明**

(c) whether it is obligatory or voluntary for the data subject to supply the data;
資料當事人是否有責任抑或是可自願提供資料；

(d) if it is obligatory for the data subject to supply the data, the consequences if he fails to supply the data; and
如資料當事人有責任提供該資料，他拒絕提供資料所需承受的後果；及

(e) the data subject is entitled to request access and correction of his personal data, and the job title and address of the person handling such requests.
資料當事人有權要求查閱及要求改正自己的個人資料，及提供處理有關要求的人士的職銜及地址。

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# Personal Information Collection Statement (PICS)
## 收集個人資料聲明

**Case Sharing: Transfer of customers' personal data collected from on-street promotional activity by a bank to third party insurance company 個案分享：銀行將街頭宣傳活動收集的客戶個人資料轉移給第三方保險公司**

- **a bank conducted on-street promotion campaign in an evening 銀行在傍晚進行街頭宣傳**
- **user manual, credit card contract and PICS were issued to Complainant 投訴人獲發用戶手冊、信用卡合約及收集個人資料聲明**
- **Complainant had presbyopia 投訴人患有老花**
- **bank's staff filled in the form for Complainant without mentioning or explaining the PICS 銀行職員為投訴人填寫表格但沒有提及或解釋收集個人資料聲明的內容**

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# Personal Information Collection Statement (PICS)
## 收集個人資料聲明

- **PICS was in small print, word height not exceed 1.5mm**

  收集個人資料聲明以細小字體列印，字體高度不超過1.5毫米

- **PICS wrote that personal data would be transferred to "*selected companies for the purpose of informing Data Subjects of services which the* [bank] *believes will be of interest to Data Subjects*"**

  聲明註明個人資料會被轉移予＂*已揀選的公司，用以通知資料當事人*[銀行]*相信當事人感興趣的服務...*＂

- **contravention of Principle 1**

  違反第1原則

# Personal Information Collection Statement 收集個人資料聲明

## Practical Tips 實用貼士：

💡 **design the layout of PICS (including font size, spacing and use of appropriate highlights) in an easily readable manner** 設計容易閱讀的聲明(包括字體大小、間隔及使用適當標示)

💡 **present PICS in a conspicuous manner, e.g. in a stand-alone notice or section** 以顯著方式展示聲明，例如：在獨立的通告或部分等

💡 **use reader friendly language, e.g. simple words** 採用讀者容易明白的語言，例如：簡單字詞

💡 **provide further assistance to customers such as help desk or enquiry service** 向客戶提供進一步協助，例如：客戶服務部或查詢服務

💡 **should not state the purpose of use and class of transferees in general and vague terms** 不應以空泛及模糊字眼說明使用目的及資料承轉人類別

- **"Guidance Note on Preparing Personal Information Collection Statement and Privacy Policy Statement"**《擬備收集個人資料聲明及私隱政策聲明指引》
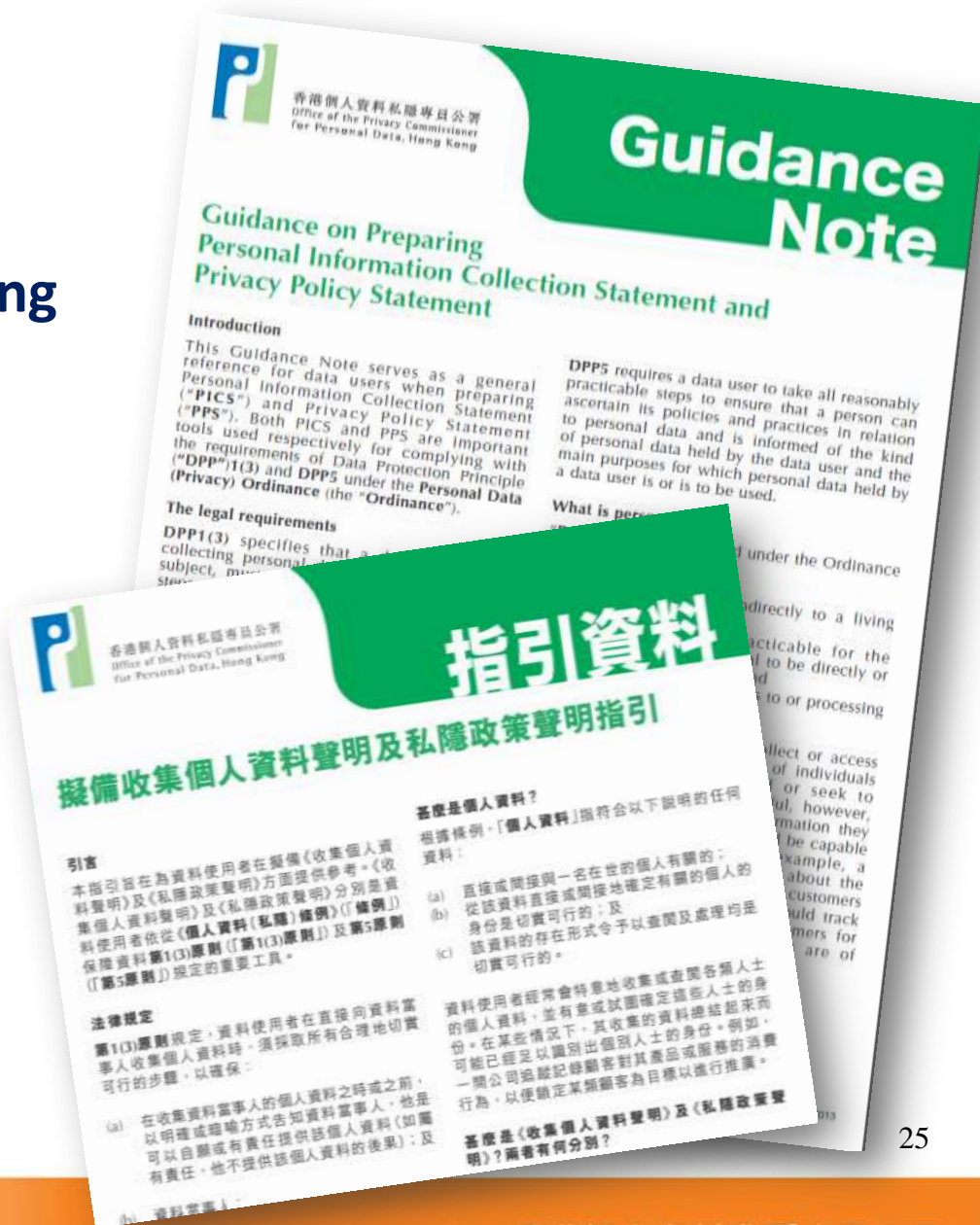
# Principle 2 – Accuracy and duration of retention
# 第2原則 – 個人資料的準確性及保留時限

- **data users shall take all practicable steps to ensure the accuracy of personal data held by them, and destroy data after the purpose of use is fulfilled**
  **資料使用者須採取所有切實可行的步驟，確保所持個人資料的準確性，及在完成資料的使用目的後刪除資料**

# Principle 2 – Accuracy and duration of retention
# 第2原則 － 個人資料的準確性及保留時限

**Case Sharing: bank statements sent to inaccurate customer address causing disclosure of personal data to unintended recipient**
**個案分享：銀行賬單寄往不準確的客戶地址導致個人資料外洩給無關的收件人**

- **credit card customer provided address in "Shek Tong Tsui"**
  **信用卡客戶提供石塘咀地址**
- **bank statement delivered to "Siu Lam"**
  **銀行賬單被寄到小欖的地址**
- **Complainant used bank's form to correct the address**
  **投訴人使用銀行的表格更正地址**
- **bank subsequently sent statements to an address in Shek Tong Tsui, but without specifying the flat number**
  **銀行其後將賬單寄往石塘咀，但未有註明單位號碼**

# Principle 2 – Accuracy and duration of retention
# 第2原則 − 個人資料的準確性及保留時限

- **bank's double-checking procedures failed to spot the mistakes**
  **銀行的雙重查核程序未能查找錯誤**

- **contravention of Principle 2**
  **違反第2原則**

- **PCPD issued enforcement notice to the bank directing it to conduct regular administrative audit for customers' requests to update personal data**
  **公署向銀行發出執行通知，指令銀行定期為客戶的更新個人資料要求作行政查核**

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# Principle 2 – Accuracy and **duration of retention**
## 第2原則 － 個人資料的準確性及保留時限

**Determine the retention period 釐定保留時限**

- **the purpose of collection of each kind of personal data?**
  **收集每項個人資料的目的?**

- **any relevant statutory or regulatory requirements?**
  **任何相關法定或規例?**

- **duty to keep records? 保存紀錄責任?**

**Note: retention requirements under Inland Revenue Ordinance**
**注意:《稅務條例》下的保存資料要求**

**In general, delete personal data in 7 years after creation of data or end of relationship**
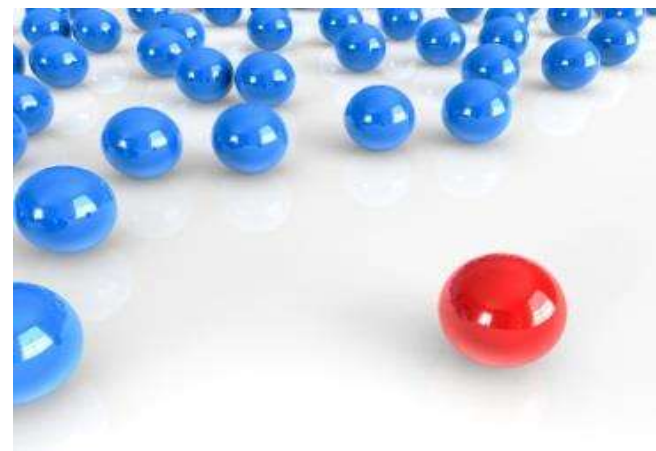**一般在個人資料建立或關係完結後7年內將資料刪除**

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# Principle 2 – Accuracy and **duration of retention**
# 第2原則－個人資料的準確性及保留時限

**Exceptional circumstances 特殊情況**

- **current or impending legal action or claim 現時或未來的法律行動或申索**

- **current enquiry or complaint 現時的查詢或投訴**

- **contractual obligation 合約責任**

- **evidence of crime 犯罪證據**

- **compliance with lawful or statutory duty 履行合法或法定責任**

# Principle 2 – Accuracy and **duration of retention**
# 第2原則－個人資料的準確性及保留時限

**Case Sharing: an insurance company retained personal data of unsuccessful insurance applicants for indefinite period of time**
個案分享：保險公司無限期地保留不成功投保人士的個人資料

- **reasons given by insurer 保險公司提供的原因**
  - ~ **legal requirements for keeping books of accounts**
    **保留賬簿的法律規定**
  - ~ **guidelines and circulars of regulatory authorities**
    **監管機構的指引及通告**
  - ~ **potential litigations, enquiries and complaints**
    **可能的訴訟、查詢及投訴**
  - ~ **checking against future applications**
    **與日後的申請作比對**

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# Principle 2 – Accuracy and **duration of retention**
# 第2原則 – 個人資料的準確性及保留時限

- **Privacy Commissioner's decision:**
  - ❖ **monetary transaction – retain 7 years**
    **涉及金錢交易 – 7年**
  - ❖ **Non-monetary transaction – retain 2 years**
    **不涉及金錢交易 – 2年**
  - ❖ **unless special circumstances existed**
    **除非涉及特別情況**
- **insurer complied with the enforcement notice issued by the Commissioner, and erased more than 7,000 records**
  **保險公司遵從專員的執行通知，銷毀超過 7,000份紀錄**

# Principle 2 – Accuracy and **duration of retention**
## 第2原則－個人資料的準確性及保留時限

- **"Guidance Note on Personal Data Erasure and Anonymisation"**
  **《個人資料的刪除 與匿名化指引》**
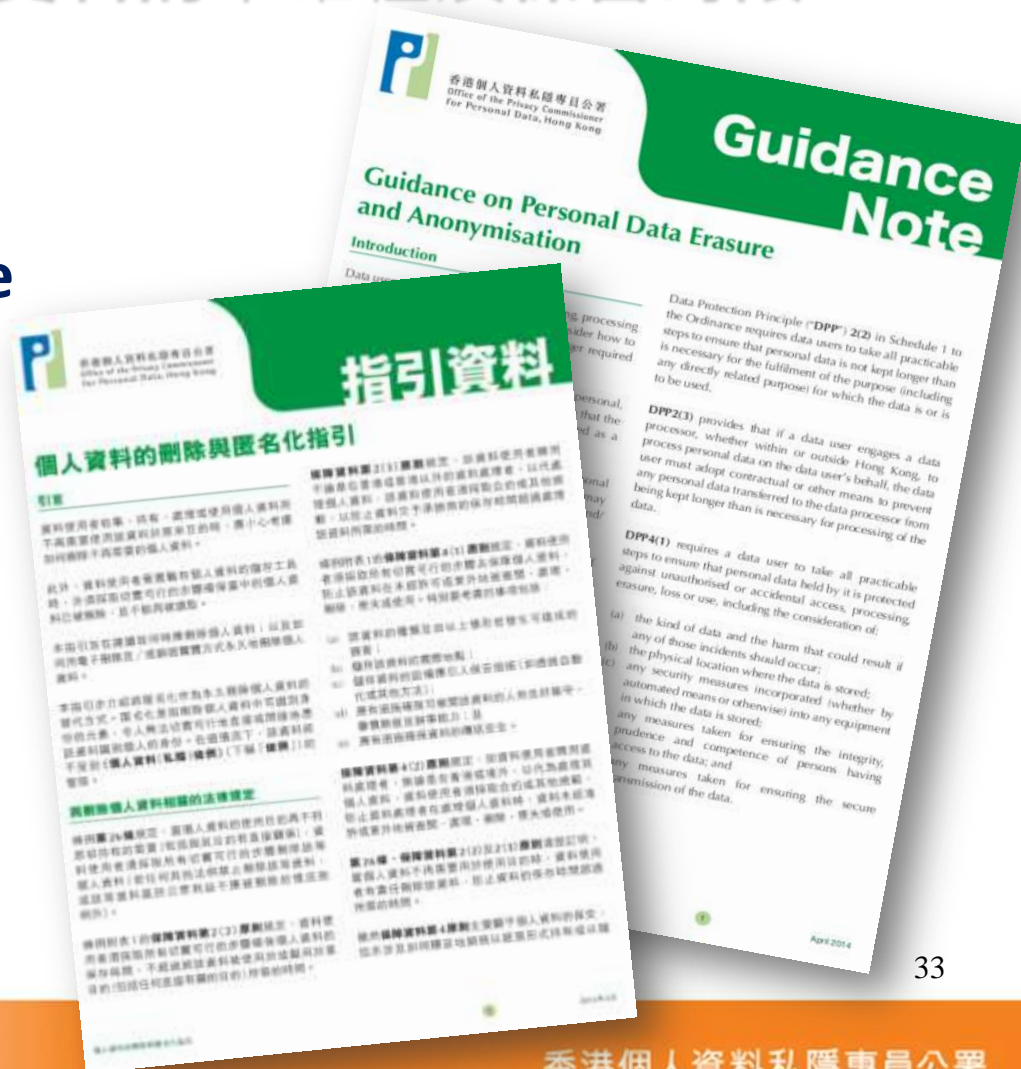
# Principle 3 – Use of personal data
# 第3原則 － 個人資料的使用

- **personal data shall not, without the prescribed consent of the data subject, be used for a new purpose**
  如無當事人的訂明同意，個人資料不得用於新目的

  *"new purpose" means any purpose other than the purposes for which they were collected or directly related purposes*
  「新目的」指在收集資料時擬使用的目的或直接有關的目的以外的目的

# Principle 3 – Use of personal data
# 第3原則 － 個人資料的使用

**Case Sharing: Use of personal data for internal training**
個案分享：使用個人資料作內部培訓

- **Regional Director of an insurance company used the personal data of a former employee to illustrate the improper business practice of insurance agents**
  某保險公司的區域總監以一名前員工的個人資料作實際例子，以解釋保險代理的不當行為

- **the company argued it was necessary to identify the former employee so as to raise vigilance of other staff members**
  該公司解釋有需要披露有關前員工的身份，以對現職員工起警惕作用

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**Privacy Commissioner's findings:**

**私隱專員的調查結果：**

- **use of personal for new purpose, and beyond reasonable expectation of the former employee to disclose his personal data during internal training**
**將個人資料用作培訓屬新目的，並且不符合前員工的合理期望**

- **not necessary to disclose identity in order to raise awareness**
**並非要披露身份才可達到警惕效果**

- **contravention of Principle 3 by insurance company (vicarious liability through the Regional Director being its agent)**
**保險公司違反第3原則 (分區董事作為其代理人的轉承責任)**

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# Principle 3 – Use of personal data
# 第3原則－個人資料的使用

**Case Sharing: Use of personal data in debt collection**
**個案分享：使用個人資料作追討債務**

- **debt collection agency (DCA) was authorised by a finance company (FC) and disclosed personal data of debtor's family members during debt recovery**

  **一間獲金融公司授權的收數公司在追討債務時披露債務人的家人的個人資料**

- **DCA posted 12 dunning letters at the corridor outside debtor's flat, disclosing debtor's and his family members' HKID card copy, names and address**

  **收數公司在債務人住所外的走廊張貼12封收數信，披露了債務人及其家人的香港身份證副本、姓名及地址**

# Liability of Employers and Principals
# 僱主及主事人的法律責任



- **section 65(2) of the Ordinance:**
  **any act done or practice engaged in by an <u>agent</u> for his <u>principal</u>, shall be treated as done or engaged in by that agent <u>and</u> the principal.**
  **條例第65(2)條：**
  **<u>代理人</u>為其<u>主事人</u>所作出的任何作為或所從事的任何行為，須視為該代理人<u>及</u>主事人所為。**

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**Privacy Commissioner's findings:**

**私隱專員的調查結果：**

- **DCA contravened Principle 3**
  **收數公司違反第3原則3**
- **DCA's act was impliedly authorised by FC**
  **金融公司默許收數公司的行為**
- **FC also liable under section 65(2) of the Ordinance**
  **根據條例第65(2)條，金融公司亦須負上責任**

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# Intra-Group Sharing of Customers' Personal Data
## 集團內部分享客戶資料

- ✓ **should inform customers in PICS: 在個人資料收集聲明中應告知客戶：**
  - • **details of intended sharing 擬分享的詳情**
  - • **kinds of data to be shared 分享的資料類別**
  - • **security measures to protect data during the sharing process 在分享過程中保護資料的保安措施**
  - • **safe disposal after use 在使用後妥善處理**
- ✓ **should not change the purpose of use without consent 不應在未取得同意前改變用途**
  - • **on a "need-to-know" and "need-to-use" basis 基於「有需要知道」及「有需要使用」原則**
  - • **not to share unnecessary data 避免不必要地分享資料**
- ✓ **keep track of the shared data 清楚紀錄已分享的資料**
- ✓ **ensure timely and complete erasure of the data 確保及時和完全地刪除資料**

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# Principle 4 – Security of personal data
## 第4原則 — 個人資料的保安

- **data users shall take all practicable steps, to safeguard personal data against unauthorised or accidental access, processing, erasure, loss or use 資料使用者須採取所有切實可行的步驟，保障個人資料不會被未獲授權或意外的查閱、處理、刪除、喪失或使用**

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# Principle 4 – Security of personal data
## 第4原則 ─ 個人資料的保安

**Case Sharing: a bank failed to safeguard the personal data collected during an outside-office marketing campaign**

**個案分享：某銀行未有妥善保管街外推廣活動收集的個人資料**



- **bank conducted a marketing campaign in a bookshop to solicit credit card applications**

  **銀行在某書店內舉行推廣活動收集信用卡申請**

- **after work, bank's employee put all application forms and identity card copies in a briefcase and carried them home**

  **銀行職員下班後將所有申請表與身份證副本放入公事包帶回家中**

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# Principle 4 – Security of personal data
## 第4原則－個人資料的保安

- **the employee left briefcase in a public light bus and lost all the documents**
  **該員工在公共小巴遺下公事包及遺失所有文件**
- **bank did not have adequate guidelines**
  **to staff for handling personal data**
  **collected during outside-office marketing campaigns**
  **銀行未有向職員發出足夠指引，指示他們如何處理在街外推廣活動收集的個人資料**
- **breach of Principle 4**
  **違反第4原則**
- **enforcement notice issued to the bank and remedial actions taken**
  **(e.g. transfer documents to a nearby branch immediately after work)**
  **發出執行通知及採取補救措施(例如：下班後轉移文件到附近分行)**

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# Principle 4 – Security of personal data
# 第4原則 － 個人資料的保安

- **if a data user engages a data processor to process personal data, the data user must adopt contractual or other means to safeguard the personal data transferred**
  **如資料使用者聘用資料處理者處理個人資料，須透過合約規範或其他方法，以保障轉移的個人資料**



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- **"Leaflet of Outsourcing the Processing of Personal Data to Data Processors"**
  **《外判個人資料的處理予資料處理者單張》**

# Principle 5 – Information to be generally available
## 第5原則－資訊須在一般情況下可提供

**Data users shall provide: 資料使用者須提供：**

**(a)  policies and practices in relation to handling of personal data; 處理個人資料的政策及實務；**

**(b)  the kinds of personal data held; 持有的個人資料的種類；**

**(c)   the main purposes for which personal data are used
會為何種主要目的而使用個人資料**

# Principle 5 – Information to be generally available
## 第5原則 – 資訊須在一般情況下可提供

**Practical Tips 實用貼士:**

- **to formulate and make available to customers a Privacy Policy Statement (PPS) (kinds of personal data held, main purposes of using the data and privacy policies and practices in place)**
制定及向客戶提供私隱政策聲明(持有的個人資料類別、主要使用資料的目的及現有私隱政策及做法)

- **to display PPS in websites and make printed versions be available in headquarters and branches**
在網頁內展示私隱政策聲明，在總部及分行存放聲明列印本

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# Principle 6 – Access to personal data
## 第6原則 ─ 查閱個人資料

- **data subject is entitled to request access to and correction of his personal data**
  **資料當事人有權要求查閱及改正自己的個人資料**

- **data user may charge a non-excessive fee**
  **資料使用者可收取不超乎適度的費用**

- **data user shall respond within 40 days**
  **資料使用者要在40天內作出回覆**

# Principle 6 – Access to personal data
## 第6原則 — 查閱個人資料

- **"Guidance Note on Proper Handling of Data Access Request and Charging of Data Access Request Fee by Data Users"**

  **《資料使用者如何妥善處理查閱資料要求及收取查閱資料要求費用指引》**



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# Total Enquiries and Complaints Handled by PCPD
## 公署處理的查詢及投訴總數

| | 2014 | 2015 |
|---|---|---|
| 查詢<br>**Enquiries** | 17,328 | 18,456<br>(up上升 7%) |
| 投訴<br>**Complaints** | 1,702 | 1,971<br>(up上升 16%) |

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# Direct Marketing Related Enquiries and Complaints
## 與直銷有關的查詢及投訴

| | 2014 | 2015 |
|---|---|---|
| 查詢 Enquiries | 2,385 | 2,200 |
| 投訴 Complaints | 266 | 322 |

# **Direct Marketing**

# Direct Marketing Requirements
# 直銷活動規定

- **The new provisions on regulation of direct marketing activities came into force on 1 April 2013**
  **規管直銷活動的新條文於2013年4月1日生效**

- **direct marketing activities under the Ordinance include such activities *made to specific persons* by mail, fax, email and phone**
  **條例下的直銷活動包括*向特定人士*以郵遞、圖文傳真、電子郵件及電話進行的直銷活動**

# Direct Marketing Requirements 直銷活動規定

**Intends to use or provide personal data to others for direct marketing**
擬用個人資料或轉交資料予他人作直銷

**Data User
資料使用者
Notification
通知**

**Data Subject
資料當事人
Consent
同意**

**Provides personal data**
提供個人資料

| | |
|---|---|
| provide "prescribed information" and response channel for data subjects to elect whether to give consent<br>提供「訂明資訊」及回應途徑，讓資料當事人選擇是否提供同意<br>notification must be easily understandable<br>通知必須清楚易明 | consent should be given explicitly and voluntarily<br>必須自願和清晰地作出同意<br>"consent" includes an indication of "no objection"<br>不反對也屬同意 |

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# Direct Marketing Requirements
# 直銷活動規定

- **if a data subject submits an opt-out request, the data user must comply with the request without charge**

  **如資料當事人表示拒絕再接收有關的直銷資料，資料使用者須在不收費的情況下遵從**

# Direct Marketing Conviction Cases
## 與直銷有關的定罪個案

| Date 時期 | Case 個案 | Penalty 罰款金額 |
|---|---|---|
| Sep 2015<br>2015年9月<br>*(Note: Pending appeal trial)*<br>**(注: 現正等候上訴聆訊)** | **A telecommunication company ignored customer's opt-out requests**<br>一間電訊公司沒有依從客戶的拒收直銷訊息要求 | **Fined $30,000**<br>被判罰款三萬元 |
| Sep 2015<br>2015年9月 | **A storage service provider failed to take specified actions and obtain the data subject's consent before direct marketing**<br>一間儲存服務供應商在直接促銷前未有採取指明行動通知當事人及取得其同意 | **Fined $10,000**<br>被判罰款一萬元 |
| Nov 2015<br>2015年11月 | **A healthcare services company ignored customer's opt-out requests**<br>一間體檢服務公司沒有依從客戶的拒收直銷訊息要求 | **Fined $10,000**<br>被判罰款一萬元 |

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# Direct Marketing Conviction Cases
## 與直銷有關的定罪個案

| Date 時期 | Case 個案 | Penalty 罰款金額 |
|---|---|---|
| Dec 2015<br>2015年12月<br>*(Note: Appeal trial in progress)*<br>*(注:上訴聆訊進行中)* | **an individual provided personal data to a third party for direct marketing without taking specified actions and obtaining the data subject's consent**<br>一名人士在未有採取指明行動通知當事人及取得其同意前，將個人資料提供予第三者作直接促銷 | **Fined $5,000**<br>被判罰款五千元 |
| Apr 2016<br>2016年4月 | • **an insurance agent used personal data for direct marketing without taking specified actions and obtain the data subject's consent; and**<br>一名保險代理人在直接促銷前未有採取指明行動通知當事人及取得其同意；及<br>• **failed to inform the data subject of his opt-out right when using his personal data in direct marketing for the first time**<br>在首次使用個人資料作直接促銷時，未有告知資料當事人他有權提出拒收直銷訊息要求 | **Community Service Order of 80 hours for each charge**<br>被判罰每項控罪各80小時社會服務令 |

# Direct Marketing Conviction Cases
## 與直銷有關的定罪個案

| Date 時期 | Case 個案 | Penalty 罰款金額 |
|---|---|---|
| May 2016<br>2016年5月 | • **a telemarketing company used a customer's personal data in direct marketing without taking specified actions and obtaining his consent; and**<br>一間銷售推廣公司在直接促銷前未有採取指明行動通知客戶及取得其同意；及<br>• **ignored opt-out requests**<br>沒有依從拒收直銷訊息要求 | **Fined $8,000 for each charge**<br>每項控罪分別被判<br>罰款八千元 |

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# Practical Tips 實用貼士

**must take specified actions and obtain consent**
**必須採取指明行動及取得同意**

**must notify data subject of his opt-out right**
**必須知會資料當事人他有拒收直銷訊息的權利**
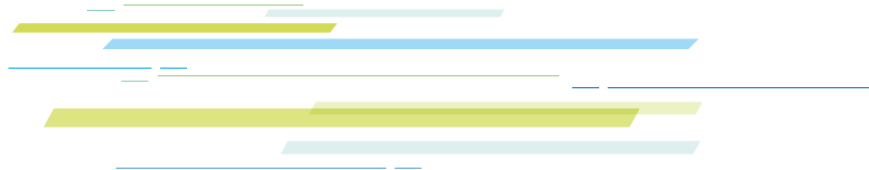
**update the Opt-Out List timely**
**適時更新拒收直銷訊息名單**

**ensure that staff follow standing procedures**

**確保員工遵守公司政策**

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- **"Guidance on Direct Marketing"**
  《直接促銷新指引 》

- **"Leaflet of Exercising Your Right of Consent to and Opt-out from Direct Marketing Activities"**
  《根據《個人資料(私隱)條例》行使你同意及拒絕直接促銷活動的權利單張》
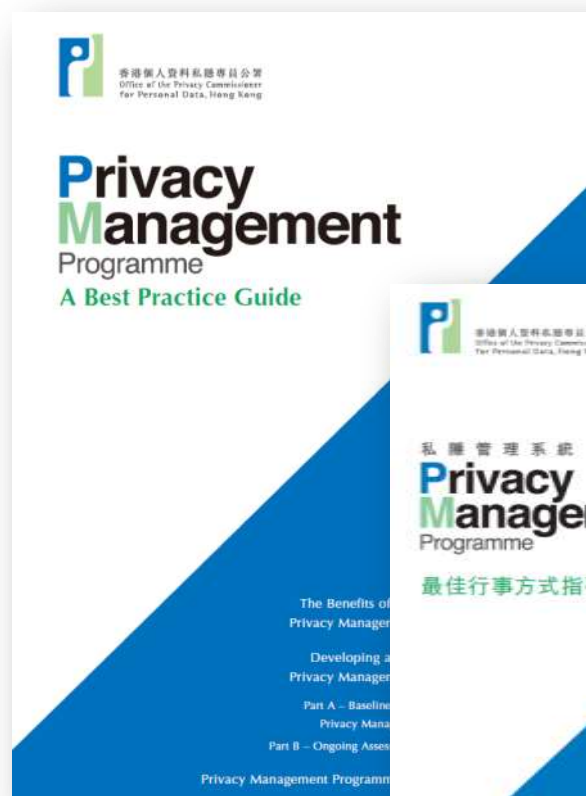
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- **a personal data protection strategy
  from compliance to accountability
  由符規躍升為問責的保障
  個人資料策略**

- **advocate personal data protection as part
  of good corporate governance
  提倡機構把保障個人資料
  提升為良好的管治必要責任**

- **apply the programme as a top-down
  business imperative in the organisation
  由上而下貫徹地在機構中
  執行**

From Compliance... 由符規

To 躍升為**問責**
Accountability

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- **"Privacy Management Programme: A Best Practice Guide"**
  **《私隱管理系統：最佳行事方式指引》**

Education and Promotion

# PCPD's website 公署網站 (PCPD.org.hk)



- **PCPD strives to strengthen information on the website, building an important channel to communicate with the public 公署致力加強網站的資訊，使之成為公署與公眾溝通的重要途徑**

# Web Resources: Industry-specific resources
# 網站資源：行業資源

# Web Resources: Case Notes
# 網站資源：個案簡述



- **Complaints**
**投訴**
- **Enquiries**
**查詢**
- **Administrative appeals**
**行政上訴**

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- **"Guidance Note on the Proper Handling of Customers' Personal Data for the Banking Industry"**
  《銀行業界妥善處理客戶個人資料指引》

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- **"Guidance Note on the Proper Handling of Customers' Personal Data for the Insurance Industry"**
  <span style="color:red">**《妥善處理客戶個人資料：給保險業界的指引》**</span>

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# 39th International Conference of Data Protection and Privacy Commissioners
# 第三十九屆國際資料保障及私隱專員研討會
# 中西薈萃 East Meets West

International Conference of Data Protection and Privacy Commissioners
25-29/9/2017 Hong Kong

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Thank You!

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