

附錄
Appendices

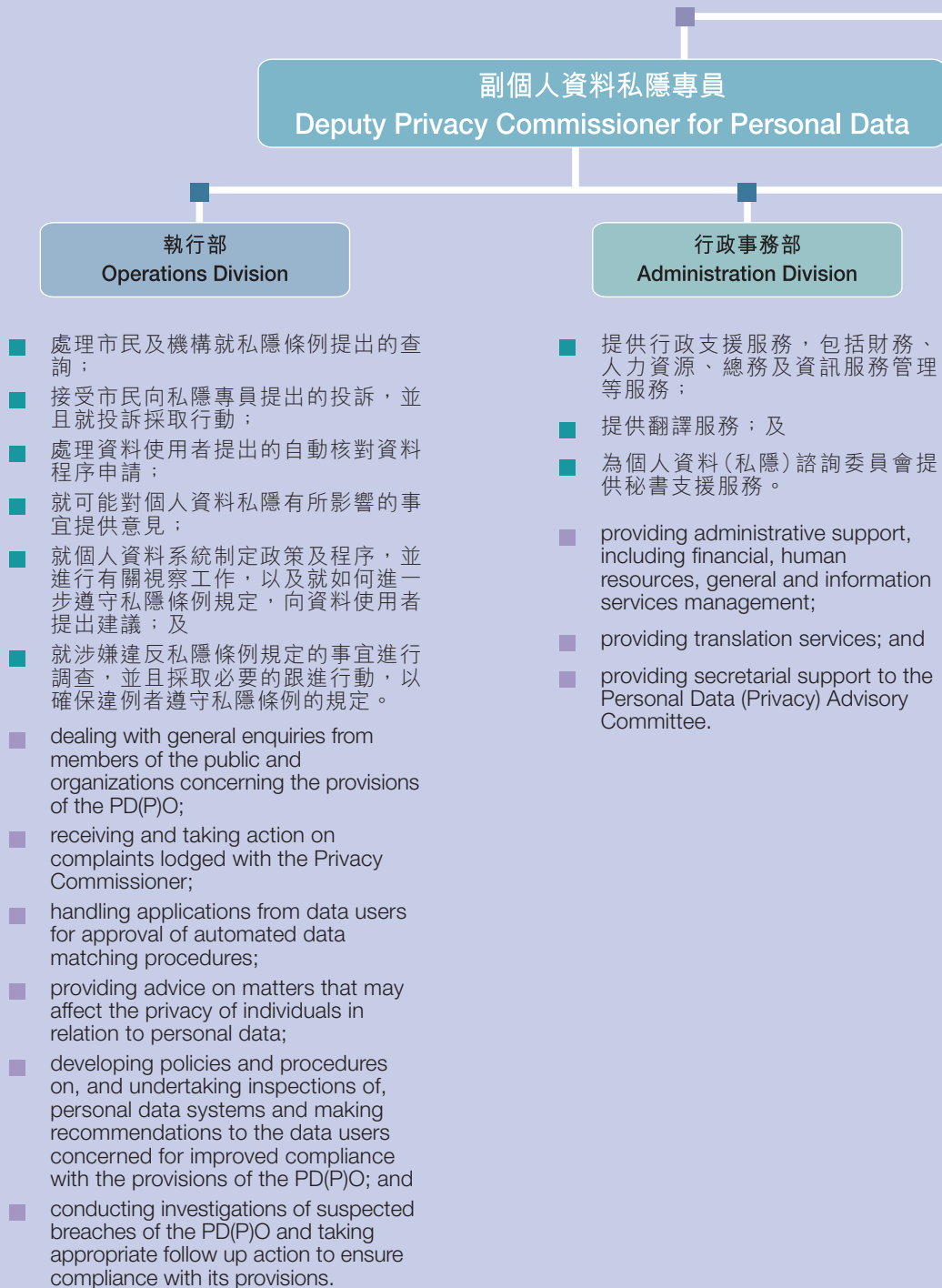
PCO 私
隱專員

公署組織架構 PCO Organization Chart

職員及組織架構

公署由私隱專員掌管，負責全面監察和監管私隱條例的施行，並促使各界依從條例的規定。此外，私隱專員亦負責管理公署的整體行政工作。副個人資料私隱專員在公署的整體行政及策劃方面協助私隱專員，同時亦負責與個人資料私隱有關的各項政策問題。

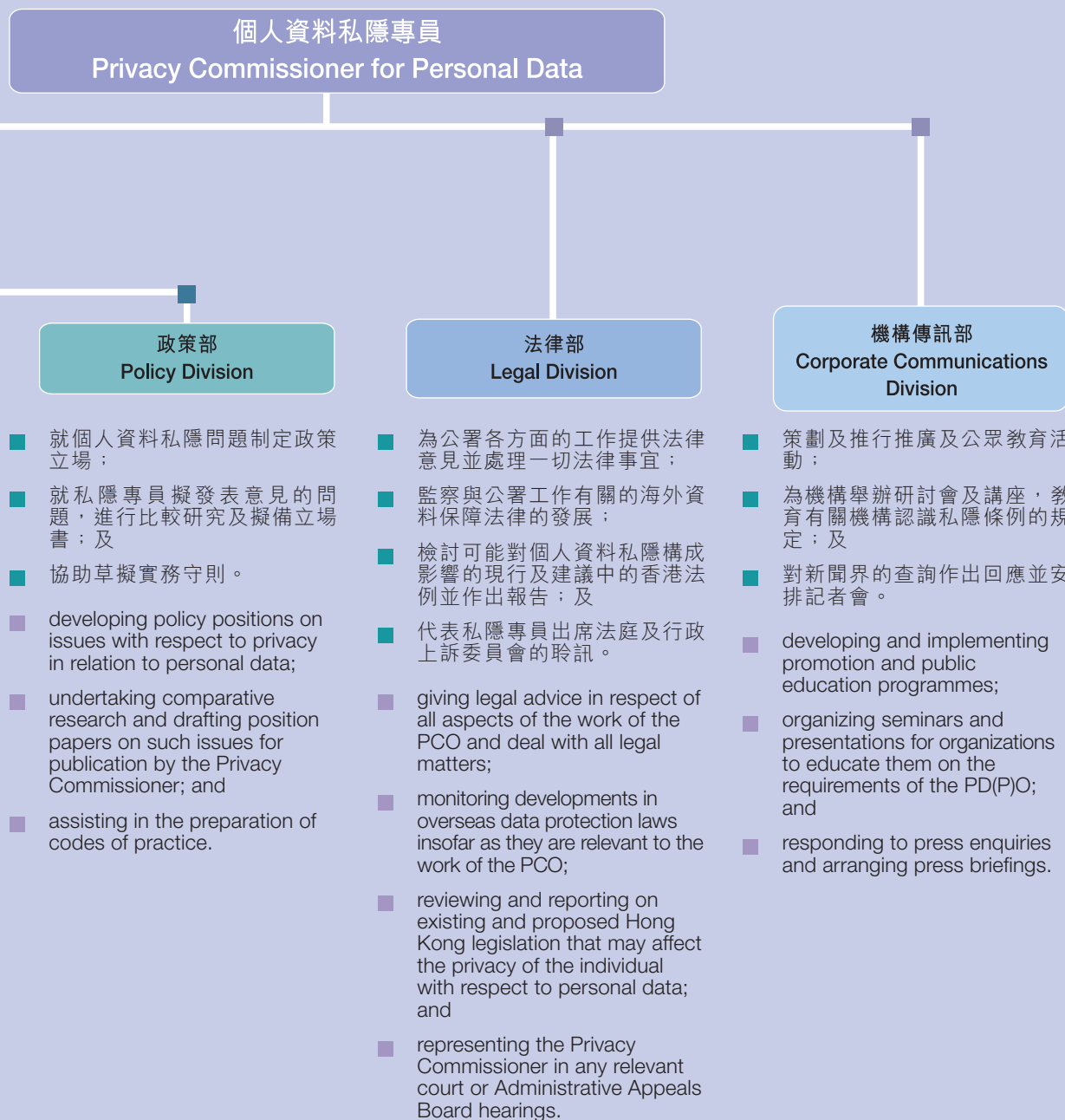
在本年報期完結時，公署的職員編制為39人，分別在下列五個部門工作：



Staff and Organizational Structure

The PCO is headed by the Privacy Commissioner who has overall responsibility for promoting, monitoring and supervising compliance with the PD(P)O and administering the PCO. A Deputy Privacy Commissioner assists the Privacy Commissioner in the overall administration and strategic planning of the PCO. He also has responsibility for policy issues related to personal data privacy.

The Office had a total establishment of 39 staff at the end of the period under review and was organized in 5 divisions:



公署對建議中的法例所作的評論

甲部 – 公署曾對以下建議中的法例提出評論：

《2003年領養(修訂)條例草案》
《2003年建築物(修訂)條例草案》
《結算及交收系統條例草案》
《2003年公司(修訂)條例草案》
《建造業議會條例草案》
《存款保障計劃條例草案》
《2002年教育(修訂)條例草案》
《2003年電子交易(修訂)條例草案》
關於投訴警方獨立監察委員會的建議條例草案
《2003年基督教靈糧世界佈道會法團(修訂)條例草案》
對《強制性公積金計劃條例》(第485章)作出的建議修訂
《商船(船舶及港口設施保安)條例草案》
對《職業退休計劃條例》(第426章)作出的建議修訂
《渣打銀行(香港)有限公司(合併)條例草案》
《2003年城市規劃(修訂)條例草案》
《2004年不良醫藥廣告(修訂)條例草案》
《2003年聯合國(反恐怖主義措施)(修訂)條例草案》
《2003年廢物處理(修訂)條例草案》
《永亨銀行有限公司(合併)條例草案》

Comments on Proposed Legislation by the PCO

附錄二 Appendix II

Part A - Proposed Legislation which the PCO has provided comments:

Adoption (Amendment) Bill 2003
Buildings (Amendment) Bill 2003
Clearing and Settlement Systems Bill
Companies (Amendment) Bill 2003
Construction Industry Council Bill
Deposit Protection Scheme Bill
Education (Amendment) Bill 2002
Electronic Transactions (Amendment) Bill 2003
A proposed Bill on Independent Police Complaints Council
Ling Liang World-Wide Evangelistic Mission Incorporation (Amendment) Bill 2003
Proposed amendments to Mandatory Provident Fund Schemes Ordinance, Cap 485
Merchant Shipping (Securities of Ships and Port Facilities) Bill
Proposed amendments to Occupational Retirement Schemes Ordinance, Cap 426
Standard Chartered [Bank] (Hong Kong) Limited (Merger) Bill
Town Planning (Amendment) Bill 2003
Undesirable Medical Advertisements (Amendment) Bill 2004
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003
Waste Disposal (Amendment) Bill 2003
Wing Hang Bank Limited (Merger) Bill

乙部 — 公署對建議中的法例所作的評論

《2003年公司(修訂)條例草案》

法案委員會要求公署就條例草案發表意見。公署就四類關注事項發表意見，即(i)可供公眾人士查閱的載有個人資料的合約或備忘錄；(ii)董事及秘書個人資料的收集；(iii)透過公共登記冊可查閱的個人資料；及(iv)個別股東藉法庭申請得以查閱的公司記錄。

關於第(i)項，建議中的第38D(3A)及342C(3A)條規定公司須備存關鍵性的合約或備忘錄，供公眾查閱。由此而生的私隱問題是此舉可導致所載的個人資料被披露及可能被濫用。公署建議應述明披露個人資料的明確目的。財經事務及庫務局局長回應時解釋此項安排的目的是要加強公司資料的透明度，為投資者提供更佳保障。公署認為應加入一項目的聲明，這可適當而有效地消除各種不明確情況。在本年報期結束時，此事仍未有進一步進展。

關於上文第(ii)項，公署強調應依從保障資料第1(3)原則的規定，向被收集個人資料的董事及秘書提供「收集個人資料聲明」。財經事務及庫務局局長回應時確認會在指明表格內加入「收集個人資料聲明」，以及在公司註冊處的公共查閱區和網頁，及所有指明表格的磁碟內展示有關聲明。

(續下頁)

Part B — Comments made by PCO on Proposed Legislation

Companies (Amendment) Bill 2003

The Bills Committee invited the PCO to give submissions on the Bill. In pursuance of which, the PCO expressed views on four areas of concern, namely, (i) the public inspection of contract or memorandum containing personal data; (ii) the collection of personal particulars of directors and secretaries; (iii) personal data accessible via public register; and (iv) inspection of company records by individual shareholder upon court application.

With respect to (i), the proposed sections 38D(3A) and 342C(3A) required a company to make available for public inspection material contracts and memorandum. It raised privacy concern as to the disclosure of personal data and their possible misuse. The PCO suggested that express purpose for disclosing the personal data should be made known. In response, the Secretary for Financial Services and the Treasury explained that the purpose of this arrangement was to enhance information disclosure for better investor protection. The PCO however maintained that the provision of a purpose statement was appropriate and effective to quell uncertainty. At the end of the reporting period, there was no further development on this issue.

For (ii) above, the PCO emphasized on compliance with the requirements under DPP1(3) and the giving of Personal Information Collection Statement ("PICS") to the directors and secretaries whose personal data would be collected. The Secretary for Financial Services and the Treasury responded and confirmed that PICS would be included in the specified forms and a PICS would also be displayed at the public search area, on the Companies Registry's website and in diskettes of all specified forms.

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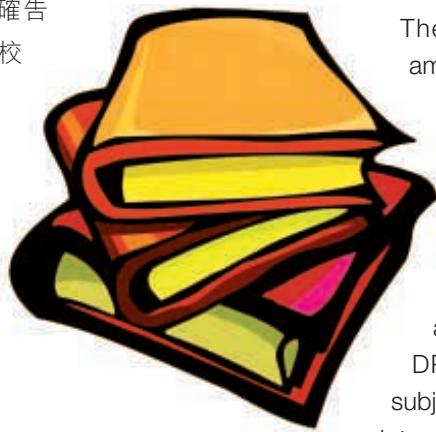
關於上文第(iii)項，公署強調列示目的聲明的重要性，以規限從查閱公共登記冊所得的個人資料的獲准用途。財經事務及庫務局局長在回應中指出會在建議的第305(1A)條加入一項目的聲明。公署亦提出可在建議的法例中加入制裁條文，作為一項有效的阻嚇措施。此外，公署亦建議對根據第305(1A)(a)條須予以披露個人資料的人士的類別作出檢討，以確保類別的完整性。在本年報期結束時，此事並無進一步進展。

關於上文第(iv)項，建議中的第152FC條訂明在何種情況下可披露獲准收集的資料，而建議中的第152FE條亦明確訂明賦權條文並不授權任何人可違反私隱條例就收集、保留及使用個人資料的規定。

《2002年教育(修訂)條例草案》

公署早前曾就此條例草案對《教育條例》(第279章)第8(2)條下賦予教育統籌局常任秘書長的廣泛權力，表示關注。該條文賦權常任秘書長將他認為有需要記載的*任何其他詳情*，記入根據草案新加的第8(1)(da)條設立的法團校董會公共登記冊內。由於校董的個人資料會在公共登記冊中披露，公署提醒教育統籌局局長應明確界定所披露的資料範圍，以防披露超過實際所需的資料及出現可能濫用個人資料的情況。局長在回應中建議修訂第8(3)條，訂明記入公共登記冊的個人資料只限於各校董的姓名、任期及所屬的校董類別。公署對局長所採取的措施表示歡迎，並提示他應根據保障資料

第(3)原則的規定，明確告知身為資料當事人的各校董他們被收集的個人資料的使用目的及該等資料可能會移轉予甚麼類別的人。



Regarding (iii) above, the importance of specifying the purpose statement to limit the permitted usage by persons having access to the public register was stressed. The Secretary for Financial Services and the Treasury responded by inserting a purpose statement in the proposed section 305(1A). The question of imposing sanction in the proposed legislation as effective deterrence was also raised by the PCO. In addition, suggestion was made to review the completeness of the category of persons whose personal data would be disclosed under section 305(1A)(a). At the end of the reporting period, there was no further development on this issue.

Concerning (iv) above, the proposed section 152FC had prescribed the circumstances under which disclosure of information collected were permitted and the proposed section 152FE had also stipulated clearly that nothing containing in the enabling sections should authorize the collection, retention and use of personal data in contravention of the PD(P)O.

Education (Amendment) Bill 2002

The PCO had previously expressed concern on the Bill in respect of the potentially wide powers conferred on the Permanent Secretary for Education and Manpower under section 8(2) of the Education Ordinance, Cap 279. The provision empowered the Permanent Secretary to enter *such other particulars* as he considered necessary in the public register to be set up under the proposed new section 8(1)(da) for incorporated management committees. As personal particulars of the managers of the committees would be disclosed in the public register and in order to prevent disclosure of data beyond what was absolutely necessary and any possible misuse of personal data, the PCO reminded the Secretary for Education and Manpower that the scope of the personal data to be disclosed should be clearly defined.

The Secretary responded by proposing amendments to section 8(3) to the effect that the scope of personal data of the managers to be entered in the public register be limited to his name, tenure of office and category that he belonged to. The PCO welcomed the steps taken by the Secretary who was also reminded of the requirements under DPP1(3) to notify the managers as data subjects explicitly of the purpose of use of the data and the classes of persons to whom the data would be transferred.

《2003年電子交易(修訂)條例草案》

法案委員會邀請公署對《電子交易條例》(第553章)的建議修訂提供意見。按照建議新加的第43A(3)條，資訊科技署署長獲賦權在核證機關披露紀錄內，公布評估報告及法定聲明的關鍵性資料。由於此舉可能涉及披露個人資料，公署建議應述

明有關個人資料的使用目的。此外，公署亦注意到透過第36條的建議修訂，登記證書持有人的個人資料可能會在核證機關備存的網上儲存庫被披露。故此，公署亦認為應制定目的聲明，有效限制從儲存庫收集所得的個人資料的獲准用途。此外，個人資料亦可能透過資訊科技署署長行使《電子交易條例》第30及33條賦予的權力時被收集，公署因此提示署長有責任履行保障資料第1原則的規定。在本年報期內，此事並無進一步進展。



Electronic Transactions (Amendment) Bill 2003

The PCO was invited by the Bills Committee to provide views on the proposed amendments to the Electronic Transactions Ordinance, Cap 553. In relation to the proposed new section 43A(3), the Director of Information Technology Services was empowered to publish in the disclosure record for the certification authority, *inter alia*, material information in the assessment report and statutory declaration. As personal data might be disclosed in the disclosure record, the PCO advised that specific purpose of use of the personal data be stated. The PCO further noted that personal data of holders of registered certificates might be disclosed in the on-line repository maintained by certification authority through the amendments proposed for section 36. A purpose statement was again seen to be effective in limiting the permitted purpose of use of the personal data obtained from the repository. In addition, the exercise of powers under sections 30 and 33 of the Electronic Transaction Ordinance by the Director of Information Technology Services might involve collection of information containing personal data. The PCO therefore reminded the Director of the obligation under DPP1. There was no further development in the matter during the period under review.

《2003年基督教靈糧世界佈道會法團(修訂)條例草案》

本條例草案旨在成立基督教靈糧世界佈道會香港靈糧堂堂務委員會。民政事務局局長要求公署就條例草案作出評論。條例草案第8條建議將堂委會成員及獲委任簽署契據、文件及其他文書的人士的姓名及地址在公司註冊處登記，供公眾人士查閱。在此方面，公署提醒民政事務局局長應設法確保供公眾查閱的資料，不會使用於原本收集目的以外的任何目的。公署故此建議在條例草案中加入一項聲明，指明可供公眾查閱的個人資料的使用目的，並且對不當使用有關資料的人士作出制裁。其後，當通過有關法律時，條例中加入了一項目的聲明。

Ling Liang World-Wide Evangelistic Mission Incorporation (Amendment) Bill 2003

The Bill sought to provide for the incorporation of the Council in Hong Kong Ling Liang World-Wide Evangelistic Mission. The Secretary for Home Affairs asked the PCO to comment on the Bill. It was proposed under section 8 of the Bill that personal data, such as names and addresses, of Council members and of persons appointed to sign deeds, documents, and other instruments would be registered under the Companies Registry for public inspection. In this connection, the PCO reminded the Secretary that due consideration should be given to ensure the data open for public inspection would not be used for purpose other than the data collection purpose. The PCO therefore advised the inclusion in the Bill a statement specifying the purpose of use of the personal data available for public inspection and imposition of sanction against improper use of the data. Subsequently, when the relevant law was passed, a purpose statement was provided for in the Ordinance.

對《強制性公積金計劃條例》(第485章)作出的建議修訂

財經事務及庫務局局長建議修訂《強制性公積金計劃條例》第5A、20及21B條，對根據該條例備存的每一公共登記冊加入一項目的聲明，以及述明除非事先取得有關個人的同意，否則有關登記冊內的個人資料不得使用於目的聲明所指目的以外的任何目的。公署獲邀對此作出評論。公署指出為方便依從保障資料第3原則的規定，有關方面應制定明確的目的聲明，向可經登記冊作出查閱的人士提供指引。此外，關於立法擬稿建議使用「同意」一詞，公署建議局長考慮使用保障資料第3原則所採用的「訂明同意」。

公署亦要求局長考慮加入法定制裁措施，以阻嚇不當使用從公共登記冊內收集的個人資料。公署亦注意到《強積金計劃條例》的第5A(1)、20C(1)及21(1)條及《強制性公積金計劃(一般)規例》第172(11)條賦權強制性公積金計劃管理局廣泛權力，訂明何類資料須載於登記冊內。公署因此建議局長訂明有關資料的類別。

Proposed amendments to Mandatory Provident Fund Schemes Ordinance, Cap 485

The Secretary for Financial Services and the Treasury proposed to amend sections 5A, 20 and 21B of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) by incorporating a purpose statement each for the various public registers maintained under the MPFSO and that the personal data contained in these registers should not be used for purposes other than those specified in the purpose statements unless prior consent of the individuals were obtained. Comments from the PCO were sought. The PCO advised that in order to facilitate compliance with DPP3, specific purpose statement should be clearly spelt out for guidance to all data users who have access to these registers. The Secretary was further advised to consider the proposed legislative drafting on the use of the word ‘consent’ as opposed to “prescribed consent” being used under DPP3.

The Secretary was also asked to consider the imposition of statutory sanction for improper use of personal data obtained from the registers as an effective deterrent tool. The PCO also noticed that wide powers were conferred upon the Mandatory Provident Fund Authority under sections 5A(1), 20C(1) and 21(1) of the MPFSO and section 172(11) of the Mandatory Provident Fund Schemes (General) Regulations for the Authority to prescribe the information to be contained in the registers. The Secretary was therefore advised to specify the categories of personal data to be included in the registers.



對《職業退休計劃條例》(第426章)作出的建議修訂

財經事務及庫務局局長擬修訂《職業退休計劃條例》，在條例第6條下備存的可供公眾查閱的載有註冊或獲豁免註冊的職業退休計劃資料的公共登記冊加入一項目的聲明。由於受託人的個人資料可能被披露，局長要求公署發表評論。公署對可供大眾查閱的個人資料是否涉及超過實際所需及個人資料可能被濫用的情況表示關注，因此認為必須盡量清楚界定所收集及披露的個人資料類別，以及公布該等資料的使用目的。公署促請局長注意及參考民政事務局就公共登記冊發出的指引所載的立法建議及行政措施。局長作出正面回應，根據公署的評論檢討有關修訂建議的立法擬稿。

《2003年城市規劃(修訂)條例草案》

此條例草案擬容許公眾人士得以查閱呈交城市規劃委員會的所有申述、意見及申請。公署對是否有個人資料從而被公眾查閱表示關注。房屋及規劃地政局局長在回應中表示無意讓公眾查閱私隱條例第2條釋義下的個人資料。

(續下頁)

Proposed amendments to Occupational Retirement Schemes Ordinance, Cap 426

The Secretary for Financial Services and the Treasury sought to amend the Occupational Retirement Schemes Ordinance ("ORSO") to incorporate a purpose statement for the public register maintained under section 6 for occupational retirement schemes registered or exempted under the ORSO. Since particulars of trustees comprising personal data may be disclosed, the PCO was asked by the Secretary to give comments. For personal data of individuals that are made publicly accessible, the PCO is concerned about the risk of disclosure beyond what is absolutely necessary and on top of that any risk of misuse of personal data. The categories of personal data to be collected and disclosed as well as the purpose of publication should therefore be as explicit and clearly defined as possible. The attention of the Secretary was drawn to the drafting recommendations and administrative measures laid down in the Guidelines issued by the Home Affairs Bureau on public registers for reference. The Secretary responded positively by reviewing the legislative drafting for the proposed amendments in light of the comments given by the PCO.

Town Planning (Amendment) Bill 2003

The Bill sought to make available for public inspection of all representations, comments and applications submitted to the Town Planning Board. The PCO was concerned as to whether any personal data would be subject to public inspection as well. The Secretary for Housing, Planning and Lands, in response, expressed that there was no intention to make available any personal data, as defined in section 2 of PD(P)O, for public inspection.

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其後，規劃署署長就公布申述人、提出意見者及申請人的姓名是否符合私隱條例規定一事尋求公署的意見，署長提出有關人士在提交申述、意見及申請時早已得知當局根據規定必須公布他們的資料。公署認為首先要考慮的問題是在有關情況下是否需要識辨申述人、提出意見者及申請人的身份。如有需要，則有關人士必要得知其個人資料將被公布。此外，有關方面宜限制可供公眾查閱的個人資料的使用目的，並且施加制裁措施，以防不當使用有關資料。

規劃署署長在回應中同意採取審慎的措施，以防個人資料可能被濫用。建議指出只會披露有關人士的姓名。在文件供大眾查閱前，他們的地址及電話號碼會予以刪除。署長亦證實會採取必要的行政措施，確保有關個人得知他們的姓名會被公布，同時提醒進行查閱的公眾人士經查閱所得的個人資料其用途的限制。規劃申請的申請表及指引資料亦會清楚列明收集資料的目的，以及會將有關人士的姓名公布給大眾查閱的事項。

《2003年聯合國(反恐怖主義措施)(修訂)條例草案》

本條例草案的目的是為修訂《聯合國(反恐怖主義措施)條例》(「反恐條例」)。建議中的第12(6)條指明在何種情況下獲授權人員可將獲得的資料向律政司、香港警務處、香港海關、入境事務處及廉政公署披露。公署注意到並無條文限制有關資料的披露目的。此外，公署發覺建議中的第12D(2)(a)條，以及作出相應修訂的《販毒(追討得益)條例》的第25A(9)(a)條及《有組織及嚴重罪行條例》的第25A(9)(a)條載有容許獲授權人員披露資料的類似條文。公署認為有需要相關的條文下，明確述明有關資料的披露目的，以限制資料的披露。

Subsequently, the Director of Planning sought advice from the PCO on whether publication of the names of the persons who made representations, comments or applications would be consistent with PD(P)O, given that the concerned persons would be made well aware of the publication requirement before submitting their representations, comments or applications. The PCO advised that the issue to consider first was whether it was necessary to identify the persons who made representations, comments or applications in the circumstances. If it was necessary to do so, then those individuals should be made aware of the publication. In addition, it was desirable to restrict the purpose of use of any personal data made available for public inspection and to impose sanction against improper use of such data.

In response, the Director agreed that a cautious approach should be adopted to avoid possible misuse of personal data. It was proposed that only the names of the individuals would be disclosed. The address and telephone number, etc would be struck out from all documents available for public inspection. The Director also confirmed that necessary administrative measures would be taken to ensure that the individuals were made aware of the publication of their names and the public viewing the submissions would be alerted to the restriction in use of the personal data contained therein. The purpose for collecting the data and publication of the names of the individuals for public inspection would be clearly stated in the application forms and guidance notes for planning application.

United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003

The Bill sought to amend the United Nations (Anti-Terrorism Measures) Ordinance. The proposed section 12(6) specified the situations where information obtained by an authorized officer could be disclosed to the Department of Justice, the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department and the ICAC. The PCO noted that there was no provision limiting the purposes of disclosure. In addition, similar provisions allowing disclosure of information by an authorized officer were found at the proposed section 12D(2)(a) and the consequential amendments made to section 25A(9)(a) of the Drug Trafficking (Recovery of Proceeds) Ordinance and section 25A(9)(a) of the Organized and Serious Crimes Ordinance. The PCO considered that it was necessary to limit the disclosure by stating explicitly under the relevant provisions the specific purpose for which the relevant information could be disclosed.

此外，公署亦注意到新加的第12D(2)(b)條容許在律政司司長覺得有關資料可能有助於任何相應的人員或機構履行職能時，獲授權人員可因此而披露資料。鑑於條例第12(5)條所述的「相應的人員或機構」的涵蓋範圍甚廣，公署對因此而准予披露的資料可能被用於不屬防止罪行或國際保安所需的目的表示關注。

保安局局長回應時認為條例草案中有關規管資料披露的條文，是受私隱條例在披露個人資料方面的明確條文所規管。關於第12D(2)(b)條，保安局局長表示該條文旨在讓執法機構與海外對等機構互換資料，以防止及調查恐怖分子及資助恐怖主義活動方面的罪行。

不過，公署仍然對建議中的條文所衍生的影響表示關注。鑑於獲授權人員可行使廣泛權力，以及個人在反恐條例下有義務提供資料，故此適宜將披露該等資料的目的，規限在與防止恐怖分子活動及相關財務活動的目的。公署認為如互換資料的目的是方便及有效地防止及調查資助恐怖主義及洗黑錢方面的罪行，則應在各相關條文中述明資料的披露目的，此舉可避免披露與反恐條例的立法原意不符的資料。保安局局長保證在提交條例草案時會適當考慮公署的建議。

It was also noted that the new section 12D(2)(b) allowed disclosure of information by an authorized officer, where the information appeared to the Secretary for Justice to be likely to assist any corresponding person or body to discharge its functions. Given the wide coverage of “corresponding person or body” as defined in section 12(5) of the Ordinance, the PCO showed concern that the permitted disclosure might fall outside the ambit of crime prevention or safeguarding international security.

The Secretary for Security however considered that the provisions for disclosure of information in the Bill should be read subject to the more specific provisions for disclosure of personal data in the PD(P)O. Regarding section 12D(2)(b), the Secretary indicated that it was intended to enable the enforcement agencies to exchange relevant information with overseas counterparts for the purpose of preventing and investigating terrorist and terrorism financing offences.

The PCO however remained concerned over the implication of the proposed sections. Given the extensive powers of an authorized officer and the onerous obligation imposed upon an individual to provide information/data under the Ordinance, it was desirable to confine the purposes of disclosure of such information/data only to those consistent with the purpose in preventing terrorist acts and related financial activities. The PCO took the view that if the intention of sharing information was to facilitate the effective prevention and investigation of such offences as terrorism financing and money laundering, the specification of clear purposes of disclosure under the relevant sections could avoid disclosure which was inconsistent with the legislative intent. The Secretary assured that the PCO's comments would be given due consideration when the Bill was put forward.

《個人資料(私隱)條例》 的修訂

《證券及期貨條例》(2002年第5號)對《個人資料(私隱)條例》作出下述修訂：—

- (i) 第2(1)條中「財經規管者」的定義中，廢除(b)、(c)、(d)、(e)及(ea)段而代以—
 - (b) 《證券及期貨條例》(2002年第5號)第3(1)條提述的證券及期貨事務監察委員會；
 - (c) 《證券及期貨條例》(2002年第5號)附表1第1部第1條所指的認可結算所、認可交易所、認可控制人或認可投資者賠償公司；
 - (d) 根據《證券及期貨條例》(2002年第5號)第III部獲認可提供該條例附表5所界定的自動化交易服務的人；

上述修訂事項在二零零三年四月一日生效。

Changes to the Personal Data (Privacy) Ordinance **附錄三**

Appendix III

By the Securities and Futures Ordinance (No.5 of 2002), the following amendments were made to the PD(P)O: —

- (i) In section 2(1), in the definition of “financial regulator”, repeal paragraphs (b), (c), (d), (e) and (ea) and substitute—
 - (b) the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (5 of 2002);
 - (c) a recognized clearing house, a recognized exchange company, a recognized exchange controller or a recognized investor compensation company within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (5 of 2002);
 - (d) a person authorized under Part III of the Securities and Futures Ordinance (5 of 2002) to provide automated trading services as defined in Schedule 5 to that Ordinance.

The above amendments came into force with effect from 1 April 2003.