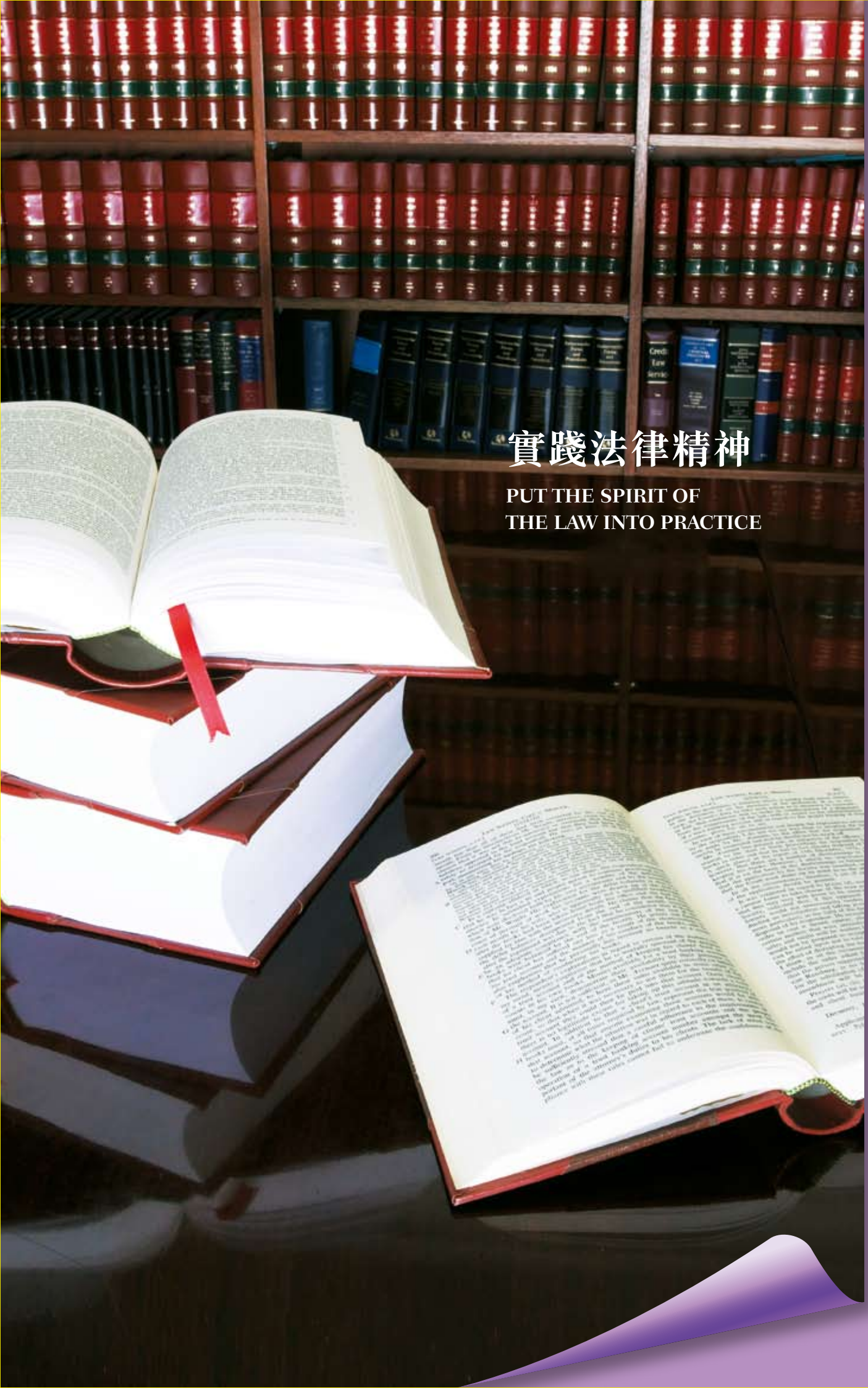
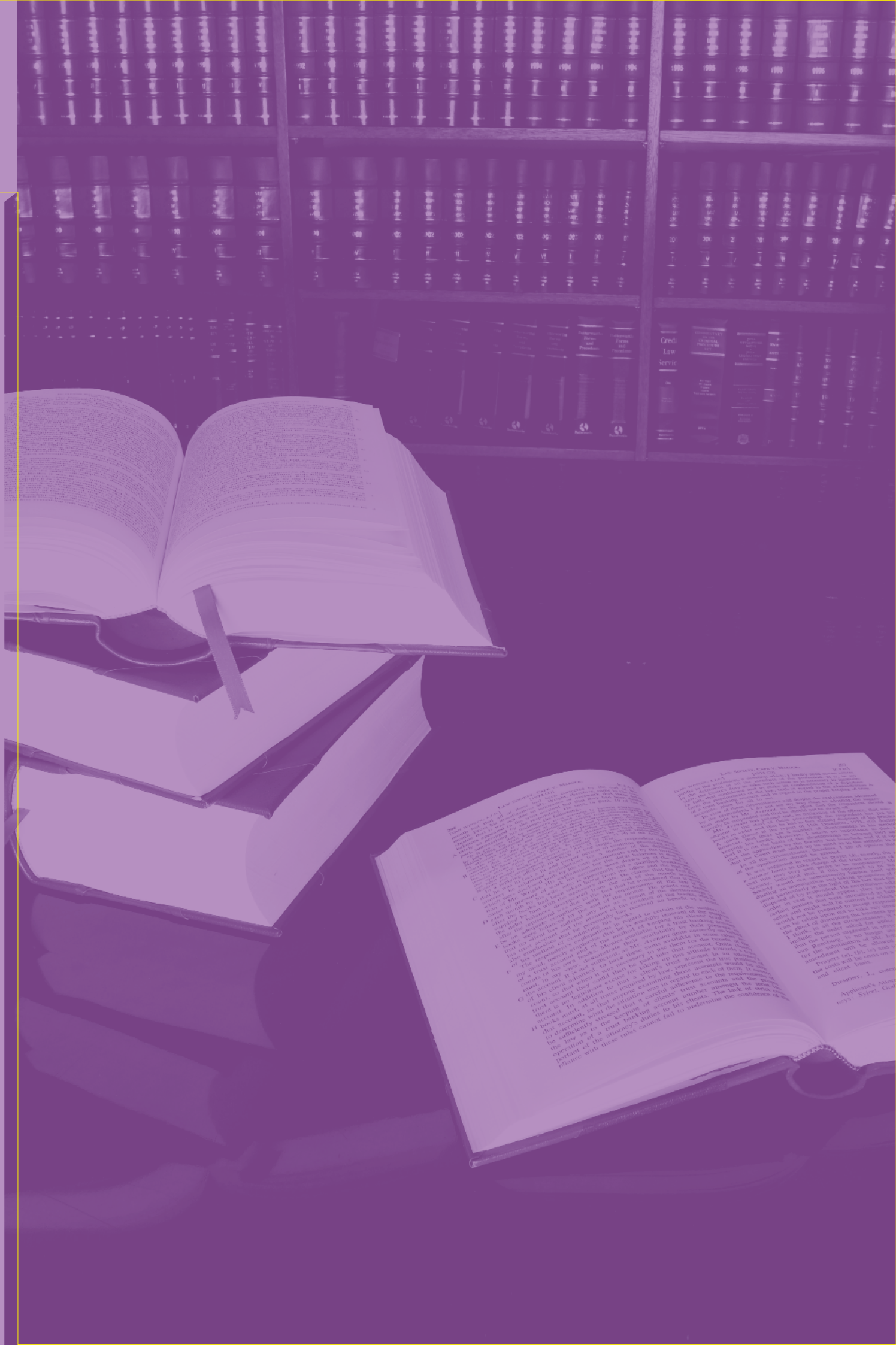


實踐法律精神

PUT THE SPIRIT OF THE LAW INTO PRACTICE



條例檢討
Review of the Personal Data (Privacy) Ordinance

背景

條例的主要條文於1996年12月實施。儘管香港是亞洲唯一擁有成熟的保障資料法例及私隱專員的司法管轄地區，但科技及電子商貿的不斷急速發展，惹起了對私隱保障的關注。另一方面，海外司法區已開始檢討其私隱法例，以應付新挑戰。

公署於2006年6月成立了內部的條例檢討工作小組，對條例進行全面檢討。2007年12月，公署向政制及內地事務局局長提交超過50項修訂建議及私隱關注議題。這些建議反映工作小組考慮過的各項因素，分別是條例實施以來國際私隱法例及標準的發展；公署過往的規管經驗，尤其是應用某些條文時所遇到的困難；以及經電子方式儲存及傳送個人資料，令個人變得難以掌握或決定該等個人資料的收集、使用及保安，容易造成損害。建議亦處理公眾關注的課題、平衡私隱權與公眾利益，以及對私隱有重大影響的事宜採取防患未然的措施。

2009年8月，政制及內地事務局發出《檢討個人資料(私隱)條例的諮詢文件》(下稱「諮詢文件」)，提出43項建議。公眾諮詢期為時三個月，於2009年11月30日結束。

主要建議

是次諮詢範圍廣泛，27項主要建議載於諮詢文件附件1，涵蓋七個範疇，分別是(1)敏感個人資料；(2)資料保安；(3)公署的執法權力；(4)罪行及制裁；(5)資料當事人的權利；(6)資料使用者的權利及義務；以及(7)新增豁免條文。部分主要建議，如落實的話，會對香港的個人資料保障有重大及基本的影響。諮詢文件全文可於公署網站(www.pcpd.org.hk)瀏覽。部分主要建議概述如下。

Background

The core provisions of the Ordinance came into operation in December 1996. Although Hong Kong remains the only jurisdiction in Asia with a mature piece of data protection legislation and a privacy commissioner, the rapid technological and e-commerce developments and the exponential rate with which it continues to progress have given rise to genuine privacy concerns. On the other hand, overseas jurisdictions have commenced their own reviews of privacy laws to meet new challenges.

An internal Ordinance Review Working Group was formed within the PCPD in June 2006 with the aim of conducting a holistic review of the Ordinance. In December 2007, the PCPD presented to the Secretary for Constitutional and Mainland Affairs ("CMAB") a report containing more than 50 proposals. These proposals reflected the various factors which the Working Group had taken into account, namely, the development of international privacy laws and standards since the operation of the Ordinance; the regulatory experience of the PCPD gained in the past, particularly the difficulties encountered in the application of certain provisions of the Ordinance; and the vulnerability of individuals who have become less able to control and determine the collection, use and security of their personal data stored and transmitted through electronic means. The proposals also addressed current issues of public concerns, balanced privacy right against public interest and harnessed matters that would have significant privacy impact.

In August 2009, the CMAB issued a Consultation Document on Review of the Personal Data (Privacy) Ordinance ("the Consultation Document") containing 43 proposals. The consultation gave the public three months to respond and ended on 30 November 2009.

Main Proposals

The scope of consultation is extensive. The key proposals, 27 of them, as contained in Annex 1 of the Consultation Document cover 7 aspects, namely, (1) Sensitive Personal Data; (2) Data Security; (3) Enforcement Powers of the PCPD; (4) Offences and Sanctions; (5) Rights of Data Subject; (6) Rights and Obligations of Data User; and (7) Introducing New Exemptions. Some of the main proposals, if implemented, would have a significant and fundamental impact on personal data protection in Hong Kong. The Consultation Document is available at the PCPD's website (www.pcpd.org.hk). Some of the main proposals are outlined below.

敏感個人資料

條例並沒有區分「敏感」的個人資料。歐盟《第95/46/EC號指令》的《保障私隱及個人資料跨境流動指引》及一些海外私隱法例為特別類別的個人資料提供了特定保障，包括資料當事人的種族或民族本源、政治聯繫、宗教信仰及聯繫工會成員身分、身體或精神健康或狀況、生物特徵資料及性生活。在回應公署把本地私隱保障程度提升至與海外標準一致的建議，政制及內地事務局表示作為開始只把生物特徵資料列為敏感個人資料。建議的規管機制是，除了某些訂明情況外，收集、持有、處理及使用敏感個人資料應予以禁止。

Sensitive Personal Data

The Ordinance does not differentiate personal data that are sensitive from others. The EU Directive 95/46/EC on *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* and some overseas privacy legislations provide specific protection for special categories of personal data including racial or ethnic origin of the data subject, his political affiliation, religious beliefs and affiliations, membership of any trade union, physical or mental health or condition, his biometric data and sexual life. In response to the PCPD's suggestion to bring the level of local privacy protection at par with overseas standard, the CMAB indicated that as a start only biometric data should be classified as sensitive personal data. The proposed regulatory regime is that the collection, holding, processing and use of sensitive personal data ought to be prohibited except in certain prescribed circumstances.

資料處理者

公署建議新增資料處理者在條例下的責任。資料處理者須遵守保障資料第2(2)原則(資料保留期間)、保障資料第3原則(個人資料的使用)及保障資料第4原則(個人資料的保安)的規定。此外，資料使用者應有責任以合約形式或其他措施，確保受託處理個人資料的資料處理者所提供的保安程度與他們有責任提供的相若。

Data Processor

It is proposed that data processors will be brought accountable under the Ordinance. Data processors should be required to observe the requirements of DPP 2(2) (duration of data retention), DPP 3 (use of personal data) and DPP 4 (security of personal data). In addition, data users should be obliged to use contractual or other means to ensure that the data processors to whom they entrust the personal data will provide a level of security compatible with their obligations.

個人資料外洩通報機制

鑑於發生大量資料外洩事故，公署建議設立通報機制，規定資料使用者盡快通知可能受資料外洩事故影響的人士，以便讓他們盡早採取措施自我保護，減低潛在損害或身份被盜用或被假冒的風險。建議規定資料使用者採取風險為本的方法，通報存在實質傷害風險的事故。資料使用者亦應在某些情況下通知公署，以便公署進行循規查察，適時向資料使用者提供有關資料保安系統的指引。在現階段，政制及內地事務局考慮採取自願通報機制，而不是強制性的通報機制。

Breach Notification

In the wake of many data leakage incidents, it is proposed that a notification mechanism be put in place to require data users to promptly notify individuals, who may be affected by a data security breach, so that they can take early steps to protect themselves and minimize their exposure to potential damage or risk of identity theft or fraud. The proposal requires data users to adopt a risk-based approach to notify incidents that carry a real risk of harm. The data user should also notify the PCPD in certain circumstances of such breach so that compliance checks can be carried out and where appropriate, timely guidance can be given to data users concerning their data security systems. At the moment, the CMAB considered introducing voluntary rather than mandatory notification mechanism.

在未經授權下取得、披露和出售個人資料

為了遏止散播及濫用被外洩的個人資料的不負責任行為，公署建議如任何人未經資料使用者同意，蓄意或罔顧後果地取得或披露該資料使用者持有或被洩漏的個人資料，即屬犯罪。任何人將以此方式收集的個人資料出售圖利，亦屬犯法。這兩項建議是仿效英國《1998年私隱法令》的模式。

適用於建議罪行的抗辯包括：(a)為防止或偵查罪行而必須的；(b)任何成文法則、法律規則或法庭命令所規定或授權；(c)有合理理由相信他獲法律賦予權利下而取得、披露或促使披露有關個人資料；(d)有合理理由相信假如資料使用者得知他如此取得、披露或促使披露有關個人資料，資料使用者會同意該些行為；(e)符合公眾利益；(f)為了特定目的，供任何人用作任何新聞、文學或藝術材料的發布，並有合理理由相信有關舉動是符合公眾利益的。

諮詢文件強調，罪行的範圍應限於「從中取利」或「作惡意用途」的犯罪行為。違例者會被施加與過失的輕重相稱的罰款。

判給補償及處以罰款

為提高向受屈資料當事人給予補償的有效性及對侵犯私隱作為或行為的阻嚇性，公署建議賦權專員(1)向受屈資料當事人判給補償；(2)規定嚴重違反保障資料原則的資料使用者繳付罰款，兩項建議均設立上訴機制。

The Unauthorized Obtaining, Disclosure and Sale of Personal Data

To curb irresponsible dissemination and misuse of leaked personal data, it is proposed to make it an offence for any person who knowingly or recklessly without the consent of the data user, obtains or discloses personal data held or leaked by the data user. It will also be unlawful for anyone to sell the personal data so obtained for profits. Both of these proposals are modeled on the U.K. Data Protection Act 1998.

Applicable defences for the proposed offences should include: (a) necessary for preventing or detecting crime, (b) required or authorized by an enactment, rule of law or court order, (c) acted in reasonable belief that that person had in law the right to obtain, disclose or procure the disclosure, (d) acted in the reasonable belief that he would have had the consent of the data user if the data user had known of the act, (e) justified as being in the public interest, (f) acted for specific purpose, with a view to publication by any person of any journalistic, literary or artistic materials and in the reasonable belief that such an act was justified as being in the public interest.

It is stressed in the Consultation Document that the offences should be confined to such culpable acts for "profits" or with "malicious purposes". An offender will be ordered to pay a fine that accords with the gravity of the offence.

Award of Compensation and Monetary Penalty

To enhance the effectiveness of affording remedies to aggrieved data subjects and achieve greater deterrence on privacy intrusive acts or practices, the PCPD proposed that the Commissioner be given the power (1) to award compensation to an aggrieved data subject and (2) to require data users to pay monetary penalties for serious contraventions of data protection principles, both subject to an appeal procedure being in place.

法律協助

任何資料當事人因資料使用者違反條例規定而蒙受損害，有權根據第66條向有關資料使用者申索補償。這些資料當事人須自行承擔全部訴訟費用。自條例實施以來，這項條例下所提供的濟助很少被援引。公署建議獲賦權向有意對資料使用者提出法律程序的受屈資料當事人提供法律協助。這項建議可確保受屈資料當事人不會因費用問題而對法律訴訟卻步，並能加強條例下的制裁的整體效用。

直接促銷

現時的規管機制規定直接促銷者在首次使用資料當事人的個人資料作直接促銷時，須向資料當事人提供「拒絕服務」選擇。向已選擇了「拒絕服務」的人士進行直接促銷是違反條例的規定，屬於犯罪。公署認為現時的罰則（最高罰款10,000元）屬太低，諮詢文件建議提高罰則，以加強阻嚇作用。

公眾初步回應

公眾就部分建議即時表達關注。本地資訊科技業對把生物特徵資料列為敏感個人資料的建議表達關注。他們認為單把生物特徵資料列為敏感個人資料是不適當的。從員工管理及公司行政的角度來說，公司須在員工無壓力或無不利後果情況下取得員工的同意，以收集、處理及使用其生物特徵資料的規定是不切實際的。他們擔心這項建議會扼殺資訊科技業及阻礙科技發展。他們傾向於由公署發出實務守則讓他們遵從。關於規管資料處理者的建議，他們認為在依從相關的保障資料原則方面有實際困難。對於把在未經授權下取得、披露和出售個人資料的行為定為罪行的建議，主要的關注是可能會干擾網絡用戶的正常瀏覽活動。至於在直接促銷活動中違反使用個人資料的規定而提高罰則，該建議獲得大力支持。所得的意見贊同在直接促銷活動中濫用個人資料的情況，須施加更嚴厲的規管及較高的罰則。

Legal Assistance

A data subject, who suffers damage by reason of a contravention of the requirement of the Ordinance, is entitled under section 66 to claim compensation from the data user. These data subjects will need to bear all the legal costs themselves. Such relief remedy provided under the Ordinance has seldom been invoked since the operation of the Ordinance. It is proposed that the PCPD will be empowered to provide legal assistance to aggrieved data subjects who intend to institute legal proceedings against data users. The proposal will ensure that aggrieved data subjects will not be inhibited from filing lawsuits due to cost considerations and enhance the overall effectiveness of the sanctions provided by the Ordinance.

Direct Marketing

The current regulatory regime is to require direct marketers to give an "opt-out" choice to the data subject when first using his personal data for such purpose. Repeated direct marketing activities to a person, who has "opted out" constitute an offence under the Ordinance. The existing penalty level (at $10,000 maximum) is considered too low and it is proposed in the Consultation Document that the penalty should be raised to achieve better deterrence effect.

Preliminary Public Responses

Members of the public have immediately expressed concerns over some of the proposals. The local Information technology ("IT") industry has expressed concern over the proposal to classify biometric data as sensitive personal data. They considered it inappropriate to single out biometric data as sensitive personal data. From the perspective of staff management and company administration, the requirement to obtain consent from the staff to collect, process and use their biometric data free from pressure or adverse consequence is not practical. They worried that the proposal would strangle the IT industry and inhibit technological development. They preferred a code of practice to be issued or approved by the PCPD for them to follow. As for the proposal to regulate data processors, they considered that there would be practical difficulties in complying with the relevant data protection principles. In respect of the proposal to make it an offence for unauthorized obtaining, disclosure or sale of personal data, the major concern was the possible interference with the normal browsing activities of web-users. The proposal to increase the penalty level for contravention of the provision regulating the use of personal data in direct marketing activities has received great support. The comments obtained suggest preference of tougher regulation and higher penalty level on misuse of personal data in direct marketing activities.

諮詢活動

在諮詢期間，公署派員出席多個公開論壇、講座及研討會等，介紹這些建議及回應各公眾關注的事項。為向公眾提供額外資料，以便他們在提交意見前能加以考慮，公署於2009年9月在網站上載公署檢討《個人資料（私隱）條例》的資料文件（下稱「資料文件」）。該資料文件載列公署向政制及內地事務局所提交的建議原文及有關該等建議的一些研究資料。於2009年11月，公署就諮詢文件向政制及內地事務局提交意見書，表達公署對各項建議的回應（下稱「公署的意見書」）（資料文件及公署的意見書可從公署網站www.pcpd.org.hk下載）。公署已就諮詢期間公眾所表達的關注（包括以上所述），在意見書內論述。

據一政黨就諮詢文件所進行的民意調查，大部分受訪者給予正面回應，並支持提高保障資料私隱的建議。

諮詢期結束後，政制及內地事務局會分析所收到的觀點及意見，然後編撰報告。公署現正等待政制及內地事務局的報告。

環球趨勢

檢討條例的目的是更新保障資料的法例，以面對目前的挑戰。這項工作與海外政府及私隱規管機構藉檢討及改革私隱法例，以加強保障個人資料私隱權益所採取的方式一致。澳洲、加拿大、新西蘭及英國均積極檢討其私隱法例。按規模來說，澳洲的諮詢工作在近年是同類項目中最大型的。報告書長達2693頁，共提出295項建議。

環球趨勢是務求爭取較高程度的個人資料私隱保障。各國傾向就特定的私隱議題及問題提供實務性的規管。對付嚴重及公然漠視私隱法規的行為，則建議採取較嚴厲的制裁措施，並賦予規管機構較高的執法權力。例

Consultation Activities

During the consultation period, the PCPD has attended a series of public forums, talks, seminars, etc. to promote understanding of these proposals and address concerns encountered. To enable the public to have additional materials to consider before making submissions, the PCPD prepared and uploaded onto its website the Information Paper on Review of the Personal Data (Privacy) Ordinance in September 2009. It contained the original proposals made by the PCPD to the CMAB and some of the research materials relating to the proposals. In November 2009, the PCPD submitted to the CMAB its submission on the Consultation Document setting out the PCPD's responses to various proposals. Both the Information Paper and the PCPD's Submission can be downloaded from the Office's website at www.pcpd.org.hk. The concerns expressed to the PCPD during the consultation period, including those outlined above, are also dealt with in the PCPD's Submission.

According to an opinion poll conducted by a political party in respect of the proposals, it is noted that on the whole a majority of the interviewees showed positive responses and supported the proposals that aim at enhancing data privacy protection.

After the public consultation, the CMAB will embark on the process of analyzing the views and comments received and compile a report of the consultation. At present, the PCPD is awaiting the report from the CMAB.

The Global Trend

The review of the Ordinance aims at updating the data protection law to meet the new challenges. This step echoes with the different measures taken by overseas governments and privacy regulators in reviewing and reforming their privacy laws in order to safeguard the individual's personal data privacy interests. Australia, Canada, New Zealand and the United Kingdom have all embarked on a review of their privacy laws. By way of illustration, the Australian's consultation exercise is the biggest of its kind in recent years. The report contains 2693 pages and 295 recommendations.

The global trend is to aspire for a higher level of personal data privacy protection. It moves towards providing pragmatic regulations for specific privacy issues. Tougher sanctions are proposed to deal with more serious and blatant disregard of the requirements under the respective privacy laws and the overseas privacy regulators are also vested with

如，英國資訊專員公署獲賦權命令嚴重違反《資料保障法令》的機構支付罰款最高可達500,000英鎊，並已發出法定指引闡述如何執行此項權力。另一例子是，澳洲法律改革委員會在其《第108號報告 — 澳洲私隱法律與實務須知》(獲澳洲政府於2009年10月發表的首階段反應接納)中建議修訂《澳洲私隱法令》，賦權澳洲私隱專員在以循規為本的執法方式不足時，可採取較強硬的執法手段，應付嚴重的違規情況。

enhanced enforcement powers. For example, the UK Information Commissioner's Office ("ICO") is empowered to order organizations to pay monetary penalty of up to £500,000 for serious breaches of the Data Protection Act and the ICO has produced statutory guidance on how such new power will be implemented. Another example is the recommendation made by the Australian Law Reform Commission in its "Report 108 – For Your Information: Australian Privacy Law and Practice" (which have been accepted by the Australian Government in the First Stage Response issued in October 2009) that the Australian Privacy Act should be amended to empower the Australian Privacy Commissioner with tougher enforcement remedies to cope with serious breaches where other compliance oriented enforcement methods are found to be insufficient.

在本地，公署向受屈資料當事人判給補償、就嚴重違反保障資料原則處以罰款、新增罪行及提高罰則等建議已納入諮詢文件內。這些措施符合國際趨勢，強化私隱法例下的執法條文。

Locally, the PCPD's proposals to award compensation to aggrieved data subjects and impose monetary penalty for serious contravention of the data protection principles as well as the introduction of new offences and raising the penalty level were included in the Consultation Document. These measures tally with the international trend of strengthening the enforcement provisions of personal data privacy laws.

向行政上訴委員會提出的上訴個案的簡述
Notes on Appeal Cases Lodged with the Administrative Appeals Board ("AAB")

個案 CASE 1

僱主為了搜集員工失職的證據而拍攝有關員工的影像，無須依從保障資料第1(3)原則的規定*(行政上訴委員會上訴案件第23/2008號)*

When the employer took the employee's images for the purpose of collecting data about his dereliction of duty, the employer was not bound to follow the requirement of DPP1(3) *(AAB Appeal No. 23 of 2008)*

投訴內容

投訴人獲其僱主告知，該僱主持有一張載有投訴人於當值期間在工作處所的儲藏室內睡覺的影像光碟。投訴人其後遭解僱。投訴人表示儲藏室內並無安裝攝錄器材，懷疑僱主是在未經他同意下進行「偷拍」。投訴人認為僱主侵犯其私隱，故向私隱專員作出投訴。

The Complaint

The complainant was informed by his employer that they had a VCD showing the complainant asleep in the storeroom of the workplace while he was on duty. The complainant was subsequently dismissed. The complainant said that there was no video recording equipment in the storeroom, so he suspected that his employer had taken the video sneakily without his consent. The complainant thought that his employer had intruded into his privacy and lodged a complaint with the Privacy Commissioner.

私隱專員的調查結果

投訴人沒有看過該影像光碟的內容，也不知道是誰或在什麼情況下被拍攝，但他明確指出儲藏室內沒有任何攝錄工具或監察鏡頭。因此，沒有表面證據證明該僱主是拍攝者。再者，即使該僱主是未經投訴人事前同意而進行拍攝，收集有關影像的目的是搜集投訴人於當值期間失職的證據。由於所拍攝的影像是投訴人於工作期間睡覺的情況，若要求僱主在進行拍攝前通知投訴人不是合理地切實可行的，因此，該僱主毋須採取保障資料第1(3)原則的步驟。私隱專員決定根據條例第39(2)(d)條拒絕進行調查。投訴人不滿私隱專員的決定，向行政上訴委員會提出上訴。

Findings by the Privacy Commissioner

The complainant had not watched the video and did not know who had taken the video or under what circumstances the video had been taken. However, he clearly stated that there was no video recording equipment or surveillance camera in the storeroom. Therefore, there was no p*rima facie* evidence showing that it was the employer who took the video. Moreover, even if the employer took the video without the prior consent of the complainant, the purpose of taking the video was to gather evidence on the complainant's dereliction of duty during working hours. As the videotaped images were images of the complainant sleeping during working hours, it was not reasonably practicable to require the employer to inform the complainant beforehand. Therefore, the employer was not required to follow the steps specified in DPP1(3). The Privacy Commissioner decided not to carry out an investigation pursuant to section 39(2)(d) of the Ordinance. Being dissatisfied with the decision, the complainant lodged an appeal with the AAB.

上訴

在上訴聆訊過程中，該僱主確認該光碟是連同一封匿名投訴信一起收到的，僱主既不知匿名投訴人的身份，亦不知拍攝光碟的人是誰。行政上訴委員會及各方在看過光碟的內容後均同意光碟內的影像應由一手提電話或攝錄機所拍攝。該僱主堅稱沒有授權任何員工進行拍攝，對此投訴人沒有任何可質疑的證據。所以，投訴人投訴僱主「偷拍」便不能成立。

另外，投訴人亦質疑私隱專員的決定不符合保障資料第1(2)及1(3)原則。行政上訴委員會認為，除非拍攝者違反保障資料第1(3)原則，否則拍攝本身並沒有不合法或不公平之處。至於保障資料第1(3)原則，行政上訴委員會認為即使僱主或僱主授權有關拍攝，但有關拍攝的目的是搜集投訴人在工作期間失職的證據，要求僱主在拍攝前喚醒及告知投訴人收集影像的目的並非「合理地切實可行」的。

委員會認為私隱專員根據條例第39(2)(d)條行使酌情權而拒絕對投訴進行調查的決定並沒有任何不合法或不合理之處。

The Appeal

During the hearing of the appeal, the employer confirmed that he had received the VCD together with an anonymous letter. The employer neither knew the identity of the sender nor the person who made the VCD. After the AAB and relevant parties had watched the VCD, they all agreed that the images in the VCD were taken by using a mobile phone or video recorder. The employer insisted that he had not authorized any staff to take the video. The complainant had no evidence to show otherwise. Thus, the complaint about the taking of the video sneakily by the employer was not established.

Furthermore, the complainant queried that the decision of the Privacy Commissioner was not consistent with the requirements of DPP1(2) and DPP1(3). According to the AAB, unless the video maker had contravened DPP1(3), the recording itself was neither unlawful nor unfair. Regarding DPP1(3), the AAB considered that even if the video maker was the employer or a person authorized by the employer, as the purpose of taking the video was to gather evidence on the complainant's dereliction of duty during working hours, it was not "reasonably practicable" for the employer to wake up the complainant and inform him of the purpose of video recording.

The AAB found that it was not unlawful or unreasonable for the Privacy Commissioner to exercise his discretion of refusing to carry out an investigation pursuant to section 39(2)(d) of the Ordinance.

行政上訴委員會的決定

上訴被駁回。

AAB's Decision

The appeal was dismissed.

個案 CASE 2

電郵地址xyz@xxx.com.hk（xyz是投訴人名字的首字母）並不屬於個人資料（*行政上訴委員會上訴案件第25/2008號*）

The e-mail address, xyz@xxx.com.hk ("xyz" being the complainant's initials) was found not to be the complainant's personal data *(AAB Appeal No.25 of 2008)*

投訴內容

投訴人是一間公司的網上電子金融資訊服務的訂戶。在申請服務時，投訴人向該公司提供電郵地址xyz@xxx.com.hk（xyz是投訴人名字的首字母）。投訴人其後在該電郵地址收到大量垃圾電郵。投訴人從報章得知該公司的系統曾遭黑客入侵後，投訴該公司沒有採取所有切實可行的步驟，保障他的個人資料（即該電郵地址）免受垃圾電郵發出者未獲准許的或意外的查閱，因而違反條例的保障資料第4原則。

The Complaint

The complainant was a subscriber of certain electronic financial information service provided by a company through its website. In applying for the service, the complainant provided the company with his e-mail address, xyz@xxx.com.hk ("xyz" being the complainant's initials). The complainant thereafter received numerous SPAM e-mails at the e-mail address. Having learned from a newspaper that the company's system had been infiltrated by hackers, the complainant complained that the company had failed to take all practical steps to protect his personal data, i.e., the e-mail address against unauthorized or accidental access by spammers and thus contravened DPP4 of the Ordinance.

私隱專員的調查結果

私隱專員認為投訴人的電郵地址並不構成條例所指的「個人資料」，因為投訴人的身份不能單從電郵地址可以確定；亦沒有證據顯示該公司的網站曾向垃圾電郵發出者洩漏他的個人資料。由於沒有表面證據證明有違反條例的情況，私隱專員根據條例第39（2）（d）條拒絕進行調查。投訴人對私隱專員的決定提出上訴。

Findings by the Privacy Commissioner

The Privacy Commissioner took the view that the complainant's e-mail address did not constitute "personal data" within the meaning of the Ordinance as the complainant's identity could not be ascertained from the e-mail address alone and that there was no evidence showing that his personal data had been leaked to the spammers by the company. On these basis, the Privacy Commissioner refused to carry out an investigation pursuant to section 39(2)(d) of the Ordinance, as there was no *prima facie* case of a contravention of the Ordinance. The complainant appealed against the Privacy Commissioner's decision.

上訴

沒有爭議的是，投訴人在該電郵地址所收到的垃圾電郵並無載有關於投訴人身份的資訊。除了使用該電郵地址外，並沒有證據證明有人未經准許使用投訴人的個人資料或任何顯露投訴人身份的資料。行政上訴委員會並不排除電郵地址在某些情況下屬於個人資料的可能性；當從電郵地址確定一個人的身分是合理地切實可行的，不論是因為電郵地址本身或連同其他資訊顯示有關資料。不過，在本個案，儘管電郵地址的字首"xyz"與投訴人名字的首字母相同，行政上訴委員會並不接納該電郵地址可合理地確定投訴人的身分這個說法。由於缺乏其他證據，行政上訴委員會認為該公司並無違反保障資料第4原則。

The Appeal

There was no dispute that the SPAM e-mails received through the complainant's e-mail address contained no information concerning the identity of the complainant. There was no evidence that, other than the use of the designated e-mail address, there had been any unauthorized use of the complainant's personal information or information which would have revealed the complainant's identity. The AAB did not preclude the possibility that an e-mail address, in some circumstances, could be personal data where it would be reasonably practicable for the identity of an individual to be ascertained from such an address, whether because of the information revealed in the e-mail address itself or in conjunction with other information. However, in this case, the AAB did not accept that the complainant's identity could reasonably be ascertained from the e-mail address notwithstanding the fact that the prefix of the address "xyz" corresponded to the complainant's initials. In the absence of any other evidence, the AAB took the view that there was nothing to indicate that a contravention by the company of DPP4 had occurred.

行政上訴委員會的決定

上訴被駁回。

AAB's Decision

The appeal was dismissed.

個案 CASE 3

僱主為向工程客戶匯報工程所涉及的項目明細及金額，披露僱員的工資資料*(行政上訴委員會上訴案件第 1/2009 號)*

An employer disclosed its employee's pay data when reporting to its client the breakdown and expenses of a project *(AAB Appeal No. 1/2009)*

投訴內容

投訴人曾於一工程公司任職，負責跟進該公司所承接的一項工程。投訴人投訴該公司在未取得他同意的情況下，將關於他的不正確的工資資料傳真予該工程的客戶。投訴人亦指出曾與該公司立下口頭協議，將投訴人與該公司之間的僱用合約內容(包括工資資料)保密。

The Complaint

The Complainant worked in an engineering company and was responsible for a project undertaken by the company. The complainant complained that in the absence of his consent, the company had faxed his pay data which were incorrect to the client of the project. The complainant also claimed that there was a verbal agreement between him and the company to keep the contents of his employment contract (including pay data) confidential.

私隱專員的決定

行政上訴委員會曾於行政上訴第 49/2005 號的判決中指出「虛假的事實和虛構的證據都不屬個人資料」。故此，私隱專員認為既然投訴人指稱有關工資資料是不正確的，則依據行政上訴委員會第 49/2005 號的判決，該等資料並不構成條例所述的「個人資料」，所以條例的有關規定並不適用於投訴人的個案。此外，即使該等有關工資資料構成投訴人的「個人資料」，該公司當初收集投訴人的有關工資資料，明顯地是為了處理與該工程有關的事宜。該公司其後向該工程的客戶匯報該工程所涉及的項目明細及金額，而當中包括投訴人的工資資

Findings by the Privacy Commissioner

In the decision of AAB Appeal No. 49/2005, the AAB decided that false facts and fabricated evidence were not personal data. The Privacy Commissioner opined that as the complainant claimed that the pay data were incorrect, according to the decision of AAB Appeal No. 49/2005, the data did not amount to "personal data" under the Ordinance, thus the requirements of the Ordinance were not applicable to the complainant's case. Apart from that, even if the pay data constituted "personal data" of the complainant, it was obvious that the company's original purpose of collecting the relevant pay data was for the handling of matters related to the project. The subsequent report made to its client by the company on the breakdown and expenses of the project, including the complainant's pay data appeared to be consistent with and directly related to the original purpose of collecting the pay data. Thus, there was no

私隱專員的決定 *(續)*

料，這與該公司當初收集該工資資料的目的看來是一致及直接有關，並無違反保障資料第3原則的規定。至於投訴人所指的保密協議，是「包括不幫（投訴人）交香港稅務，強積金，等等」，私隱專員認為該保密協議並不適用於本案。而且，保密協議的內容，是逃避有關的法律責任，其合法性令人存疑。在考慮到以上情況下，私隱專員根據條例第39（2）（d）條拒絕進行調查。投訴人不滿私隱專員的決定，向行政上訴委員會提出上訴。

Findings by the Privacy Commissioner *(continued)*

contravention of DPP3. Regarding the confidentiality agreement mentioned by the complainant, it means "including not to pay for (the complainant) Hong Kong tax, MPF, etc". The Privacy Commissioner believed that the confidentiality agreement was not applicable to this case. Moreover, such an agreement aimed to avoid legal responsibility and its legality was doubtful. In view of the above, the Privacy Commissioner refused to carry out an investigation under section 39(2)(d) of the Ordinance. Dissatisfied with the Privacy Commissioner's decision, the complainant lodged an appeal with the AAB.

上訴

投訴人提供了更多關於他與該公司產生不和的背景資料。在聆訊中投訴人一再強調該公司所披露關於他的工資資料並不是他的正確工資資料。投訴人甚至指出該傳真文件是由該公司編造以作欺騙用途。

行政上訴委員會認為投訴人指稱的不正確工資資料並不構成條例所述的「個人資料」，條例的有關規定並不適用於投訴人的個案。單憑這原因，私隱專員已經可以根據條例的39（2）（d）條拒絕繼續進行調查。

再者，行政上訴委員會認為該公司其後向該工程的客戶匯報所涉及的項目明細及金額時，披露投訴人的工資資料，與其當初收集該資料的目的一致及直接有關，不涉及違反保障資料第3原則的規定。

The Appeal

The complainant provided more background information about his dispute with the company. During the hearing, the complainant emphasized that the pay data disclosed by the company were incorrect. The complainant even alleged that the fax was fabricated by the company for a fraudulent purpose.

The AAB opined that the incorrect pay data as alleged by the complainant did not constitute "personal data" and the requirements under the Ordinance were not applicable to the complainant's case. On this ground alone, the Privacy Commissioner could refuse to carry out an investigation under section 39(2)(d) of the Ordinance.

Furthermore, the AAB took the view that the disclosure of the complainant's pay data by the company to its client when reporting the breakdown and expenses of the project was consistent with and directly related to the original purpose of collection, and its disclosure would not contravene the requirements of DPP3.

上訴 *(續)*

至於投訴人所指的保密協議，該公司代表否認有此口頭保密協議。行政上訴委員會觀乎保密協議的內容，是為逃避有關的法律責任而設，該保密協議是違反公共政策及缺乏合法性的。因此，無論該「保密協議」是否成立皆不會影響上訴的結果。

最後，行政上訴委員會亦指出，投訴人與該公司之間的爭議是有關支付某些工程費用及其計算方法。這些爭議並不屬於私隱專員的職權管轄範圍，應以民事訴訟的方式或經有關法院審理。

The Appeal *(continued)*

Regarding the confidentiality agreement mentioned by the complainant, the company's representative denied that there was such an agreement. From the contents of the agreement, the AAB opined that as it aimed to avoid legal responsibility, it was contrary to public policy and lacked legality. Therefore, irrespective of whether the confidentiality agreement existed or not, the outcome of the appeal would not be affected.

Lastly, the AAB also pointed out that the disputes between the complainant and the company were about the payment of certain project costs and the calculation method. Such disputes were outside the jurisdiction of the Privacy Commissioner and they should be dealt with by means of civil action or through related court proceedings.

行政上訴委員會的決定

上訴被駁回。

AAB's Decision

The appeal was dismissed.

個案 CASE 4

房東寄信至租客的母親的地址，向租客家屬透露租客欠租的情況*(行政上訴委員會上訴案件第9/2009號)*

Landlord sent letters to the address of tenant's mother disclosing the tenant's arrears of rent to the tenant's family members *(AAB Appeal No. 9/2009)*

投訴內容

某房東在一宗租務糾紛中向投訴人追討欠租。經審理後，土地審裁處裁定投訴人須遷出有關單位，並須向該房東繳付欠租、管理費及差餉等。投訴人其後遷往其母親的地址。

其後投訴人指該房東先後寄出3封信件往其母親的地址，並於該地址附近張貼為數達10張以上的貼報，旨在逼使投訴人繳付欠租。該房東承認其中兩封信件是她發出的，用意是向投訴人追討欠租。投訴人認為該房東獲得該地址、發出信件及貼報的做法違反了條例的規定，向專員投訴。

The Complaint

A landlord tried to recover arrears of rent from the complainant in a rent dispute. The Lands Tribunal ruled that the complainant had to move out of the flat and pay the outstanding rent, management fee and rates, etc. to the landlord. The complainant subsequently moved out to her mother's address.

The complainant said that the landlord had sent three letters to her mother's address successively and posted more than 10 notices somewhere near the address to force the complainant to pay the rent in arrear. The landlord admitted that two of the letters were sent by her to recover the arrears from the complainant. Believing that the landlord by collecting the address, sending the letters and posting the notices had contravened the requirements of the Ordinance, the complainant lodged a complaint with the Privacy Commissioner.

私隱專員的決定

專員經查詢後，認為調查投訴是不必要的，並依據條例第39(2)(d)條作出拒絕就投訴進行調查的決定。理由如下：

1. 即使該房東不是從投訴人或其母獲得該地址，也不表示該房東獲得該地址是違反了保障資料第1(2)原則或條例其他規定，因此無表面證據證明該房東獲得該地址是違反了保障資料第1(2)原則或條例其他規定。

2. 該房東承認其中兩封信件是由她發出的，用意是向投訴人追討欠租。當中一封信的收件人是投訴人的母親，另一封信的收件人除註明是投訴人外，還包括其他人士。專員認為事件中繳交租金的責任只落在投訴人身上，該房東無需向其他人透露投訴人欠租一事。該房東把兩封信件的內容披露予他人，看來與她要追討欠租的目的不一致或並非直接有關，而她如此使用該等資料前並未獲得投訴人的訂明同意，因此該房東的做法可能違反保障資料第3原則的規定。然而，查詢期間，該房東向專員承諾停止向第三者發出載有投訴人欠租事宜的文件及/或信件。專員隨後已就此向該房東發出警告信。鑒於該房東的承諾，專員認為即使展開調查，亦不能合理地預計可帶來更滿意的結果。

投訴人不滿專員的決定，向行政上訴委員會作出上訴。

Findings by the Privacy Commissioner

Upon enquiry, the Privacy Commissioner considered that investigation of the complaint was unnecessary and decided not to carry out an investigation pursuant to section 39(2)(d) of the Ordinance on the basis of the following reasons:

1. Even if the landlord had obtained the address not directly from the complainant or her mother, the getting of the address did not contravene DPP1(2) or other requirements of the Ordinance. Therefore, there was no *prima facie* evidence showing that the collection of the address by the landlord had contravened DPP1(2) or other requirements of the Ordinance.

2. The landlord admitted that two of the letters were sent by her to recover the arrears of rent from the complainant. The addressee of one letter was the complainant's mother. The addressees of the other letter were the complainant and another person. The Privacy Commissioner considered that the duty of paying rent only fell on the complainant. The landlord did not need to tell others that the complainant was in arrears of rent. It appeared to the Privacy Commissioner that the disclosure of the two letters to others was not consistent with or directly related to the purpose of recovering rent arrears. Such use of the data by the landlord without the prescribed consent of the complainant might have contravened the requirements of DPP3. However, during the enquiry, the landlord undertook to the Privacy Commissioner that she would stop sending documents and/or letters concerning the complainant's arrears of rent to any third party. The Privacy Commissioner thereafter issued a warning to the landlord. In view of the undertaking by the landlord, the Privacy Commissioner took the view that any investigation would not reasonably be expected to bring about a better result.

Dissatisfied with the Privacy Commissioner's decision, the complainant lodged an appeal with the AAB.

上訴

行政上訴委員會認為該地址不可能只有該房東才知道。即使投訴人的確只跟該房東發生過糾紛，也不表示她們的租務糾紛就只有她們倆才知道。此外，該匿名信及有關貼報均沒有資料可令專員追查寄件人是誰。專員已無從繼續調查。至於該房東違反保障資料第3原則的規定向其他人披露欠租一事，即使專員展開調查並發出執行通知，專員亦只能指示該房東作出如同有關承諾的糾正步驟。再者，條例不賦予專員發出賠償命令或指示。如果証據充分，個別人士可根據條例第66條就違反條例的情況進行民事索償。上訴委員會不應作為解決上訴人和該房東所有糾紛的場合，不然的話，條例亦會被濫用，這違反條例的基本概念和立法原意。

The Appeal

The AAB believed that the landlord could not be the only person who had known the address. Even if there was a dispute between the complainant and the landlord, it did not mean that only the two of them had known about the rent dispute. Moreover, the anonymous letters and the notices did not contain any information for the Privacy Commissioner to trace the sender. The Privacy Commissioner had no way of continuing the investigation. Regarding the contravention of DPP3 by the landlord in disclosing that the tenant was in arrear of rent, even if the Privacy Commissioner carried out an investigation and issued an enforcement notice, the Privacy Commissioner could only direct the landlord to take the remedial measures as stated in the undertaking. Moreover, the Ordinance does not empower the Privacy Commissioner to make a compensation order or direction. If there is sufficient evidence, individuals can claim compensation for the contravention by civil action under section 66 of the Ordinance. The AAB should not be a place for the settlement of disputes between the appellant and the landlord; otherwise the Ordinance might be abused, which was contrary to the basic concept and legislative intent of the Ordinance.

行政上訴委員會的決定

上訴被駁回。

AAB's Decision

The appeal was dismissed.

個案 CASE 5

屋邨互助委員會將載有投訴人的姓名、地址及有關屋邨活動售票糾紛詳情的會議記錄及告示，張貼在大廈互助委員會佈告箱*(行政上訴委員會上訴案件第 12/2009 及 13/2009 號)*

Mutual Aid Committee of a housing estate posted on its notice panel minutes and notice containing the complainants' names and addresses as well as a dispute concerning the ticketing of the estate activities *(AAB Appeal Nos. 12/2009 and 13/2009)*

投訴內容

兩名投訴人是一屋邨的住戶。投訴人與屋邨互助委員會（簡稱「互委會」）的工作人員就互委會發售屋邨活動門券的安排發生糾紛。互委會認為投訴人有出言恐嚇及惡意搗亂之嫌，於是報警求助。警方經調查後不採取任何行動。投訴人其後得悉互委會在佈告箱張貼會議記錄及告示，當中載有投訴人的姓名、地址以及有關糾紛的詳情。投訴人認為該會議記錄及該告示內容具誹謗性及洩露投訴人的私隱，遂向私隱專員投訴。

The Complaint

The two complainants were residents of a housing estate. The complainants had a dispute with a worker of the Mutual Aid Committee ("the MAC") over the sale of tickets for some estate activities. As the MAC believed that the complainants were threatening and making trouble, it called the police for help. No action was taken by the police. The complainants later learnt that the MAC had posted minutes and notice containing the names and addresses of the complainants as well as details of the dispute on the MAC's notice panel. The complainants considered that the contents of the minutes and notice were defamatory and disclosed the complainants' privacy. Hence they lodged a complaint with the Privacy Commissioner.

私隱專員的決定

私隱專員就投訴向互委會查詢。互委會向私隱專員回覆，表示是經召開會議後通過議決公開投訴人所作出的"搗亂行為"，但有關告示及會議紀錄已被除下。在投訴人確認有關會議記錄及告示已被除下，並得到投訴人的同意，私隱專員認為繼續調查不會產生任何實際效果，故毋須就其投訴再作跟進。私隱專員遂根據條例第 39(2)(d)

Findings by the Privacy Commissioner

The Privacy Commissioner enquired with the MAC about the complaint. In response to the enquiry, the MAC said that it was pursuant to a resolution passed by the MAC at a meeting that the "trouble making" behavior of the complainants was publicized, but the minutes and notice had already been removed. Upon the complainants' confirmation that the minutes and notice had been removed and with the consent of the complainants, the Privacy Commissioner considered that further investigation would not bring about any better practical effect and there was no need to follow up on the complaint. Therefore, the Privacy Commissioner

私隱專員的調查結果 *(續)*

條決定，不就投訴立案進行調查。期後，投訴人不同意私隱專員有關的說法，他們認為私隱專員應繼續調查並裁決有關行為是否違反條例的規定，以便他們向互委會提出民事訴訟，亦有助他們相關的法律援助申請。投訴人因而向行政上訴委員會提出上訴。

Findings by the Commissioner *(continued)*

decided not to investigate the complaint under section 39(2)(d) of the Ordinance. The complainants did not agree with the decision of the Privacy Commissioner. They thought that the Privacy Commissioner should continue the investigation and decide whether the act complained of had contravened the requirements of the Ordinance. This would facilitate them in bringing a civil action against the MAC and would support their application for legal aid. The complainants thus lodged an appeal with the AAB.

上訴

行政上訴委員會認同私隱專員的權力有限。私隱專員和上訴委員會均受法律所限制，並無權處理有關事件的是非曲直，無權裁定投訴人等曾否作出搗亂行為，更遑論要處理互委會是否有誹謗、詐騙、盜竊、錯誤管理帳目及貪污等其他違法的行為。

私隱專員採取了一個實際方式來處理本案件。私隱專員認為繼續調查不會產生任何實際效果：(a) 既然告示及會議記錄已除下，再發執行通知已無實際效用；(b) 根據條例第45(2)條及第46條，私隱專員的調查內容不得用於民事法律程序上。因為條例並沒有註明調查結果可成為民事訴訟表面的證據，投訴人亦不可用調查的結果作為民事起訴的基礎。

The Appeal

The AAB agreed that the power of the Privacy Commissioner was limited. The powers of the Privacy Commissioner and the AAB are restricted by the law. They have no power to judge the rights and wrongs of the incident, or to decide if the complainants had caused any trouble, nor to decide if the MAC had committed other illegal acts such as defamation, fraud, burglary, incorrect accounting and bribery.

The Privacy Commissioner adopted a practical approach in handling this case. The Privacy Commissioner opined that further investigation would not bring about any better practical effect: (a) as the minutes and notice had already been removed, no practical effect could be achieved by an enforcement notice; (b) under sections 45(2) and 46, the investigation of the Privacy Commissioner could not be used in any civil proceedings. As the Ordinance does not stipulate that the result of an investigation can be *prima facie* evidence in a civil action, the complainants cannot use the result of the investigation as the basis for a civil action.

上訴 *(續)*

行政上訴委員會同意專員的看法，民事起訴成功與否不能憑調查的內容或私隱專員裁決來決定，但上訴委員會相信專員的裁決有一定的參考作用。就投訴人所作的法律援助申請，行政上訴委員會指出無論私隱專員作出任何裁決，法律援助署署長應獨立考慮案情，不應受私隱專員的決定影響了他個人的決定。

經考慮了個案的情況，行政上訴委員會同意私隱專員的看法，繼續調查只會浪費資源，並不會帶來任何好處。

The Appeal *(continued)*

While the AAB agreed with the Privacy Commissioner's view that the success of a civil action did not depend on the investigation or the decision of the Privacy Commissioner, it believed that the decision of the Privacy Commissioner had certain reference value. Regarding the legal aid application of the complainants, the AAB opined that no matter what decision the Privacy Commissioner had made, the Director of Legal Aid should consider the case independently and should not be affected by the decision of the Privacy Commissioner.

After considering the circumstances of the case, the AAB agreed with the Privacy Commissioner's view that further investigation would waste resources and bring no benefits.

行政上訴委員會的決定

上訴被駁回。

AAB's Decision

The appeal was dismissed.

個案 CASE 6

某服務團體向投訴人的僱主披露他的精神健康資料，因他可能作出危害其個人及公眾安全的行為*（行政上訴委員會上訴案件第15/2009號）*

A service association disclosed the complainant's mental health data to his employer because the complainant might commit a harmful act to himself and the public *(AAB Appeal No. 15/2009)*

投訴內容

投訴人是某公共運輸機構的維修技工。由於他在職期間受傷，該機構便轉介他到某服務團體接受心理治療。在接受治療期間，他一再向該團體的臨床心理學家及熱線輔導員表示想炸毀該機構的公共運輸設施（下稱「該資料」）。該團體經過考慮並與該技工的心理醫生商議後，把該資料通知該機構。

該技工向私隱專員投訴，指該團體在未取得他的同意下向該機構披露該資料，違反了條例的規定。

The Complaint

The complainant was a maintenance technician of a public transport organization. As he was injured in the course of his employment, the organization referred him to a service association for psychological treatment. During the treatment, he had told more than once the clinical psychologist and the hotline counselor of the association that he wanted to blow up the public transport facilities of the organization ("the Data"). After consideration and discussion with the psychologist of the technician, the association informed the organization of the Data.

The technician complained to the Privacy Commissioner that the association disclosed the Data to the organization without his consent in contravention of the requirements of the Ordinance.

私隱專員的決定

該團體解釋披露該資料予該機構的用意是保障該技工及公眾的安全，提醒該機構防止意外發生。他們沒有先尋求該技工的授權便披露該資料予該機構，是因為他們認為該技工的情緒極不穩定，如要求他授權透露該資料，很可能會觸發他情緒失控，甚至恐怕會觸怒他，而促使他會真的炸毀該機構的公共運輸設施。

Findings by the Privacy Commissioner

The association explained that the purpose of disclosing the Data to the organization was to safeguard the safety of the technician and the public, and to prevent any accident from happening. They did not seek the authorization of the technician before disclosing the Data to the organization because they took the view that the emotion of the technician was very unstable, and if they requested for his authorization for disclosure of the Data, he might lose control or might get angry, provoking him to blow up the public transport facilities of the organization.

私隱專員的決定 *(續)*

該團體表示，在一般情況下，他們會嚴格保密接受他們服務的人士的個人資料及面談內容，未經當事人書面同意，資料不會外洩。但若有跡象顯示當事人或他人將會受到傷害，該團體會主動向有能力防止或減低有關傷害的人士或/及機構披露當事人或他人將會受到傷害的資料，以防止或減低有關傷害。該團體的有關做法已載於小冊子及張貼於他們的辦事處及輔導室。該團體的記錄亦註明該技工已獲告知，在保護該技工的人身安全的前提下，該團體可能需要破壞雙方的保密協議。私隱專員認為，考慮到該技工的工作範圍及性質，該團體認為該技工有可能把炸毀有關公共運輸設施的念頭付諸實行的想法，亦非不合理。一旦該技工實行他的念頭，除危害公眾安全外，更有可能導致他本身的傷亡。故此，該團體以保護該技工的人身安全為目的而將該資料披露予該機構，看來與當初收集該資料的目的直接有關，因此，該團體應沒有違反保障資料第3原則。

無論如何，私隱專員認為炸毀公共運輸設施屬條例第58(1)(d)條下不合法或嚴重不當的行為。該團體把該資料告知該機構，是為了防止此等不合法或嚴重不當的行為。因此，該資料在此情況下使用應獲條例第58(2)條豁免。

Findings by the Privacy Commissioner *(continued)*

The association explained that under normal circumstances, they would keep the personal data and contents of interviews of their clients in the strictest confidence. The data would not be disclosed without the written consent of the clients. However, if there were signs showing that their clients or others would be hurt, the association would, in order to prevent or mitigate any harm, take the initiative to disclose such information to the people and/or organizations that were able to prevent or mitigate the harm. Such practice was published in a booklet and was posted in their office and counseling room. The association also marked on record that the technician had been informed that the association might need to break the confidentiality agreement for the sake of protecting the personal safety of the technician. The Privacy Commissioner took the view that having regard to the scope and nature of his job, it was not unreasonable for the association to believe that the technician might realize his thoughts and take action to blow up the public transport facilities. In case the technician took action, apart from endangering public safety, it might also cause harm to himself. Therefore, it appeared that the disclosure of the Data to the organization by the association for the purpose of protecting the personal safety of the technician was directly related to the original purpose of collecting the Data. Thus, the association had not contravened DPP3.

In any case, the Privacy Commissioner considered that bombing of public transport facilities was unlawful or a seriously improper conduct under section 58(1)(d) of the Ordinance. Disclosure of the Data to the organization by the association was to prevent such unlawful or seriously improper conduct. Therefore, under the circumstances, the use of the Data were exempted under section 58(2) of the Ordinance.

私隱專員的決定 *(續)*

再者，該資料也應屬條例第59條下有關該技工的精神健康的個人資料。倘該團體在未獲該技工同意下不能透露該資料，便相當可能會對該技工及公眾的身體健康造成嚴重損害。因此，該資料的使用也應獲條例第59條豁免。

私隱專員在顧及有關個案及所有情況後，認為調查是不必要的。該技工不滿私隱專員的決定，向行政上訴委員會提出上訴。

Findings by the Privacy Commissioner *(continued)*

Moreover, the Data were personal data relating to the mental health of the technician pursuant to section 59 of the Ordinance. If the association could not disclose the Data in the absence of the technician's consent, it would be likely to cause serious harm to the physical health of the technician and the public. Therefore, the use of the Data should also be exempted by virtue of section 59 of the Ordinance.

After considering all the circumstances of the case, the Privacy Commissioner considered that an investigation was unnecessary. The technician was dissatisfied with the Privacy Commissioner's decision and lodged an appeal with the AAB.

上訴

行政上訴委員會同意，該團體以保護該技工的人身安全為目的而向該機構透露該資料的做法，與當初收集該資料的目的直接有關，因此沒有違反保障資料第3原則。

行政上訴委員會又認為，該團體決定披露該資料時，即使沒有獲得上訴人的訂明同意，但有關做法客觀上看來並非倉促，而是經過細心考慮。行政上訴委員會同意該資料應獲條例第58(2)及59條豁免，不受第3保障原則管限。

The Appeal

The AAB agreed that the disclosure of the Data to the organization by the association for the purpose of protecting the personal safety of the technician was directly related to the original purpose of collecting the Data, and thus the association had not contravened DPP3.

The AAB also opined that even without the prescribed consent of the appellant, the disclosure of the Data by the association was considered a thoughtful act from an objective point of view and the association had undergone thorough consideration. The AAB agreed that the Data should be exempted from the application of DPP3 by virtue of sections 58(2) and 59 of the Ordinance.

行政上訴委員會的決定

上訴被撤銷。

AAB's Decision

The appeal was dismissed.

公署就公眾諮詢文件提交的意見書
PCPD's Submissions to Public Consultation Papers

為實施適用於金融機構客戶查證及備存紀錄規定及監管匯款代理人和貨幣兌換商而建議制訂的新法例的諮詢文件

Consultation Paper on the Proposed New Legislation on Customer Due Diligence and Record-Keeping Requirements for Financial Institutions and the Regulation of Remittance Agents and Money Changers

財經事務及庫務局(下稱「該局」)發出諮詢文件，就為實施適用於金融機構客戶查證及備存紀錄規定及監管匯款代理人和貨幣兌換商而制訂的詳細立法建議，徵詢公眾意見，有關建議旨在加強金融業打擊清洗黑錢的監管制度。私隱專員就其中下述議題提出意見：

個人資料的收集

建議的法例賦權金融機構收集客戶及公司客戶實益擁有人的身份證明文件及資料，在進行客戶查證時確定及核實他們的身份。私隱專員表示，根據保障資料第1原則的規定，個人資料只應為了與資料使用者的職能及活動直接有關的合法目的而收集，而所收集的個人資料就該目的而言屬必需、足夠但不超乎適度。應盡可能清晰界定諮詢文件內所建議收集的個人資料的種類。私隱專員進一步表示，金融機構應遵從保障資料第1(3)原則的規定，在向個別人士收集個人資料之時或之前通知他：(i)該等資料將會用於甚麼目的；(ii) 該等資料可能移轉予甚麼類別的人；(iii)他有責任提供該等資料抑或是可自願提供該等資料；及(iv)(如他有責任提供該等資料)他若不提供該等資料便會承受的後果。

The Financial Services and the Treasury Bureau ("the Bureau") issued a consultation paper to seek views on the detailed legislative proposals on the customer due diligence and record-keeping requirements for financial institutions and the regulation of remittance agents and money changers with the aim to enhancing the anti-money laundering regulatory regime in the financial sectors. In response, the Commissioner made submissions on, amongst others, the following issues.

Collection of Personal Data

The proposed legislation will empower financial institutions to collect identification documents and information relating to customers and beneficial owners of corporate customers to ascertain and verify their identities in carrying out customer due diligence ("CDD"). The Commissioner advised that in accord with the requirements under DPP1, personal data should only be collected for a lawful purpose directly related to the function and activities of the data user and the personal data collected should be necessary, adequate but not excessive in relation to that purpose. Specific attention should be given to clearly define and delimit, as far as practicable, the kind of personal data to be collected as proposed in the Consultation Paper. The Commissioner further advised that financial institutions should comply with the requirements under DPP1(3) to inform the individuals, on or before collecting personal data from them, regarding (i) the purpose for which the data were to be used, (ii) the classes of persons to whom the data may be transferred, (iii) whether it is obligatory or voluntary to supply the data, and, (iv) where it is obligatory, the consequences for him if he fails to supply the data.

以風險為本模式進行客戶查證

鑑於該局建議是以風險為本模式進行客戶查證，私隱專員建議該局再考慮是否需要在建立業務關係後仍進行客戶查證，尤其是當*「清洗黑錢或恐怖分子融資活動的風險也很低」*的情況。

私隱專員知悉相關國際機構發出的《打擊清洗黑錢和恐怖分子籌資活動指引》及40項建議並沒有規定，在與壽險客戶建立關係時一般性地收集實益擁有人的身份證明文件。私隱專員促請小心考慮是否應檢討在建立業務關係後核實人壽保單中受益人身份的建議，因為保單內的受益人在投保人去世前仍然可以被更改。在收取承保款項前並無清洗黑錢的風險。

關於公司客戶，建議的客戶查證措施包括識別及核實*「實益擁有人」*的身份，包括直接或間接（包括透過信託或無記名股份）擁有或控制任何法律實體的10%或以上的股份或投票權，或以其他方式在有關實體行使控制其管理權的人。私隱專員建議該局進一步考慮這項建議。這建議會令很多擁有10%投票權的股東被進行客戶查證。

私隱專員亦促請該局重新考慮金融機構須在建議的新法例生效後兩年內對所有現有帳戶進行客戶查證的建議，在沒有觸發事件發生下，是否違背風險為本模式的大原則。

Customer due Diligence to be Conducted on a Risk-based Approach

In view that the conduct of CDD was proposed to operate on a risk-based approach, the Commissioner advised the Bureau to re-consider if it was necessary to conduct CDD after the establishment of a business relationship where there was *"little risk of money laundering or terrorist financing"* as proposed.

The Commissioner noted that the 40 Recommendations and the Guidance Paper on Anti-money Laundering and Combating the Financing of Terrorism issued by the relevant international organizations did not mandate general collection of identification documents of beneficial owners when relationships were entered into with life insurance customers. The Commissioner called for careful consideration as to whether the proposal to allow verification of the identity of the beneficiary named under a life insurance policy might take place after business relationship had been established should be reviewed as the beneficiary might be changed before the death of the insured. There was no risk of money-laundering before the money was paid out.

With regard to corporate customer, the proposed CDD measures will include identifying and verifying the identity of the *"beneficial owner"* which includes person owned or controlled, directly or indirectly, through trust or bearer share holdings for any legal entity 10% or more of its shares or voting rights or otherwise exercise control over the management of the entity. The Commissioner suggested the Bureau to give further consideration on the proposal which would subject many shareholders with 10% voting rights to CDD.

The Commissioner also advised the Bureau to reconsider if the proposal to require CDD to be conducted on all existing accounts of financial institutions within 2 years upon commencement of the proposed legislation might depart from the risk-based approach in the absence of any triggering event.

個人資料的使用

根據建議，由負責進行客戶查證的人所收集的個人資料將會移轉（或披露）予金融機構或相關機構，即香港金融管理局、證券及期貨事務監察委員會、保險業監督及香港海關（下稱「相關機構」）。私隱專員建議新法例應指明移轉有關個人資料的目的及在甚麼情況及條件下作出移轉。在欠缺有關的明確條文下，移轉者必須確保移轉（或披露）的目的是與收集資料的目的相同或直接與之有關，否則必須依從保障資料第3原則的規定，取得資料當事人的同意。

個人資料的保安

私隱專員促請有關人士採取特定的保安措施，確保根據建議收集或披露的資料的安全，及保護資料免受未獲准許的或意外的查閱、處理、刪除或其他使用所影響。

個人資料的保存

關於該局建議讓金融機構在帳戶或業務關係結束後可保存身份識別資料及交易記錄六年，或如涉及持續調查或交易，則可保存更長時間，私隱專員建議該局應細心考慮條例的保障資料第2（2）原則及第26條的規定，刪除不再需要用於有關目的的個人資料。

Use of Personal Data

Under the proposal, personal data collected by the parties responsible to conduct CDD will be transferred (or disclosed) to financial institutions or relevant authorities, being the Hong Kong Monetary Authority, Securities and Futures Commission, Insurance Authority and the Customs and Excise Department ("the relevant authorities"). The Commissioner advised that the proposed legislation should specify the purpose(s) for and the circumstances and conditions under which the personal data would be made subject to such transfer. In the absence of such express provision, the transferor was required to ensure the purpose of transfer (or disclosure) was the same as or directly related to the collection purpose, otherwise the data subject's consent must be obtained in compliance with DPP3.

Security of Personal Data

The Commissioner called for specific safeguards to be put in place to ensure security of the data as collected or disclosed under the proposals and to protect them against unauthorized or accidental access, processing, erasure or other use.

Retention of Personal Data

With regard to the proposal to allow financial institutions to maintain records of identification data and transaction records for 6 years following termination of an account or business relationship or such longer period if related to on-going investigations or transactions, the Commissioner advised the Bureau that due regard should be given to the requirements of DPP2(2) and section 26 of the Ordinance to erase personal data that were no longer required for the purpose.

與海外規管機構共用個人資料

該局建議如果是為了公眾利益，相關機構可將取得的資料與執行類似職能的海外規管機構共用；如海外規管機構披露個別人士資料，則須獲相關機構的同意。私隱專員建議該局盡可能詳細說明：(i)共用資料的情況；(ii)由誰人共用；及(iii)在建議的法例中如何界定公眾利益。該局亦應清楚列明相關機構在何種情況下可基於與打擊清洗黑錢及金融恐怖主義直接有關而同意海外規管機構披露資料。私隱專員進一步建議該局設立機制，以免接納不當要求。有關機構亦須要求海外規管機構採取足夠的安全措施，以防止資料外洩。

規管匯款代理人和貨幣兌換商

建議的新法例將賦權海關關長備存持牌匯款代理人和貨幣兌換商登記冊。私隱專員建議，如這公共登記冊包括個人資料，擬議法例應清楚訂明設立登記冊的立法根據及目的。登記冊只應包括達致目的所需的個人資料。匯款代理人和貨幣兌換商牌照的申請人應獲提供一份個人資料聲明，列明所收集的個人資料會在登記冊中披露及登記冊的目的。查閱登記冊的人士應獲告知登記冊的指定目的，並限制有關資料其後的使用。擬議法例亦應訂明不當使用登記冊內的個人資料的制裁。

Sharing of Personal Data with Overseas Regulators

It is proposed that if it is in the public interest, the relevant authorities may share information obtained with overseas regulators which exercise similar functions and that onward disclosure of information will be subject to the consent of the relevant authorities. The Commissioner advised the Bureau to particularize, as far as practicable, (i) the situations for such sharing of information, and (ii) by whom, and (iii) how such public interest was to be determined in the proposed legislation. The circumstances relating directly to anti-money laundering and counter financial terrorism for consent to be given by the relevant authorities for onward disclosure of information should also be clearly spelt out. The Commissioner further suggested the Bureau to build in safeguards against acceding to improper request. The overseas regulators should be required to adopt adequate security measures against any data security breach.

Regulations on Remittance Agents and Money Changers

The Commissioner for Customs and Excise will be empowered under the proposed new legislation to maintain a register of licensed remittance agents and money changers ("RAMCs"). The Commissioner advised that if personal data were to be included in such public register, the proposed legislation should clearly stipulate the legislative basis and the purpose of setting up the register. Only personal data necessary to fulfill the purpose should be included in the register. The applicants for a RAMC licence should be given a personal information statement indicating that the personal data collected will be disclosed in the register and stating out the purpose of the register. The persons accessing the register should be made aware of the specific purpose of the register and confine the subsequent use of such data accordingly. Sanctions against improper use of the personal data contained in the register should also be stipulated in the proposed legislation.

有關集體訴訟的諮詢文件

法律改革委員會(下稱「法改會」)轄下的集體訴訟小組委員會就「集體訴訟」發出諮詢文件，目的是在香港引入一套集體訴訟機制。私隱專員就其中下述議題提出意見：

(i) 私隱專員歡迎引入集體訴訟機制，這可讓受屈的資料當事人尋求公義，讓那些缺乏財力的資料當事人根據條例第66條向相關的資料使用者申索補償。當資料當事人的個人申索與所涉及的訟費不成比例時，這機制對資料當事人尤其有用。引入集體訴訟機制可收窄資料當事人與資料使用者之間的差距，尤其是當資料使用者是機構資料使用者，擁有大量人力物力。此外，建議的集體訴訟機制可協助受僱的資料當事人在其個人資料私隱被侵犯時，無需懼怕僱主的制裁而對僱主提出訴訟。

(ii) 關於把集體訴訟程序的資料刊登於網站的建議，私隱專員請法改會留意遵從保障資料原則。私隱專員建議資料庫的控制者應確保就資料庫的目的而言，沒有收集超乎適度的個人資料。如直接從資料當事人收集個人資料，應把保障資料第1原則的訂明資訊通知資料當事人，包括資料將會用於甚麼目的及資料可能移轉予甚麼類別的人。如資料當事人的個人資料會被放在網站公開，資料當事人應獲得通知他／她的個人資料將會被公開讓公眾查閱。

Consultation Paper on Class Actions

The Class Actions sub-committee of the Law Reform Commission ("LRC") issued a consultation paper on "Class Actions" with the objective of introducing a class action regime in Hong Kong. The Commissioner made submissions on, amongst others, the following issues:

(i) The Commissioner welcomed the introduction of a class action regime which could enhance aggrieved data subjects to seek justice and enable those data subjects without means to seek compensation under section 66 of the Ordinance against the relevant data user. This is particularly useful to data subjects when their individual claims may be disproportionate to the legal costs to be incurred. The introduction of a class action regime will narrow down the disparity between the data subject and the data user especially when the data user is an organizational data user who has ample resources (in terms of both manpower and monetary). Also, the proposed class action regime may assist employee data subjects to take action against their employer if their personal data privacy is infringed without fear of sanction from the employer.

(ii) In relation to the suggestion that information about class proceedings which will be published on a website, the Commissioner drew the attention of the LRC about the compliance with the data protection principles. The Commissioner advised that the controller of the database should ensure that no excessive personal data were collected having regard to the purpose of the database. Where personal data were collected directly from the data subjects, there should be notification to the data subjects on the prescribed information under DPP1, including the purpose for which the data were to be used and the classes of transferee of the data. Where personal data of a data subject was to be made available in a website, the data subject should be notified that his or her personal data would be made available to the public for inspection.

（iii）私隱專員亦請法改會留意，資料庫的控制者應在收集個人資料時通知資料當事人是否有責任提供該等資料，抑或是可自願提供該等資料，以及不提供資料的後果，以符合保障資料第1(3)原則的規定。

(iii) The Commissioner also drew the LRC's attention to the requirements under DPP1(3) that the controller of the database should notify the data subject at the time of collection that whether it was obligatory or voluntary for him or her to supply the personal data in the database and the consequences if he or she failed to supply the data.

（iv）關於集體訴訟資料庫的運作，私隱專員表示應針對下述各項課題設有足夠的個人資料私隱保障措施，例如(a)披露的目的；(b)披露的程度(甚麼類型或種類的個人資料會被披露)；及(c)資料庫內的個人資料的準確性及保留期間。

(iv) Regarding the operation of the class actions database, the Commissioner commented that there should be sufficient personal data privacy safeguards to address issues such as (a) the purpose of disclosure; (b) the extent of disclosure (i.e. what type or kind of personal data will be disclosed); and (c) the accuracy and retention period of the personal data in the database.

（v）私隱專員提醒法改會在決定甚麼類別資訊被納入資料庫供公眾查閱時，只可披露必需及足夠但不超乎適度的個人資料。私隱專員亦強調，指明資料庫內個人資料的使用目的是很重要的，令個人資料不會被用於其他無關的用途。私隱專員建議所有查閱資料庫的人應獲告知資料的指定的目的及需要限制此等資料其後亦用於有關目的。資料庫的網頁可加入私隱政策聲明，清楚列明資料庫的指定目的及限制其後使用資料庫內的資料的用途。

(v) The Commissioner pointed out that in deciding the types of information to be included in the database for public access, only necessary, adequate but not excessive personal data were disclosed. The Commissioner also stressed the importance of specifying the purpose for the use of the personal data contained in the database so that the personal data were not used for other unrelated purposes. The Commissioner suggested that all persons accessing to the database should be made aware of the specified purpose and the need to confine the subsequent use of the data to such purpose. A Privacy Policy Statement clearly spelling out the specified purpose of the database and the limitation on subsequent use of the data contained therein might be inserted in the homepage of the database.

（vi）私隱專員亦提醒法改會，保障資料第2(1)原則規定資料使用者確保資料庫內的個人資料是準確及最新的。為確保遵從保障資料第2（2)原則的規定，如法庭駁回集體訴訟的申請，有關資料應從資料庫中移除。

(vi) The Commissioner also pointed out that a data user was required under DPP2(1) to ensure the personal data maintained in the database were accurate and up-to-date. To ensure compliance with DPP2(2), the data should be removed from the database if the court dismissed the application for a class action.

公署對建議中的法例所作的評論
Comments by the PCPD on Proposed Legislations

強制性公積金計劃(修訂)條例草案

根據草案，作為計劃成員的僱員在受僱期間可成立個人帳戶，把供款帳戶中某些累算權益轉移到個人帳戶。由於隨著時間過去，成員有可能無法記起自己在任職期間的不同時段曾開立了多少個個人帳戶，因此強制性公積金計劃管理局(下稱「管理局」)建議向強制性公積金(下稱「強積金」)受託人收集成員的通訊地址、電話號碼、電郵地址及個人帳戶數目，讓管理局發信提醒所有強積金計劃成員他們持有的個人帳戶數目。作為另一選擇，管理局建議定期向強積金受託人收集成員持有的個人帳戶數目，讓管理局可按成員的要求告知相關成員。

私隱專員向管理局表達其意見，認為管理局要向成員發出提示通知，只需向強積金受託人收集成員的帳戶數目及通訊地址或電郵地址。根據保障資料第1(1)(c)原則，收集所有成員的通訊地址、電郵地址及電話號碼屬超乎適度。如只向持有特定數目個人帳戶的成員發出提示通知，個人資料的收集只應限於這些成員。私隱專員進一步就資料保安問題向管理局提出建議，又建議管理局在規定收集成員個人資料的條文中列明個人資料的使用目的及將會收集的指定資料。

草案於2009年7月8日獲立法會通過。

基因改造生物(管制釋出)條例草案

根據草案，某些人士須向漁農自然護理署署長、副署長或助理署長提供其姓名、地址及聯絡資料(下稱「相關資料」)。這些人士包括報告基因改造生物的釋出的人、申請核准釋出基因改造生物的人(下稱「申請者」)及輸出基因改造生物到香港的人(下稱「輸出者」)。此外，署長須「*為施行*」這條例而設立載有申請者及輸出者的相關資料及「*進一步／其他資料*」的紀錄冊，供公眾查閱。

Mandatory Provident Fund Schemes (Amendment) Bill

Under the Bill, an employee scheme member may set up a personal account and transfer to it from the contribution account certain accrued benefits during the course of an employment. Since, over time, a member may not be able to recall the number of personal accounts he has set up at different stages of his employment, the Mandatory Provident Fund Schemes Authority ("the Authority") proposed that it may collect from the Mandatory Provident Fund ("MPF") trustees their members' correspondence addresses, telephone numbers, email addresses and number of personal account data, so that the Authority may issue letters to all MPF scheme members to remind them of the number of personal accounts they maintained. Alternatively, the Authority proposed to collect from MPF trustees on a regular basis information about the number of personal accounts maintained by members, so that the Authority may advise the relevant members accordingly upon their requests.

The Commissioner expressed his views to the Authority that, in order to send such reminders to members, the Authority might need to collect from MPF trustees members' number of accounts and their correspondence address or email address only. Collection of all members' correspondence addresses, email addresses and telephone numbers could be excessive under data protection principle ("DPP") 1(1)(c). If reminders were to be sent to members with a particular number of personal accounts, then collection of personal data should be restricted to those members only. The Authority was further advised of data security issues and to spell out in the provision under which it collected members' personal data matters such as the purpose of use of the personal data and the specific data to be collected.

The Bill was passed by the Legislative Council on 8 July 2009.

Genetically Modified Organisms (Control of Release) Bill

Under the Bill, persons are required to give their names, addresses and contact details ("the relevant data") to the Director or Deputy Director or Assistant Director of Agriculture, Fisheries and Conservation. These persons include persons who report the release of genetically modified organisms ("GMO"), persons who apply for approval of release of GMO ("the applicant") and exporter of the GMO to be imported into Hong Kong ("the exporter"). Furthermore, a register containing the relevant data of the applicant and the exporter, together with "*further / other information*" will be established "*for the purpose of*" the Bill and made available for public inspection.

若申請者及輸出者是在世的個人，則收集相關資料會對其資料私隱造成影響，私隱專員就此草案向環境保護署（下稱「環保署」）表達意見。私隱專員留意到草案沒有列明收集相關資料的目的，而由於申請者及輸出者會被要求提供其地址，所以，要求他們提供其他「聯絡資料」似乎沒有需要。私隱專員並要求環保署告知他，在擬議的紀錄冊內披露申請者及輸出者的相關資料的目的。此外，私隱專員認為應在草案指明將在擬議的紀錄冊內披露甚麼「*進一步／其他資料*」，亦應指明保留個人資料的期限。

Since the collection of the relevant data would have impact on data privacy in the event that the applicant and the exporter are living individuals, the Commissioner expressed his views on the Bill proposed by the Environmental Protection Department ("EPD"). The Commissioner noted that the purpose of collecting the relevant data was not stated in the Bill, and given that the applicant and the exporter would be required to provide their addresses, to require them to provide other "contact details" would not seem necessary. The Commissioner further requested the EPD to advise him the purpose of disclosing the relevant data of the applicant and the exporter in the proposed register. Moreover, the Commissioner was of the opinion that the "*further / other information*" to be disclosed in the proposed register should be specified in the Bill and that a retention period of the personal data should be specified.

環保署告知私隱專員：(i)在緊急情況下需要其他聯絡資料，例如意外釋出未經核准的基因改造生物；(ii)他們會在根據草案制定的表格及通告夾附收集資料目的聲明；(iii)相關的表格及通告會指明所需的聯絡資料；(iv)雖然擬議的紀錄冊將載有申請者的姓名及地址，但他們的其他聯絡資料不一定會被包括在紀錄冊內；(v)大多數申請者（若非全部）將會是公司；及(vi)保留個人資料的期限不適用於草案，因為設立擬議的紀錄冊是為了符合《〈生物多樣性公約〉的卡塔赫納生物安全議定書》的規定，與生物安全資料交換所交換信息，包括輸出者的姓名及地址。

The EPD advised the Commissioner that: (i) other contact details would be required in case of emergency, e.g. accidental release of unapproved GMO; (ii) a statement of the purpose of collection would be attached to the forms and notices under the Bill; (iii) the required contact details would be specified in the relevant forms and notices; (iv) while the proposed register should contain the names and addresses of the applicants, their other contact details might or might not be included; (v) most of the applicants, if not all, would be corporations; and (vi) retention period of any personal data should not apply to the Bill as the establishment of the proposed register is to fulfill the requirement of exchanging information, including the name and address of the exporter, with the Biosafety Clearing-House under the Cartagena Protocol on Biosafety to the Convention on Biological Diversity.

草案於2010年3月10日獲立法會通過。

The Bill was passed by the Legislative Council on 10 March 2010.

建築物能源效益條例草案

根據草案，機電工程署署長將會獲賦權備存一份註冊能源效益評核人紀錄冊，以供公眾查閱，並制定規例訂明在擬議的紀錄冊內展示資料的事宜，讓公眾能確定他是否正與一名註冊能源效益評核人往來。私隱專員向能源效益事務處建議，被包括在擬議紀錄冊內的個人資料應只限於達致紀錄冊的目的所需的資料。申請註冊成為註冊能源效益評核人的人士應獲提供一份收集個人資料聲明，列明收集的個人資料會在擬議的紀錄冊內披露，並清楚述明指定目的，以符合保障資料第1（3）原則的規定。該部門應採取步驟，確保所有查閱或要求查閱擬議紀錄冊的人士知道其指定目的，及在繼後使用該等個人資料時需要根據保障資料第3原則限於有關目的。

在年報期內，草案並無進展。

《稅務（修訂）（第3號）條例草案》

草案旨在清除《稅務條例》下的限制，讓政府在全面性避免雙重徵稅協定中（下稱「全面性協定」）採用國際最新的資料交換標準。稅務局人員會獲賦權就可能影響某人在海外稅務法律下的任何法律責任、責任或義務的任何事宜取得資料。

Buildings Energy Efficiency Bill

Under the Bill, the Director of Electrical and Mechanical Services will be conferred with power to keep and maintain a public register of registered energy assessors for public inspection and to make regulations to prescribe matters for the display of information in the proposed register to facilitate members of the public to ascertain whether he is dealing with a registered energy assessor. The Commissioner advised the Energy Efficient Office that the personal data to be included in the proposed register should be limited to those necessary for fulfilling the purpose of the proposed register. The applicant to be registered as a registered energy assessor should be given a Personal Information Collection Statement informing that the personal data collected would be disclosed in the proposed register and there should be clear indication of its specific purpose in accordance with DPP1(3). Steps should be taken to ensure all persons accessing or requesting to access the proposed register were aware of its specific purpose and the need to confine the subsequent use of the personal data to such purpose in accordance with DPP3.

There was no further development during the reporting period.

Inland Revenue (Amendment) (No.3) Bill

The Bill seeks to clear the restriction under the Inland Revenue Ordinance ("IRO") for the Government to enter into comprehensive avoidance of double taxation agreements ("CDTA") by adopting the latest international standard for exchange of information. The officers of the Inland Revenue Department ("IRD") will be empowered to obtain information with regard to any matters that may affect any liability, responsibility or obligation of any person under overseas tax laws.

私隱專員為履行審閱草案的責任，向財經事務及庫務局局長及立法會法案委員會提供意見。私隱專員留意到草案初期的草擬本所建議的字眼可能會引起就條例對草案的安排是否不適用的疑問。局長曾考慮有關意見，而有關字眼在最後呈交法案委員會審議的版本中已被刪除。

In discharge of the duty to examine the Bill, the Commissioner provided comments to the Secretary for Financial Services and Treasury and subsequently, to the Bills Committee of the Legislative Council. The Commissioner noted the proposed wordings in the early draft of the Bill might cast doubt on whether the Ordinance would be made inapplicable in relation to the arrangement under the Bill. The comment had been taken on board by the Secretary and such wordings no longer appeared in the Bill finally submitted to the Bills Committee for vetting.

私隱專員建議，根據草案收集個人資料應遵從保障資料第1原則的規定，除非個人資料是為了直接與資料使用者的職能或活動有關的合法目的而收集，否則不得收集資料，而為該目的所收集的個人資料只限於必需、足夠但不超乎適度。私隱專員建議在草案明確列明只會收集合理所需的資料。

The Commissioner advised that the collection of personal data under the Bill should comply with DPP 1, that personal data should not be collected unless they were collected for a lawful purpose directly related to a function and activity of the data user and only necessary, adequate but not excessive personal data should be collected for that purpose. The Commissioner suggested making it explicit in the Bill that only information which was reasonably necessary would be collected.

草案亦建議修訂條例第58（1）(c)條，把該條的豁免延伸至全面性協定下海外管轄區的稅項評估及收集。私隱專員建議，要援引有關豁免，稅務局必須確保向海外稅務機構披露或移轉的個人資料只限於達致在全面性協定下某地區評估及收集稅項目的所需，以及不披露該等個人資料相當可能會損害有關目的。

The Bill also proposed to amend section 58(1)(c) of the Ordinance to extend the application of the exemption provision under that section to the assessment and collection of tax in overseas jurisdiction under CDTA arrangements. The Commissioner advised that, in order to invoke the application of the exemption, the IRD must ensure that the personal data to be disclosed or transferred to overseas tax authorities were limited to the extent necessary for fulfillment of the purpose of assessment and collection of tax of a territory under CDTA arrangements and non-disclosure would likely prejudice such purpose.

私隱專員進一步要求政府在有關附屬法例或規則的草擬階段諮詢他，以確保個別人士的個人資料私隱獲得足夠保護。

The Commissioner further requested the Government to consult him at the drafting stage of the related subsidiary legislations or rules to ensure that individual's personal data privacy is adequately protected.

草案於2010年1月6日獲立法會通過，並於2010年3月12日生效。

The Bill was passed by the Legislative Council on 6 January 2010 and came into effect on 12 March 2010.

通訊事務管理局條例草案

商務及經濟發展局局長就草案徵詢私隱專員的意見。草案建議成立通訊事務管理局(下稱「通訊局」)主要執行廣播事務管理局(下稱「廣管局」)及電訊管理局(下稱「電訊局」)(兩者統稱「前管理局」)的職能。通訊局的新行政部門為通訊事務局辦公室(下稱「通訊辦」),主要負責執行廣管局及電訊局前行政部門(統稱「前部門」)的相同職能,而部分職能將由另一個政府部門(下稱「新部門」)(尚待決定)負責。

私隱專員留意到前管理局／前部門原本持有的資料、記錄及文件,以及其義務和責任會移轉予草案下的通訊局、通訊辦及新部門。私隱專員建議商務及經濟發展局局長在草案指明通訊局、通訊辦及新部門的職能,萬一在移轉前他們所持有的個人資料發生違反條例的情況,私隱專員可對特定的承讓人採取行動。

在年報期內,草案並無進展。

Communications Authority Bill

The Secretary for Commerce and Economic Development sought comments from the Commissioner on the Bill. Under the Bill, the Communication Authority ("CA") will be established to take up and perform substantially the same functions of the Broadcasting Authority ("BA") and the Telecommunications Authority ("TA") (collectively "the former Authorities"). The CA will be served by a new executive arm, the Office of the Communications Authority ("OFCA"), which will perform substantially the same functions of the former executive arms to the BA and the TA (collectively "the former departments") while certain of their other functions will be taken up by another government department yet to be determined ("the new department").

The Commissioner noted that the data, records and documents originally held by the former Authorities/former departments together with their obligations and liabilities would be transferred to the CA, the OFCA and the new department under the Bill. The Commissioner advised the Secretary for Commerce and Economic Development to spell out the respective functions to be taken up by the CA, the OFCA and the new department specifically in the Bill so that the Commissioner might take action against the specific transferees in case there was any antecedent breach of the provisions of the Ordinance in relation to the personal data held by them before the transfer.

There was no further development during the reporting period.

《個人資料(私隱)條例》的修訂
Changes to the Personal Data (Privacy) Ordinance

《稅務(修訂)條例》(2010年第1號)對《個人資料(私隱)條例》作出下述修訂：

加入第58(1A)條：
「(1A)如—

(a)與香港以外某地區的政府有訂立根據《稅務條例》(第112章)第49(1A)條有效的安排；而

(b)該地區的某稅項屬該等安排中某條文之標的，而該條文是規定須披露關乎該地區的稅項資料的，

則在第(1)(c)款中，"稅項"(tax)包括該稅項。」

上述修訂於2010年3月12日生效。

By the Inland Revenue (Amendment) Ordinance (No.1 of 2010), the following amendment was made to the Personal Data (Privacy) Ordinance

A new paragraph 58(1A) was added:-
"(1A) In subsection (1)(c), "tax"（稅項）includes any tax of a territory outside Hong Kong if –

(a) arrangements having effect under section 49(1A) of the Inland Revenue Ordinance (Cap.112) are made with the government of that territory; and

(b) that tax is the subject of a provision of the arrangements that requires disclosure of information concerning tax of that territory."

The above amendment came into effect on 12 March 2010.