

# Meeting of Consultative Council of the Hong Kong Association of Banks

## Overview of the major amendments to the Personal Data (Privacy) (Amendment) Ordinance 2021

26 November 2021

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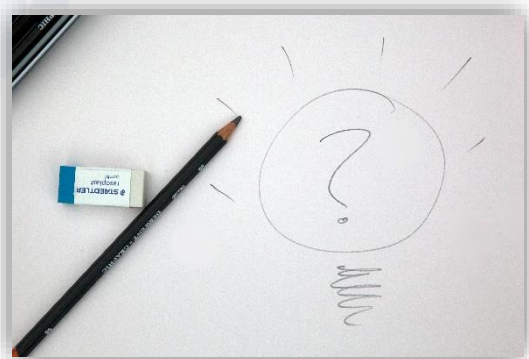


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# Background of Amending the Personal Data (Privacy) Ordinance (Cap. 486) (“Ordinance”)



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# Harms caused by Doxxing

- **Weaponisation** of personal data
- **Serious** and **far-reaching** harms caused to victims and their family members



# Purview of the Personal Data (Privacy) (Amendment) Ordinance 2021 ("Amendment Ordinance")

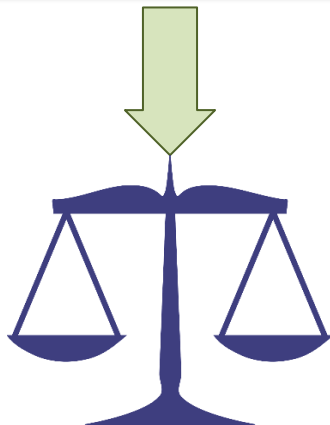


# Three main objects of the Amendment Ordinance

1. Create offences to curb doxxing acts

2. Empower the Commissioner to carry out criminal investigations and institute prosecutions

3. Confer on the Commissioner powers to issue cessation notices



# Commencement date of the Amendment Ordinance

8 October 2021:

The Amendment Ordinance was published in the Gazette and became effective **immediately**.



# (I) Section 64 – Create offences to curb Doxxing Acts

Two-tier

## New section 64(3A) of the Ordinance – first-tier offence (without actual harm)

A person commits an offence if the person discloses any personal data of a data subject **without the relevant consent** of the data subject –

- (a) with an **intent** to cause **any specified harm** to the data subject or any family member of the data subject; or
- (b) being **reckless** as to whether **any specified harm** would be, or would likely be, caused to the data subject or any family member of the data subject.

## New section 64(3B) of the Ordinance – Penalty

(3B) A person who commits an offence under subsection (3A) is liable on conviction to a fine at level 6 (\$100,000) and to imprisonment for 2 years.

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# (I) Section 64 – Create offences to curb Doxxing Acts

Two-tier

## New section 64(3C) of the Ordinance – second-tier offence (with actual harm)

A person commits an offence if –

- (a) the person discloses any personal data of a data subject **without the relevant consent** of the data subject –
  - (i) with an **intent** to cause **any specified harm** to the data subject or any family member of the data subject; or
  - (ii) being **reckless** as to whether **any specified harm** would be, or would likely be, caused to the data subject or any family member of the data subject; and
- (b) the disclosure causes any specified harm to the data subject or any family member of the data subject.

## New section 64(3D) of the Ordinance – Penalty

(3D) A person who commits an offence under subsection (3C) is liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 5 years.

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# (I) Section 64 – Create offences to curb Doxxing Acts

(a) harassment, molestation, pestering, threat or intimidation to the person;

(b) bodily harm or psychological harm to the person;

**Specified harm, in relation to a person, means-**

(c) harm causing the person reasonably to be concerned for the person's safety or well-being; or

(d) damage to the property of the person  
(new section 64(6) of the Ordinance)

# What Businesses Should Know

## Objectives of the Amendment Ordinance

- to **criminalise** doxxing acts and more **effectively combat** the crime by **increasing the enforcement powers** of the Commissioner;

## The Amendment Ordinance will not affect:

- normal and lawful business activities** in Hong Kong;
- freedom of speech** and **free flow of information** currently enjoyed by the public (as enshrined in the Basic Law and the Hong Kong Bill of Rights Ordinance).

## (II) What Businesses Should Know - the Commissioner's powers to carry out criminal investigations and institute prosecutions

Issue **written notice** to request any person to provide **relevant material**; or **to answer relevant question** to facilitate investigation  
(new section 66D of the Ordinance)

Apply for **warrant** to enter and search **premises** and seize materials for investigation; or **access electronic device**  
(new section 66G of the Ordinance)



The Commissioner may

Prosecute **in the name of the Commissioner** a doxxing-related offence **triable summarily** in the Magistrates' Court  
(new section 64C of the Ordinance)

To **stop, search** and **arrest** any person who is reasonably suspected of having committed a doxxing-related offence  
(new section 66H of the Ordinance)

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# What Businesses Should Know

## Powers to require materials and assistance (New section 66D of the Ordinance)

Failing to comply with a written notice is an offence.  
(new section 66E(2) of the Ordinance)



**On summary conviction**  
a fine at level 5 (\$50,000) and imprisonment for 6 months

**On conviction on indictment**  
a fine of \$200,000 and imprisonment for 1 year

# What Businesses Should Know

## Powers to require materials and assistance (New section 66D of the Ordinance)

It is an offence where, with intent to defraud:

- (i) a person fails to comply with a written notice issued pursuant to section 66D; or
  - (ii) a person provides any answer or statement that is false or misleading in a material particular
- (new section 66E(6) of the Ordinance)



### On summary conviction

- a fine at level 6 (\$100,000) and imprisonment for 6 months

### On conviction on indictment

- a fine of \$1,000,000 and imprisonment for 2 years

## (II) What Businesses Should Know - the Commissioner's powers to carry out criminal investigations and institute prosecutions

Powers exercisable in relation to premises under warrant  
(New section 66G(2) of the Ordinance)

To carry out specified investigation in the premises; and

To enter and search the premises;



To seize, remove and detain any material in the premises that the Commissioner or any prescribed officer reasonably suspects to be or to contain evidence for the purposes of the specified investigation

Under no circumstances shall the Commissioner or prescribed officers enter and search premises without a warrant.

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## (II) What Businesses Should Know - the Commissioner's powers to carry out criminal investigations and institute prosecutions

### Powers exercisable in relation to electronic device under warrant (New section 66G(3) of the Ordinance)



- (a) To access the device;
- (b) To seize and detain the device;
- (c) To decrypt any material stored in the device;
- (d) To search for any material stored in the device that the Commissioner or any prescribed officer reasonably suspects to be or to contain evidence for the purposes of the specified investigation (relevant material);
- (e) To reproduce the relevant material in visible and legible form;
- (f) To reduce the relevant material into a written form on paper; and
- (g) To make copies of, or take extracts from, the relevant material and take away such copies or extracts.



## (II) What Businesses Should Know - the Commissioner's powers to carry out criminal investigations and institute prosecutions

Under what circumstances can powers be exercised in relation to electronic device without a warrant (New section 66G(8) of the Ordinance)

If the Commissioner or any prescribed officer **reasonably suspects** that

(i) A doxxing or a related offence (i.e. under section 64(1), (3A) or (3C), 66E(1) or (5), 66(I)1 or 66O(1)) has been, is being or is about to be committed;

(ii) Any material that is or contains evidence for the purposes of a specified investigation is stored in an electronic device; and

(iii) a delay caused by an application for a warrant is likely to defeat the purpose of accessing the device, or for any reason it is not reasonably practicable to make the application.

Reflects **similar** common law powers of **the Police**.

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# What Businesses Should Know

A person who, without lawful excuse, **obstructs, hinders or resists** any officer in exercising the powers under section 66G or 66H, commits an offence (new section 66I of the Ordinance)



## On conviction

a fine at level 3 (\$10,000) and imprisonment for 6 months

# What Businesses Should Know

The criminal investigation powers of the Commissioner under the Amendment Ordinance reflects the powers of police officers under the Police Force Ordinance (Cap. 232).



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# (III) Confer on the Commissioner power to issue cessation notices

Under what circumstances can the Commissioner serve a cessation notice

(New sections 66K and 66M of the Ordinance)

the message in question is a “subject message”

1. Personal data of a data subject was disclosed (**whether or not in Hong Kong**) without the **consent of the data subject** by means of a written message or electronic message

2. the discloser had an **intent** or was being **reckless** as to whether any specified harm would be or would likely be, caused to the data subject or any family member of the data subject

3. When the disclosure was made, the data subject was a **Hong Kong resident**; or was **present in Hong Kong**

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# (III) Confer on the Commissioner power to issue cessation notices

## Under what circumstances can the Commissioner serve a cessation notice (New sections 66K and 66M of the Ordinance)

- When the Commissioner has reasonable ground to believe that there is a **“subject message”**, the Commissioner may serve a cessation notice on a person who is **able** to take a cessation action.

For electronic message

### Hong Kong Person

- (a) an individual who is present in Hong Kong ;
- (b) a body of person that is incorporated, established or registered in Hong Kong; or
- (c) a body of persons that has a place of business in Hong Kong

### Non-Hong Kong service provider

A person (not being a Hong Kong Person) that **has provided or is providing any service** (whether or not in Hong Kong) **to any Hong Kong person**

Cessation notice has **extra-territorial application.**

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# What Businesses Should Know

## Offence for contravening a cessation notice (New Section 66O(1) of the Ordinance)

### On first conviction

- a fine at level 5 (\$50,000) and imprisonment for 2 years, and in the case of a continuing offence, a further fine of HK\$1,000 for every day during which the offence continues

### On each subsequent conviction

- a fine at level 6 (HK\$100,000) and imprisonment for 2 years; and in the case of a continuing offence, a further fine of HK\$2,000 for every day during which the offence continues

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# What Businesses Should Know

## Appeal against cessation notice (New section 66N of the Ordinance)

Deadline for  
lodging an appeal:

- Within 14 days after the date on which a cessation notice is served

To whom the  
appeal is lodged:

- Administrative Appeals Board

Lodging an appeal does not affect the operation of the cessation notice.

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# Thank You!

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