



香港個人資料私隱專員公署
Office of the Privacy Commissioner
for Personal Data, Hong Kong

專員由鑒 From the desk of the Commissioner

Our Ref.: PCPD(O)35/35

By Fax (2504 2752) & By Post

19 October 2010

Dr. Hubert CHAN
Chairman
Communications Association of Hong Kong
GPO Box 13461 Hong Kong

Dear *Dr. Chan*

Direct Marketing Activities and Personal Data Protection

In view of the recent serious public concern about the mishandling of customers' personal data by the Octopus group of companies, I have reviewed the existing practices of some direct marketers as regards collection and use (includes transfer) of customers' personal data, and published yesterday a Guidance Note, titled "Guidance on the Collection and Use of Personal Data in Direct Marketing" ("**the Guidance Note**"). The Guidance Note can be obtained from my Office or downloaded from our website, http://www.pcpd.org.hk/english/files/publications/DM_e.pdf. A copy is attached.

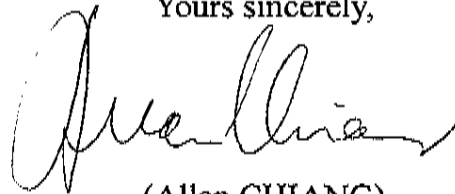
The Guidance Note provides data users with guidance on compliance with the requirements under the Personal Data (Privacy) Ordinance ("**the Ordinance**") while engaging in the collection and use of personal data for direct marketing. It replaces the Fact Sheet on "Guidelines on Cold-Calling" and the Guidance Note on "Cross-Marketing Activities" previously issued by this Office. Providing practical advice with examples, the Guidance Note serves not only to assist marketing practitioners in meeting the minimum legal requirements under the Ordinance. It also draws their attention to recommended good practices for personal data protection.

Compared with previous guidance we have provided in the same area, the Guidance Note is more comprehensive and takes into account more practicing experiences and new developments in the interpretation of the Ordinance. It does not in any way bring about changes in the requirements under the Ordinance. As such, the issue of designating an effective date for the Guidance Note does not arise. However, data users are expected to implement promptly any necessary improvement measures in line with the Guidance Note, albeit I will adopt a pragmatic approach in dealing with complaints by taking into account that a reasonable time has to be allowed for implementing new improvement measures.

My Office will organize workshops on 8 and 9 November 2010 to assist the direct marketers to better understand the Guidance Note for compliance with the requirements under the Ordinance when they collect and use personal data in direct marketing. The workshops are now open for enrolment. Interested parties may access the PCPD's website (www.pcpd.org.hk) for further information.

Respecting and protecting customers' personal data privacy is one of the essential factors enabling corporations to win customers' trust and support. Therefore, I urge your members to carefully review the recommendations contained in my Report on the results of the investigation of the Octopus case (full report available in our website) and to follow the advice in the Guidance Note when collecting and using customers' personal data for direct marketing. I trust the Octopus incident has the effect of a wake-up call and the Guidance Note will receive the attention of your members' top management that it deserves.

Yours sincerely,



(Allan CHIANG)

Privacy Commissioner for Personal Data



香港個人資料私隱專員公署
Office of the Privacy Commissioner
for Personal Data, Hong Kong

Guidance Note

Guidance on the Collection and Use of Personal Data in Direct Marketing



Introduction

Direct marketing is a common business practice found in Hong Kong and often involves the collection and use of personal data. In the process, compliance with the requirements of the Personal Data (Privacy) Ordinance (“the Ordinance”) is essential. To this end, this guidance note is issued by the Privacy Commissioner for Personal Data (“the Commissioner”) and serves to give general guidance to data users who collect and use personal data for direct marketing activities. Data users may also make reference to other laws, regulations, guidelines and codes of practices that are relevant for direct marketing purposes insofar as they are not inconsistent with the requirements under the Ordinance in relation to the handling of personal data.

The Fact Sheet on “Guidelines on Cold-Calling” and the Guidance Note on “Cross-Marketing Activities” previously issued by the Commissioner are hereby replaced and superseded by this guidance note.

Meaning of “direct marketing” under the Ordinance

“Direct marketing” is defined under section 34(2) of the Ordinance to mean :

- (a) *the offering of goods, facilities or services;*
- (b) *the advertising of the availability of goods, facilities or services; or*
- (c) *the solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or*

other purposes;

by means of –

- (i) *information or goods sent to any person by mail, facsimile transmission, electronic mail, or other similar means of communication, where the information or goods are addressed to a specific person or specific persons by name; or*
- (ii) *telephone calls made to specific persons.*

A data user shall observe the requirements under the Ordinance, in particular, section 34 and the data protection principles (“DPPs”) in Schedule 1. The requirements under the Ordinance for the collection and use of personal data in direct marketing are highlighted below.

I. When collecting personal data directly from customers for direct marketing

Personal data not to be excessively collected

DPP1(1) of the Ordinance provides in essence that only necessary, adequate but not excessive personal data are collected by a data user for a lawful purpose directly related to its function or activity.

A data user does not normally collect a customer’s personal data solely for direct marketing purpose. There is usually a specific main purpose or reason that a data user collects personal data (e.g. for provision of mobile phone network services by a telecommunications operator or provision of financial services by a bank).

While the data user may collect personal data which are necessary for fulfillment of that specific purpose, it may only collect additional personal data from the customers for direct marketing purpose if the customers elect to supply the data on a voluntary basis.

Generally, the name and contact information of a customer should suffice for the purpose of direct marketing. A data user may seek to collect more information from the customers in order to carry out customer profiling and segmentation, thereby enhancing the cost-effectiveness of direct marketing calls. In such circumstance, the data user should inform its customers that the provision of such additional information is entirely voluntary.

Special care should be paid to the collection of sensitive personal data such as Hong Kong Identity Card Number. They are not normally required for direct marketing purposes.

Collection by means that are lawful and fair

DPP1(2) requires that personal data shall be collected by means which are lawful and fair in the circumstances of the case. In considering what is "fair" in the circumstances of the case, the relevant factors to be considered include:

- whether deceptive or misleading means is used;
- whether it is voluntary for the customer to supply the personal data;
- whether customer's consent to provide the data was given in circumstances that raise a reasonable doubt on the genuineness of the consent;

Use of deceptive or misleading means

A data user should not use deceptive or misleading means to collect personal data for direct marketing. For instance, when the actual purpose of making a cold call is

to obtain the called party's personal data for direct marketing purpose, this should be explicitly made known to the called party prior to the actual collection of the personal data. Another example is where Company A holds itself out to be Company B in promoting the product / service of Company A in circumstances that the called party was misled to believe that it was Company B which was making the direct marketing approach for promoting Company B's product / service and it was based on such reliance that the called party's relevant personal data were provided in the course of the transaction.

Voluntariness

Where additional personal data are requested for direct marketing, irrespective of whether or not the marketing activities are directly related to the original purpose of collection of data, the customer is free to decide whether to give that personal data. In the circumstances, the data user should make known to the customer that it is optional for him to supply the data.

Consent obtained in doubtful circumstances

This may happen when a data user collects personal data from customers through a service application form which is designed in such a way that renders it impracticable for its customers to refuse to use their personal data for direct marketing purposes unrelated to the services the customers seek. For example, when the service application form incorporates both the terms and conditions of provision of the data user's services as well as statements relating to the use of the data collected for marketing products or services not directly related to the service originally sought, or the outright sale or transfer of the personal data to a third party for monetary gains. If the customer is only provided with one space to sign on the form, he has to choose between (i) giving up the application for the service and (ii) giving his "bundled consent" agreeing to the terms and conditions for the

provision of the service originally sought as well as the use of his data as prescribed by the data user when in fact he finds such prescribed use objectionable.

In such circumstances, the data user is advised to design its service application form in a manner that provides for the customer's agreement to the terms and conditions for the provision of the service to be separated from the customer's consent to the use of his personal data for marketing any products or services not relating directly to the services he seeks. Recommended ways to achieve this end include inviting the customer to "tick" a box or to give a separate signature specifying whether the customer agrees to the prescribed use of his personal data.

Customers to be informed of the purpose of use of personal data and classes of transferees

DPP1(3)(a) and (b) require a data user to take all reasonably practicable steps to inform the data subject on or before the collection of his personal data whether it is voluntary or obligatory for him to supply the data, the purpose of use of the data and the classes of persons to whom the data may be transferred. The data user should take all reasonably practicable steps to ensure that this is effectively communicated to the data subject.

Effective communication: Personal Information Collection Statement

Although DPP1(3) does not require the information to be provided to the customers in writing, it is good practice that data users inform customers of the purpose of collection of their personal data and the classes of transferees of the data by way of a written notice which is generally described as "Personal Information Collection Statement" ("PICS"). Whether all reasonably practical steps have been taken by a data user to inform a customer of the

PICS shall be considered in the light of all the relevant circumstances of the case.

To ensure that a PICS is effective, it is necessary for data users to take into consideration the following factors:-

- (a) whether the layout and presentation of the PICS (including the font size, spacing, underlining, use of headings, highlights and contrasts) has been designed so that the PICS is easily readable to customers with normal eyesight?
- (b) whether the PICS is presented in a conspicuous manner? (e.g. the PICS is a stand-alone section and its contents are not buried among the terms and conditions for the provision of the data user's services.)
- (c) whether the language used in the PICS is easily understandable? (e.g. the choice of simple rather than difficult words and the avoidance of use of legal terms or convoluted phrases.)
- (d) whether further assistance from the data user such as help desk or enquiry service is given to enable the customer to understand the contents of the PICS?

Data users should strive to enhance the effectiveness of communicating the PICS to the customers by reference to the actual circumstances in which personal data are collected such as the characteristics of the targeted customers (in terms of age, educational level, etc).

The purpose of use and classes of data transferees

While the purpose of use of personal data may be defined in general or specific terms, the data transferees have to be specified by classes. Data users should not define the purpose of use and class of data transferees in such liberal and vague terms that it would not be practicable for customers to ascertain

with a reasonable degree of certainty how their personal data could be used and who could have the use of the data.

While a data user is only required to inform the customers the purpose of collection in general rather than specific terms, it should refrain from using loose terms for example, "*such other purposes as the Company may from time to time prescribe*" to cover direct marketing as a purpose of collection. It is recommended good practice for the types of direct marketing activities (e.g. marketing financial or insurance products) to be clearly stated. Where there are serious doubts as to whether the direct marketing activities fall within the directly related purpose of the original collection of data, these intended activities should be clearly and conspicuously stated in the PICS and the data user is strongly advised to obtain the explicit and voluntary consent of the customer.

A data user should define the class of data transferees by its distinctive features, such as "financial services companies", "telecommunications service provider", etc. Definitions couched in vague terms such as "*such other agents as the Company may from time to time appoint,*", "*selected companies which will provide information of services in which customers may be interested*" or "*all business partners*", etc. should not be used.

II. When collecting personal data from other sources

Data users may collect an individual's personal data from a source other than the individual himself e.g. from a partner in a cross-marketing scheme or from records in the public domain. They should note that the source of the information, e.g. a telephone directory of a trade union or professional body, may have specified the purpose for which the personal data may be used and may even contain a specific prohibition against the use of the personal

data for direct marketing. They should therefore ascertain the permitted use of the data before using them for any direct marketing activities. For example, the Government provides online telephone directory information of Government officials to facilitate official communication between the Government and the public. It is also expressly stipulated that use of such information for directing marketing is prohibited.

Public registers may contain information relating to individuals. Data users should note that the use of the personal data kept in such public registers is governed by the terms prescribed by the operators of the registers or the relevant ordinance establishing such registers. If data users indiscriminately use personal data retrieved from public registers for direct marketing, they may contravene not only DPP3, but may also be in breach of the provisions of the relevant ordinances establishing the public registers. For example, using the voter's personal data kept in any register of electors for any purpose other than election is an offence¹.

Normally, the permitted use of personal data contained in any public register will not include direct marketing purposes. In such circumstances and where the purpose of use of the data is not specified by any ordinance, data users need to consider the following in determining whether the personal data may be used for direct marketing purposes:-

- (a) the background leading to the creation of the public register; and
- (b) the reasonable expectation of the data

¹ Section 22(3) Electoral Affairs Commission (Registration Of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation Cap.541A; Section 42(3) Electoral Affairs Commission (Registration) (Electors For Legislative Council Functional Constituencies) (Voters For Election Committee Subsectors) (Members Of Election Committee) Regulation Cap.541B; Section 32(3) Electoral Affairs Commission (Registration Of Electors) (Village Representative Election) Regulation Cap.541K;

subject as regards the use of the data by direct marketers.

It is recommended good practice that a data user shall refrain from using the data for direct marketing where the conclusion drawn from the above consideration is against the intended marketing use.

III. When using personal data for direct marketing

Section 34(1) of the Ordinance requires a data user on the first occasion that it uses an individual's personal data for direct marketing to inform the individual that he or she may, on a no charge basis, request the data user to cease to use his or her personal data. If the individual makes such a request, the data user should cease to so use the data concerned. This arrangement is generally described as "**opt-out**". Failure to comply with these requirements without reasonable excuse is an offence and renders the offender liable on conviction to a fine.

DPP3 provides that unless with the explicit and voluntary consent of the data subject, personal data shall only be used for the original purpose of collection or a directly related purpose.

A data user may use personal data obtained from the customers for marketing products or services directly related to the original purpose of collection of the data. For example, a bank may use personal data of its customers for marketing financial and insurance products. However, a telecommunications network operator should not use personal data of its customers for marketing financial and insurance products (as they are unrelated to telecommunications services) unless express and voluntary consent is obtained from the customers.

If at the time the data user collects the data it has no particular direct marketing activities in mind but subsequently decides

to do so, then prior to the carrying out of the direct marketing activities including the transfer of customers' personal data to third parties for the purpose of direct marketing, it must ensure that such use of the data is directly related to the original purpose of collection of the data, and consider informing the customers of its intention to do (and reason for doing) so.

When the data user uses personal data the first time for direct marketing activities, it has to observe the requirement of **section 34(1)** of the Ordinance by giving the data subject the "opt-out" choice. Where the marketing approach is made by telephone, the marketer should inform the data subject of his right to opt out by making clear to the called party that "*if you do not wish to have further marketing calls from us, please tell me and we will not call again*".

If the marketing approach is done by mail or fax to the customer, the marketing material should provide a "tick" box and a return address for the customer to exercise his opt-out right.

Where the customer is approached by email, he should be provided with an electronic link to the address of the data user for his exercise of the opt-out right.

Personal data transferred to third parties for direct marketing

Customers' personal data may be transferred² by a data user:

- (a) to a contractor or agent promoting the data user's products and services directly related to its pre-existing relationship with the customers; or
- (b) under a cross-marketing scheme, to a business partner ("the Partner Company"): (i) promoting products and services of the data user ("the Transferor

² Under section 2(1) of the Ordinance, the term "use", in relation to personal data, includes disclose or transfer the data

Company”) directly related to its pre-existing relationship with the customers and/or (ii) promoting products and services of the Partner Company which are similar or related to those originally or currently provided to the customers by the Transferor Company.

As an alternative to transfer customers’ personal data to the Partner Company, the Transferor Company may consider the option of obtaining the marketing materials from the Partner Company and carry out the marketing by its own staff.

Direct marketing carried out by agent or contractor

The data user should be mindful of the provisions in **section 65(2)** of the Ordinance that it will remain liable for its agent’s or contractor’s breach of the requirements under the Ordinance. It should therefore be prudent to select a reputable agent or contractor. In the contract with the agent or contractor, due consideration should be given to incorporating the following standard terms :

- (a) that the agent or contractor is prohibited from using or disclosing the personal data for purposes other than the agreed direct marketing activities;
- (b) that a reasonable period be specified within which the agent or contractor has to return the transferred personal data, including copies or reproductions thereof; alternatively, the customers’ personal data shall be safely erased and destroyed when the direct marketing activities are completed. It would be prudent to obtain, where appropriate, a professional third party’s verification on the safe erasure and destruction of data;
- (c) where transfer of personal data outside Hong Kong is not permitted, it should be explicitly made known in the contract;
- (d) that proper logs of direct marketing

calls and other contacts shall be kept so that compliance checks can be conducted by the data user;

- (e) that appropriate security measures be put in place to protect the personal data from loss and unauthorized or accidental access and processing;
- (f) where the mailing or call list is prepared or compiled by the agent or contractor, the agent or contractor is required to check with the data user the latest opt-out list before making any direct marketing approaches; and
- (g) that the agent or contractor shall comply with the Ordinance and all applicable guidelines and codes of practices issued by the Commissioner and other relevant regulatory or professional bodies.

Direct marketing carried out by Partner Company (“Cross-marketing Activities”)

A cross-marketing scheme may involve the transfer or disclosure of customers’ personal data by the Transferor Company to the Partner Company. The following should be observed:

- (a) The Transferor Company should ensure that customers’ personal data transferred to the Partner Company are only used for the purpose of carrying out the agreed cross-marketing activities. Typically, the data to be transferred should be confined to contact data, e.g. name, address and telephone number, enabling the Partner Company to approach the customer. Transfer or disclosure of the customer’s sensitive data such as credit card number and/or Hong Kong Identity Card number to the Partner Company should be avoided. Once the customer agrees to purchase its products or services, the Partner Company may seek data other than contact data directly from the customer. Alternatively, the customer’s express

and voluntary consent may be obtained for the Transferor Company's disclosure to the Partner Company of other data necessary for the transactions.

- (b) As a matter of good practice and to enhance the transparency of any planned cross-marketing scheme, a company is advised to take steps to make prior announcement of a cross-marketing scheme to its customers, e.g. by mailing to its customers information leaflets describing the nature and subject of the scheme, the identity and contact details of the Partner Company, whether any personal data of the customers will be transferred, the type of data to be transferred, and any measures to prevent data disclosed from being misused by the Partner Company.

Before conducting cross-marketing activities, the Transferor Company is advised to assess the adequacy of the personal data protection offered by the Partner Company. There should be clear written agreement entered into between the Transferor Company and the Partner Company governing the handling of customers' personal data transferred for the purpose of cross-marketing. The Transferor Company should give due consideration to incorporating the standard terms recommended above for contracts with the agent or contractor.

When personal data of customers are entrusted to a third party for handling, it is recommended good practice that the data user shall undertake compliance audits or reviews regularly to ensure that the transferees of the data have taken appropriate data protection measures in compliance with the Ordinance.

IV. Updating of opt-out list

A data user should maintain a list of all customers who have indicated that they do not wish to receive further marketing

approaches (the "opt-out list").

The following are recommended practices to ensure no further use of the customer's personal data for direct marketing after he has opted out from such activities :

- (a) The opt-out list should be updated regularly. Where the list is distributed on the company computer network, this should be done by the individual marketing staff members adding new opt-outs to the list as and when they are received. If the list is distributed other than by computer network, the updates should be notified to marketing staff members at a frequency of no less than once per week.
- (b) Where cross-marketing is conducted under the name of both the Transferor and Partner Companies for the marketing of the products or services of either the Transferor or the Partner Company, and the customer has indicated to the Partner Company his wish to opt-out, then the Partner Company should, unless otherwise specified by the customer, also inform the Transferor Company about the request made by the customer. Both the Partner Company and the Transferor Company must make no further marketing approaches to the customer using his personal data concerned in the cross-marketing scheme. Where cross-marketing is conducted under the sole name of the Partner Company for marketing of the Partner Company's products or services and the customer has indicated his opt-out request to the Partner Company, the Partner Company must make no further marketing approaches to the customer.
- (c) Where the data user conducts its business through branch offices, each branch office should maintain its own opt-out list of customers who have informed the branch office that they do

not wish to receive further direct marketing approach. The head office should coordinate the updating of a consolidated opt-out list by collecting the opt-out information supplied by all branch offices concerned and informing them on a continuous basis the updated position.

- (d) A data user should have standing procedures for its staff to follow on accessing and updating the opt-out list and complying with the opt-out requirements of section 34 of the Ordinance.

V. Transfer of personal data to third parties for monetary gains

Under cross-marketing schemes, the Transferor Company may simply transfer its customers' personal data to the Partner Company for marketing the latter's products and services. In some cases, the Transferor Company simply selects the required customer data and plays little or no part in the marketing process but receives monetary gains from the Partner Company in reward for the data transfer. The transaction in essence is sale of personal data.

Although the sale of personal data by a data user is not prohibited by the Ordinance, it would not normally be regarded as the original purpose of data collection or as a directly related purpose. For example, when a customer applies for a credit card from a Bank and supplies his personal data, he would only expect the Bank or the Bank's group companies to approach him for marketing related products and services of direct interest to him. These activities serve to enhance customer loyalty and are common in a competitive business environment like Hong Kong. It would fall outside his reasonable expectation that the data would be transferred or shared with third party for monetary gains. In the circumstances, explicit and voluntary

consent from the customer has to be sought for the sale of the data, or else the Bank runs the risk of contravening DPP3. The consent may be indicated by a signature to that effect or by ticking a box.

VI. End Note

It is hoped that this Guidance Note will serve as useful reference for data users to review its current practice of collection and use of personal data in direct marketing activities and to ensure compliance with the requirements under the Ordinance.

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The information provided in this guidance note is for general reference only. It does not provide an exhaustive guide to the application of the Personal Data (Privacy) Ordinance (the "Ordinance"). For a complete and definitive statement of law, direct reference should be made to the Ordinance itself. The Privacy Commissioner for Personal Data (the "Commissioner") makes no express or implied warranties of accuracy or fitness for a particular purpose or use with respect to the above information. The above suggestions will not affect the functions and power conferred to the Commissioner under the Ordinance.

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October 2010



收集及使用個人資料作直接促銷指引



導言

直接促銷是香港常見的商業活動，很多時涉及收集及使用個人資料。在過程中，必須遵從《個人資料(私隱)條例》(下稱「條例」)的規定。為此，個人資料私隱專員(下稱「專員」)發出本指引，為收集及使用個人資料進行直接促銷活動的資料使用者提供一般性指引。資料使用者亦可參考其他與直接促銷相關的法例、規例、指引及實務守則，只要它們不抵觸條例下有關處理個人資料的規定。

本指引現取代專員發出的《電話促銷活動指引》資訊單張及《跨業直銷活動指引》。

條例下「直接促銷」的定義

根據條例第 34(2)條，「直接促銷」指：

- (a) 要約提供貨品、設施或服務；
- (b) 就貨品、設施或服務的可予提供而進行廣告宣傳；或
- (c) 索求用於慈善、文化、娛樂、政治或其他目的的捐贈或貢獻，而該等要約、廣告宣傳或索求是藉着以下資訊、貨品或通話進行的—
 - (i) 藉郵遞、圖文傳真、電子郵件或其他相似的傳訊方法送交予任何人的資訊或貨品，而該等資訊或貨品

是指名致予某一個或某些特定人士的；或

- (ii) 以特定人士為對象的電話通話。

資料使用者須遵守條例的規定，尤其是第 34 條及附表 1 的保障資料原則。以下重點列出條例下有關收集及使用個人資料作直接促銷的規定。

I. 直接向客戶收集個人資料作直接促銷

不可收集超乎適度的個人資料

保障資料第 1(1)原則主要規定資料使用者只可為直接與其職能或活動有關的合法目的而收集必需、足夠但不超乎適度的個人資料。

資料使用者通常不會只為直接促銷目的而收集客戶的個人資料。資料使用者收集個人資料通常是有特定的主要目的或原因(例如：電訊營運商提供流動電話網絡服務，或銀行提供金融服務)。資料使用者可收集達至該特定目的所需的個人資料，但只有在客戶選擇自願提供資料的情況下，資料使用者才可向客戶收集額外資料作直接促銷用途。

一般來說，客戶的姓名及聯絡資料應該足以進行直接促銷。資料使用者或會收集更多資料，以進行客戶概況彙編及分

類，從而提高直接電話促銷的成本效益。在這情況下，資料使用者應通知其客戶，提供此等額外資料完全屬自願性質。

收集敏感個人資料如身份證號碼時，應特別小心。進行直接促銷通常不需要這些資料。

以合法及公平方式收集資料

保障資料第 1(2)原則規定收集個人資料的方式必須合法及在有關個案的所有情況下屬公平。在考慮何謂在有關個案的所有情況下屬「公平」時，應考慮的因素包括：

- 有否使用欺騙或誤導方式；
- 客戶是否自願提供個人資料；
- 客戶同意提供資料時所處的情況，會否令人合理地懷疑該同意的真確性。

使用欺騙或誤導方式

資料使用者不應使用欺騙或誤導方式收集個人資料作直接促銷。例如，致電對方的真正目的是為了套取該人的個人資料作直接促銷用途，便應在實際收集個人資料前，明確告知對方該真正目的。再舉另一例子，公司甲以公司乙的名義促銷公司甲的產品/服務，有關情況令對方誤以為是公司乙正在進行促銷該公司的產品/服務，而對方基於這信賴在交易當中提供了相關的個人資料。

自願性

如客戶被要求提供額外個人資料作直接促銷，不論促銷活動是否與收集資料的原本目的直接有關，客戶可自由決定是否提供該等個人資料。在這情況下，資料使用者應告知客戶他有權選擇是否提供資料。

在有疑問的情況下取得的同意

這情況可以是：資料使用者透過服務申請表向客戶收集個人資料，而有關表格的設計是不能讓客戶拒絕把其個人資料用於與客戶所尋求的服務無關的直接促銷用途。例如，服務申請表同時包含資料使用者所提供服務的條款及細則，以及有關將收集的資料用於促銷與原本尋求的服務沒有直接關係的產品或服務，或純粹出售或轉移個人資料予第三者換取金錢收益的聲明。如表格上只得一欄讓客戶簽署，他須選擇(i)放棄申請服務，或(ii)給予「綑綁式同意」，即是接受原本尋求的服務的條款及細則之同時，須接納資料使用者對其資料所訂明的用途，雖然他其實是反對有關訂明的用途。

在此情況下，建議資料使用者的服務申請表應將客戶同意購買服務的條款及細則的部分，與客戶同意其個人資料被用於促銷與他原本尋求的服務沒有直接關係的產品或服務的部分區分開來。要達到這目的，建議的方法包括讓客戶在空格上加上「✓」號，或另行簽署，表明是否同意把其個人資料用於訂明用途。

客戶獲告知個人資料的使用目的及承讓人的類別

保障資料第 1(3)(a)及(b)原則規定，資料使用者須採取所有合理地切實可行的步驟，在收集資料當事人的個人資料之時或之前，告知資料當事人他有責任提供該等資料抑或是可自願提供該等資料、該等資料的使用目的，以及該等資料可能移轉予甚麼類別的人。資料使用者應採取所有合理地切實可行的步驟，確保此等訊息有效地傳遞予資料當事人。

有效溝通：收集個人資料聲明

雖然保障資料第 1(3)原則沒有規定以書面通知客戶有關資訊，但良好的行事方式是，資料使用者以一般稱為《收集個人資料聲明》的書面通告把收集個人資料的目的及資料承讓人的類別通知客戶。資料使用者是否已採取所有合理地切實可行的步驟，通知客戶《收集個人資料聲明》，應在個案的所有相關情況下予以考慮。

為確保《收集個人資料聲明》有效，資料使用者需考慮以下因素：

- (a) 《收集個人資料聲明》的設計和展示（包括字體的大細和距離、以及運用底線、標題、高亮及對比等），是否讓擁有正常視力的客戶易於細讀？
- (b) 《收集個人資料聲明》是否清晰表達？（例如，《收集個人資料聲明》應獨立處理，內容不應含混於資料使用者的服務條款及細則之中。）

(c) 《收集個人資料聲明》所使用的語言是否易於理解？（例如，選用淺白而非艱澀難明的字詞，及避免使用法律詞彙或晦澀難解的詞組。）

(d) 有否提供服務台或查詢服務等進一步支援，協助客戶了解《收集個人資料聲明》的內容？

資料使用者應考慮收集個人資料的實際情況，例如目標客戶的特徵（如年齡、教育程度等），盡力使《收集個人資料聲明》內的訊息有效地傳遞予客戶。

使用目的及資料承讓人類別

個人資料的使用目的可概括或具體地述明，但須指明資料承讓人的類別。資料使用者不應以寬鬆及模糊的字眼描述使用目的及資料承讓人的類別，令客戶無法合理地確定其個人資料可被使用的情況以及誰可使用其個人資料。

儘管資料使用者只須概括而毋須具體地告知客戶收集資料的目的，但亦應避免使用寬鬆的字眼，例如「公司不時訂明的其他目的」，以掩蓋收集資料作直接促銷用途。建議的良好行事方式是清楚述明直接促銷活動的類別（例如促銷金融或保險產品）。如資料使用者對直接促銷活動是否與收集資料的原本目的直接有關存有重大懷疑，應在《收集個人資料聲明》中清楚明顯地述明這些擬進行的活動，並應取得客戶的明確及自願同意。

資料使用者應按資料承讓人的特點定類別，例如「金融服務公司」、「電訊服務供應商」等，絕不應以模糊的字眼下

定義，例如「公司不時委託的其他代理」、「能提供客戶有興趣服務資訊的特選公司」或「所有業務夥伴」等

II. 從其他來源收集個人資料

資料使用者可以從其他來源取得一個人的個人資料，而毋須從該人本身取得，例如從跨業直銷計劃的夥伴或從公共領域的記錄取得。他們應知道資料的來源，例如工會或專業團體的電話簿，可能已述明使用個人資料的目的，甚至指明禁止把個人資料用於直接促銷。因此，他們應在使用個人資料作任何直接促銷活動前，確定資料的准許使用目的。例如，政府在網上提供的政府官員電話簿是為了方便政府與公眾之間的公務溝通。政府亦明確規定禁止使用有關資料作直接促銷。

公共登記冊可能載有關於個人的資料。資料使用者應留意，使用這些公共登記冊內的個人資料，是受登記冊營運者所訂的條款或設立這些公共登記冊的相關條例所規管。如資料使用者濫用取自公共登記冊的個人資料作直接促銷，他們不單可能違反保障資料第 3 原則，亦可能違反設立公共登記冊的相關條例。例如，使用選民登記冊內的選民個人資料作選舉以外的用途，屬刑事罪行¹。

在一般情況下，公共登記冊內的個人資料的准許使用目的，不會包括直接促銷

¹選舉管理委員會(選民登記)(立法會地方選區)(區議會選區)規例(第 541A 章)第 22(3)條；選舉管理委員會(登記)(立法會功能界別選民)(選舉委員會界別分組投票人)(選舉委員會委員)規例(第 541B 章)第 42(3)條；選舉管理委員會(選民登記)(村代表選舉)規例(第 541K 章)第 32(3)條。

目的。在這情況下，如沒有任何條例指明該等資料的使用目的，則資料使用者在決定是否使用個人資料作直接促銷時，須考慮下述事項：

- (a) 設立有關公共登記冊的背景；及
- (b) 對直接促銷人員使用該等資料，資料當事人的合理期望。

建議的良好行事方式是，如考慮上述事項後的結論是不應用於擬作的促銷用途，資料使用者應避免使用該等資料進行直接促銷。

III. 使用個人資料作直接促銷

條例第 34(1)條規定，資料使用者在首次使用一個人的個人資料作直接促銷時，須通知該人，他或她可要求資料使用者停止使用其個人資料，但毋須繳付費用。如該人作此要求，資料使用者應停止如此使用有關資料。這項安排一般稱為「拒絕服務」。資料使用者沒有合理辯解而不依從此等規定即屬犯罪，違例者一經定罪可被判處罰款。

保障資料第 3 原則規定，除非得到資料當事人的明確及自願同意，否則個人資料只可用於收集資料的原本目的或直接有關的目的。

資料使用者可使用從客戶取得的個人資料於促銷與原本收集該等資料的目的直接有關的產品或服務上。例如，銀行可使用客戶的個人資料促銷金融及保險產品。不過，電訊網絡營運商不應使用客戶的個人資料促銷金融及保險產品(因為這些產品與電訊服務無關)，除非已取得客戶的明確及自願同

意。

如資料使用者在收集資料時並無打算進行直接促銷活動，但其後卻決定進行有關活動的話，則須在進行直接促銷活動前，包括為直接促銷而將客戶的個人資料轉移給第三者前，確保該等資料的使用與收集資料的原本目的直接有關，並考慮把有關計劃(及當中的理由)告知客戶。

如資料使用者首次使用個人資料作直接促銷活動，必須遵從條例第 34(1)條的規定，給予資料當事人「拒絕服務」的選擇。如促銷人員是以電話進行促銷，應清楚向對方表示：「如果你不希望再收到我們的促銷電話，請告訴我，我們不會再致電給你」，讓對方知道有權拒絕服務。

如利用郵件或傳真進行促銷，則應在促銷資料上印有一個可加上「✓」號的小格，並附上回郵地址，以便客戶行使其拒絕服務的權利。

如以電郵向客戶促銷，則應提供資料使用者地址的電子連結，讓客戶行使其拒絕服務的權利。

轉移個人資料予第三者作直接促銷

資料使用者或會轉移²客戶的個人資料：

- (a) 予承辦商或代理，以推廣資料使用者與客戶現存的關係直接有關的產品及服務；或

²根據條例第 2(1)條，「使用」一詞，就個人資料而言，包括披露或移轉該等資料。

- (b) 予跨業直銷計劃下的業務夥伴(下稱「夥伴公司」)：(i) 以推廣資料使用者(下稱「轉移資料的公司」)與客戶現存的關係直接有關的產品及服務及/或(ii) 以推廣夥伴公司的產品及服務，而有關產品及服務是與轉移資料的公司原本或目前向客戶提供的產品及服務相似或有關。

作為把客戶的個人資料轉移予夥伴公司的另一選擇，轉移資料的公司可考慮從夥伴公司取得促銷資料，讓本身的職員進行促銷活動。

由代理或承辦商進行直接促銷

資料使用者應注意條例第 65(2)條的條文，該條令資料使用者對其代理或承辦商在條例下的違規行為負責。因此，應謹慎地選擇有信譽的代理或承辦商。與代理或承辦商訂立合約時，應考慮納入以下標準條文：

- (a) 禁止代理或承辦商使用或披露個人資料於議定直接促銷活動以外的目的；
- (b) 規定代理或承辦商須於指明的合理時期交還已轉移的個人資料，包括相關副本或複製本；或規定在直接促銷活動結束後須安全刪除及銷毀客戶的個人資料。謹慎的做法是就安全刪除及銷毀資料取得專業第三者的核實(如適合)；
- (c) 若不准許把個人資料轉移至香港境外，應於合約上清楚說明；
- (d) 須保存打出直接促銷電話及作出其

他聯絡的適當記錄，讓資料使用者能夠進行循規檢查；

- (e) 實施適當的安全措施，保障個人資料免予遺失及未經授權或意外存取及處理的情況；
- (f) 如郵遞或電話清單是由代理或承辦商準備或編纂，代理或承辦商在進行直接促銷前，須與資料使用者核對最新的拒絕服務名單；
- (g) 代理或承辦商須遵從條例及由專員及其他相關規管或專業機構發出的所有適用指引和實務守則的規定。

由夥伴公司進行直接促銷(跨業直銷活動)

跨業直銷計劃可能涉及轉移資料的公司向夥伴公司轉移或披露客戶的個人資料。應留意下述事宜：

- (a) 轉移資料的公司應確保轉移予夥伴公司的客戶個人資料只會用於進行議定的跨業直銷活動。通常被轉移的資料只限於聯絡資料，例如姓名、地址及電話號碼，讓夥伴公司聯絡有關客戶。應避免向夥伴公司轉移或披露客戶的敏感資料，例如信用卡號碼及/或身份證號碼。當客戶同意購買產品或服務後，夥伴公司可直接向客戶索取聯絡資料以外的資料。另一做法是，可徵求客戶的明確及自願同意，讓轉移資料的公司向夥伴公司披露以達成交易所需的其他資料。
- (b) 作為良好的行事方式，以及提高跨業直銷計劃的透明度，公司應考慮

在進行跨業直銷計劃前，先通知客戶，例如郵寄資料小冊子通知他們計劃的性質及主題、夥伴公司的身份及聯絡資料、會否轉移客戶的個人資料、轉移資料的種類，以及防止夥伴公司不當使用資料的措施。

在進行跨業直銷活動前，轉移資料的公司應考慮評估夥伴公司所提供的個人資料保障是否足夠。雙方應訂立清晰的書面合約，規管轉移作跨業直銷的客戶個人資料的處理。轉移資料的公司應考慮把上述建議與代理或承辦商所訂立的合約中的標準條款納入合約內。

如資料使用者把客戶的個人資料交託第三者處理，建議的良好行事方式是，資料使用者須定期進行循規審核或檢討，以確保該第三者已遵從條例的規定，採取適當的資料保障措施。

IV. 更新拒絕服務名單

資料使用者應備存一份已表示不希望再收到任何直接促銷電話的所有客戶的名單(即「拒絕服務名單」)。

下述建議的行事方式可確保資料使用者在客戶作出拒絕服務要求後，不會再使用其個人資料作直接促銷：

- (a) 拒絕服務名單應定期更新。如利用公司的電腦網絡分派名單，則個別促銷職員應在接獲新的拒絕服務通知時，將有關通知即時加進名單內。如不是利用電腦網絡發放名單，則應定期將最新的名單分派促銷職員，每星期不少於一次。
- (b) 如跨業直銷是以轉移資料的公司及

夥伴公司的名義進行，促銷其中一間公司的產品或服務，當客戶向夥伴公司作出拒絕服務的要求時，除非客戶另有指明，否則夥伴公司應把客戶的要求告知轉移資料的公司。夥伴公司與轉移資料的公司不得再利用在跨業直銷計劃中涉及該客戶的個人資料向該客戶促銷。如跨業直銷單是以夥伴公司的名義進行，促銷夥伴公司的產品或服務，當客戶向夥伴公司作出拒絕服務的要求時，夥伴公司不得再向該客戶促銷。

- (c) 如資料使用者設有分行，則每一間分行應備存本身的拒絕服務名單，列明客戶已通知該分行他們不希望再收到任何直接促銷電話。總公司應統籌更新一份綜合的拒絕服務名單，方法是向所有分行收集拒絕服務的資料，並持續地把已更新的資料通知它們。
- (d) 資料使用者應制定查閱及更新拒絕服務名單的正規程序，讓職員有所依從，以符合條例第 34 條關於拒絕服務的規定。

V. 為金錢收益轉移個人資料予第三者

在跨業直銷計劃中，轉移資料的公司可能只是把其客戶的個人資料轉移予夥伴公司，以促銷後者的產品及服務。在某些情況中，轉移資料的公司只須揀選所需的客戶資料，而毋須參予促銷過程或只參與少部份，卻因轉移資料而從夥伴公司得到金錢收益。該等交易本質上是銷售個人資料。

雖然條例沒有禁止資料使用者銷售個

人資料，但此舉通常不會被視為收集資料的原本目的或直接有關的目的。例如，當客戶向某銀行提供個人資料申請信用卡，他只會預期該銀行或該銀行集團的公司接觸他，向他促銷他有興趣的相關產品及服務。這些活動可提高客戶的忠誠度，在香港這樣的競爭性商業環境中甚為普遍，但如該等資料被轉移予第三者或與第三者共用，以換取金錢收益，便會超過他的合理期望。在這情況下，該銀行必須就出售資料取得客戶的明確及自願同意，否則該銀行會承受違反保障資料第 3 原則的風險，同意可以簽署或勾選方格的方式示明。

VI. 結語

公署希望本指引能提供有用的參考資料，讓資料使用者檢討目前收集及使用個人資料作直接促銷活動的做法，以確保遵從條例的規定。

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版權

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免責聲明

本指引所載的資料只作一般參考用途，並非為《個人資料(私隱)條例》(下稱「條例」)的應用提供詳盡指引。有關法例的詳細及明確內容，請直接參閱條例的條文。個人資料私隱專員(下稱「專員」)並沒有就上述資料的準確性或個別目的或使用的適用性作出明示或隱含保證。上述建議不會影響專員在條例下獲賦予的職能及權力。

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