

**Report Published under Section 48(2) of the  
Personal Data (Privacy) Ordinance (Cap. 486)**

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

**Transfer of Customers' Personal Data by**  
**Fubon Bank (Hong Kong) Limited**  
**to an Insurance Company without Customers' Consent**

This report in respect of an investigation carried out by me pursuant to section 38(a) of the Personal Data (Privacy) Ordinance, Cap 486 (“**the Ordinance**”) against Fubon Bank (Hong Kong) Limited is published in the exercise of the power conferred on me by Part VII of the Ordinance. Section 48(2) of the Ordinance provides that “*the Commissioner may, after completing an investigation and if he is of the opinion that it is in the public interest to do so, publish a report –*

(a) *setting out -*

- (i) *the result of the investigation;*
- (ii) *any recommendations arising from the investigation that the Commissioner thinks fit to make relating to the promotion of compliance with the provisions of this Ordinance, in particular the data protection principles, by the class of data users to which the relevant data user belongs; and*
- (iii) *such other comments arising from the investigation as he thinks fit to make; and*

(b) *in such manner as he thinks fit.”*

**ALLAN CHIANG**  
**Privacy Commissioner for Personal Data**

## **The Complaint**

The Complainant was a customer of Fubon Bank (Hong Kong) Limited (the “**Bank**”) and she had provided her personal data to the Bank for opening savings and deposit accounts (the “**Accounts**”). The Complainant received a direct marketing call in July 2009 from an insurance company (the “**Insurance Company**”) after she had closed the Accounts earlier in the same month. The caller thanked the Complainant for using the services of the Bank and promoted an insurance product (the “**Product**”) of the Insurance Company.

2. The Complainant believed that the Bank had disclosed her name and telephone number to the Insurance Company without her prior consent and thus lodged a complaint with this Office against the Bank.

## **Relevant Provisions of the Ordinance**

3. Data Protection Principle (“**DPP**”) 1(3) and 3 of Schedule 1 to the Ordinance are relevant to this case.

DPP 1(3) provides that:-

*“Where the person from whom personal data are or are to be collected is the data subject, all practicable steps shall be taken to ensure that-*

- (a) he is explicitly or implicitly informed, on or before collecting the data, of-*
  - (i) whether it is obligatory or voluntary for him to supply the data; and*
  - (ii) where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data; and*
- (b) he is explicitly informed-*
  - (i) on or before collecting the data, of-*
    - (A) the purpose (in general or specific terms) for which the data are to be used; and*
    - (B) the classes of persons to whom the data may be transferred; and*
  - ...”*

DPP3 provides that:-

*“Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than-*

- (a) the purpose for which the data were to be used at the time of the collection of the data; or*
- (b) a purpose directly related to the purpose referred to in paragraph (a).”*

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

### **Information Collected during the Investigation**

4. In the course of investigation of this case, this Office received information and evidence from the Bank and the Complainant respectively as set out in the following paragraphs.

#### ***Collection of the Complainant’s personal data by the Bank***

5. When the Complainant opened the Accounts with the Bank, she provided to the Bank on an application form (the “**Application Form**”) her English and Chinese names, Hong Kong Identity Card (“**HKIC**”) number, date of birth, nationality, correspondence address, residential and mobile telephone numbers, education level, employment information and marital status.

6. In relation to its compliance with the notification requirement under DPP1(3), the Bank relied on the following paragraphs in a circular (the “**Circular**”) and the Application Form respectively:-

#### **The Circular**

*“B. Personal Data*

....

*(4) The purpose for which data relating to a customer may be used are as follows:-.*

....

*(vii) marketing banking and financial services or related products of the Bank and/or selected companies; ...*

*....*

*(5) Data held by the Bank relating to a customer will not affect the Bank's duty of confidentiality towards the data and will continue to be kept confidential and safeguarded diligently in accordance with the Bank's internal policies as well as guidelines issued by the Government of the Hong Kong Special Administrative Region ("Hong Kong") but the Bank may provide such data to the following parties (whether in Hong Kong or elsewhere) for the purposes set out in paragraph B(4):-*

*....*

*(ix) selected companies for the purpose of informing customer of services which the Bank believes will be of interest to customers."*

#### *The Application Form*

##### *"Part 3 Declaration and Confirmation*

*....*

*(4)... I/We acknowledge that I/we have been provided with [the Circular] and confirm that I/we understand and accept the terms and conditions set out therein.*

*....*

*(11) I/We understand and agree that [the Bank] shall be permitted to transfer and/or disclose my/our data and/or the information relating to my/our account(s) to [the Bank's] major shareholder(s) and/or any of its/their subsidiaries or affiliate companies, or [the Bank's] service providers, regardless of whether its/their principal place of business or registered office is/are in a domicile within or outside Hong Kong."*

7. The Bank stated that during the account opening process, the Complainant had been provided with a copy of the Bank's terms and conditions for services (the "T&C") which incorporated the Circular as an appendix. The Bank argued that the Complainant had signed the Application Form to confirm that she had read, been explained, understood and agreed to be bound by, and been provided a copy of the T&C.

### *Agreements between the Bank and the Insurance Company*

8. The Bank entered into an agreement with the Insurance Company in September 2004 whereby the Bank was appointed as an insurance agent of the Insurance Company. Later on, the Bank and the Insurance Company entered into a further agreement (the “**Agreement**”) in June 2007 to replace the terms of the previous agreement. Pursuant to the Agreement,

- (a) the Bank shall provide data of selected customers to the Insurance Company for the purpose of marketing and promoting insurance products offered by the Insurance Company and ensure that such data shall contain the most up-to-date information necessary for the carrying out of the joint marketing program (the “**Program**”) in connection with the marketing of the said insurance products by the Insurance Company;
- (b) the Insurance Company shall pay the Bank the commission in relation to the insurance policies issued under the Program in consideration of the services provided by the Bank (including the provision of the data of selected customers); and
- (c) the Bank and the Insurance Company shall, before carrying out any joint marketing program, enter into a product agreement setting out details of such program.

9. The direct marketing call received by the Complainant promoting the Product (the “**Promotion**”) was made pursuant to a product agreement (the “**Product Agreement**”) that the Bank entered into with the Insurance Company in December 2006. Customers eligible to the Product were the Bank’s credit card holders and bank account customers who met certain criteria set out in the Product Agreement. The Product Agreement also set out the commission rates payable to the Bank.

### *Transfer of the Complainant’s personal data from the Bank to the Insurance Company*

10. The Bank confirmed that on 29 June 2009, it had disclosed to the Insurance Company the personal data of 33,000 selected customers holding

credit card accounts / bank accounts with the Bank for the purpose of the Promotion. The Complainant was one of those bank account customers and the Bank had disclosed her personal data, viz her name, HKIC number, gender, date of birth, telephone number, address and savings account number (the “**Data**”), to the Insurance Company.

11. In response to the query made by this Office as to why personal data other than contact information were disclosed, the Bank explained that gender and date of birth were necessary for selecting target customers, while HKIC number and account number were for identity verification. In addition, the age of a particular customer would be one of the factors in determining the premium payable under the Product.

12. The Bank made reference to the relevant paragraphs of the Circular and the Application Form mentioned in paragraphs 5 and 6 above and submitted that it had obtained the Complainant’s consent before transferring the Data to the Insurance Company. The Bank added that the Complainant’s signature in the Application Form represented her agreement to the terms of the Circular, which constituted her acceptance to paragraphs (4)(vii) and (5)(ix) of the Circular.

#### ***Additional information provided by the Complainant***

13. In relation to the collection of the Data by the Bank, the Complainant stated that the Bank’s staff did not give her a copy of the T&C on or before collecting her personal data on the Application Form. The Complainant only received it on the following day when she collected her bank passbook from the Bank. She was unable to recall whether a copy of the Circular was attached to the Application Form. Further, at no time did the Bank’s staff explain to her the contents of the Application Form, the Circular, or the T&C, or the purpose for which her personal data were to be used and the classes of persons to whom her personal data might be transferred.

#### ***Further submission of the Bank***

14. In response to the additional information provided by the Complainant, the Bank stated that it had interviewed an ex-employee (the “**Ex-employee**”) who had assisted the Complainant to complete the Application Form for

opening the Accounts.

15. According to the Bank, the Ex-employee could not recall the exact circumstances and details of the account opening process due to the lapse of time. However, in accordance with the Ex-employee's usual practice, she would give a copy of the T&C to her customer at the time when an account was opened. She would also explain to the customer the contents of the T&C and the Circular. If the customer was satisfied with her explanation and information and had no further questions to ask, she would then request the customer to sign on the bank account opening form to confirm the customer's understanding of the T&C and agreement to the terms and conditions with the Bank.

16. The Ex-employee saw no reason, and did not recollect any particular circumstance which would cause her usual practice to have been departed from in the case of the Complainant. Also, the Bank could not find any unusual features or indications which would suggest that its usual account opening procedure was not adhered to when opening the Complainant's accounts.

17. The Bank also submitted that the Ex-employee was at the material time a competent and experienced employee and was provided with a copy of a manual (the "**Manual**") containing clear and precise procedure for the collection of personal data in compliance with the data protection principles. The Ex-employee had also attended regular data protection trainings provided by the Bank including those on account opening procedure and legal aspects of banking operations.

18. The Bank considered that the Complainant, as a university graduate, should be able to understand the T&C and the Circular, which clearly explained the purpose for which her personal data would be used and the persons to whom such data may be transferred. The Bank added that since the Complainant was employed as a company secretary consultant at the material time, it was reasonable to expect that she should be familiar with forms/documents.

19. The Bank argued that it had taken all practicable steps to comply with DPP1(3) and even if one of its employees did not follow its usual procedure in accordance with the Manual, such a lapse on the part of an employee should



not result in its failure to “take all practicable steps” in complying with the DPP.

20. The Bank had provided this Office with a copy of the Manual issued before the collection of the Data for reference.

### **Findings of the Privacy Commissioner**

#### ***The collection of the Data by the Bank***

21. In determining whether the Bank has met the notification requirement under DPP1(3), it is essential to establish whether the Bank had taken all practicable steps to ensure that the Complainant was explicitly informed, on or before the collection of the Data, of the classes of persons to whom the Data may be transferred.

22. The Bank claimed that by signing on the Application Form, the Complainant was regarded as having read, been explained, understood and agreed to be bound by, and been provided a copy of the T&C. Further, the Complainant should be able to understand the T&C and the Circular which have clearly explained the persons to whom the Data might be transferred.

23. It is noted that there is a discrepancy between the information provided by the Complainant and that provided by the Bank as to when the T&C and the Circular were provided to the Complainant. The Complainant stated that she was only provided with a copy of the T&C when she collected her passbook (i.e. one day after the Bank had collected the Data from her) and she had not been explained of the Circular. The Bank stated that according to the Manual and the information obtained from the Ex-employee, the Complainant should have been provided with a copy of the Circular and given an explanation of the contents therein before the Data were collected.

24. However, it is noted that there is no provision under the Manual requiring an employee to explain the contents of the Circular to a customer. Nevertheless, I have the following observations with regard to the Circular and Application Form:-

- (i) The Circular: It is noted from paragraph (5)(ix) of the Circular that the Bank may provide personal data of its customers to “*selected companies for the purpose of informing customer of services which the Bank believes will be of interest to customers*”. This paragraph does not specify what classes the selected companies belong to or whether they are unrelated parties. Only paragraph (4)(vii) of the Circular states that customers’ personal data may be used for marketing banking and financial services or related products of the Bank and/or selected companies.
- (ii) Application Form: Paragraph 4 of Part 3 of the Application Form only states that the applicant understands and accepts the terms set out in the Circular. Further, while it is stated in paragraph 11 of Part 3 of the Application Form that “[*the Bank*] shall be permitted to transfer and/or disclose my/our data and/or the information relating to my/our account(s) to [*the Bank’s*] major shareholder(s) and/or any of its/their subsidiaries or affiliate companies, or [*the Bank’s*] service providers”, there was no provision in the Application Form expressly specifying that customers’ personal data may be transferred to unrelated parties as set out in the Circular.

25. In view of the above, I consider that even if the Bank’s staff had followed the Manual to provide a copy of the Circular to the Complainant at the material time, in the absence of any indication on the Application Form drawing her attention to the relevant paragraphs of the Circular relating to “Personal Data”, the Complainant had to, on her own initiative, carefully refer to paragraphs 4 and 5 of the Circular (which is included in the T&C as an appendix and printed in fonts of about 1mm × 1mm for English and about 2mm × 2mm for Chinese) before she could ascertain that the Data might be disclosed by the Bank to selected companies for promoting banking and financial services or related products of the Bank and/or selected companies.

26. In this regard, it may be helpful to note the following comments from the decision of the Administrative Appeals Board (“**AAB**”) in AAB No.38 of 2009 (the “**AAB Decision**”):-

*“23. We believe this distinction between consumer and business applicants may first be drawn as the Ordinance has its long title that it is “to protect the privacy of individuals in relation to personal data”...*

*27. One does not expect consumer customers to go from one clause to another in a small print document to find for themselves what was intended in relation to their personal data. This is not a reasonable expectation of what a consumer should do and must do. They are quite entitled to be drawn specific attention to the fact of being approached by other business companies. Personal particulars set out on an identity card form part of the “privacy” of a citizen and are protected by Article 39 of the Basic Law, Article 17 of the ICCPR<sup>1</sup> and Article 14 of the Bills of Rights. An express waiver of such rights should therefore be sought before business promotion from third party companies could be made.”*

27. In the present case, even if the Complainant was provided with a copy of the Circular, she had to go through paragraph 11 of Part 3 of the Application Form and paragraphs (4)(vii) and (5)(ix) of the Circular before she could find out that her personal data would be transferred to one of the Bank’s “selected companies” for the purpose of marketing its banking and financial services or related products. Furthermore, neither the provisions under paragraph (5)(ix) of the Circular nor those under paragraph 11 of Part 3 of the Application Form explicitly informs the Complainant of the classes of transferees of her personal data. Having considered the aforesaid and the comments of AAB, I am of the view that the Bank has not taken all practicable steps to ensure that on or before the collection of the Data, the Complainant was explicitly informed of the classes of persons to whom the Data might be transferred, thereby contravened the requirement under DPP1(3).

### ***The disclosure of the Data from the Bank to the Insurance Company***

28. In deciding whether the Bank’s disclosure (the “**Disclosure**”) of the Data to the Insurance Company for the Promotion was a contravention of the

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<sup>1</sup> International Covenant on Civil and Political Rights

requirement under DPP3, I need to consider whether the Disclosure was within the purpose for which the Data were to be used at the time of collection of the same (the “**Collection Purpose**”) or directly related to the Collection Purpose. In this regard, the purposes of use conveyed to the Complainant by the Bank when collecting the Data from her, the reasonable expectation of the Complainant regarding the use of the Data by the Bank, and applicable codes of practice, regulations and guidelines issued by relevant regulatory bodies are relevant.

### *Whether the Disclosure was within the Collection Purpose*

29. In determining whether the Disclosure was within the Collection Purpose, I have to examine the purpose for which the Complainant’s personal data were to be used at the time of collection. In this connection, as explained above, only if the Complainant was provided with a copy of the Circular and her attention was drawn to paragraphs 4 and 5 thereof that she might be able to ascertain that the Data might be disclosed by the Bank to selected companies for promoting banking and financial services or related products of the Bank and/or selected companies.

30. Even if the Complainant was provided with a copy of the Circular, the Disclosure does not fall within the Collection Purpose. According to the Bank, under the Agreement, the Insurance Company was responsible for providing the insurance products and marketing materials, bearing the costs and expenses of the telemarketing, and providing advice and processing the relevant applications. The role of the Bank was only to “*provide [the Insurance Company] promptly with such marketing and other information as may be reasonably requested by [the Insurance Company]*”, “*promptly forward and send to [the Insurance Company] all applications, communications, correspondence, enquiries and requests received by [the Bank] in relation to any Products or any insurance policy issued by [the Insurance Company]*”, “*provide the Data of the Customers to [the Insurance Company] ... for the purpose of marketing and promoting the Products*” and “*ensure that the Data provided to [the Insurance Company] ... shall contain the most up-to-date information ... of the Customers*”. In other words, the Bank played little or no part in selling insurance products but to provide customers’ personal data. Nevertheless, pursuant to the Agreement, the Insurance Company shall pay commission to the Bank for the insurance policies issued under the Program.

I consider such arrangement under the Agreement is in substance sale of personal data by the Bank for monetary gain which is outside the purpose of use of personal data as stated in paragraphs 4 and 5 of the Circular. Therefore, such arrangement falls outside the Collection Purpose.

***Whether the Disclosure was directly related to the Collection Purpose***

31. When the Complainant provided her personal data to the Bank, her purpose was to subscribe for the Accounts service of the Bank. The Complainant would have expected that her personal data would be used for purposes relating to her account opening application and for related savings and deposit account services provided by the Bank. It would be outside the reasonable expectation of the Complainant that her personal data would be used under the Agreement. It was evident that the Complainant felt objectionable when she discovered that her personal data were disclosed to the Insurance Company resulting in her lodgment of the present complaint.

32. The following comments from the AAB Decision are of relevance in determining whether the Disclosure was directly related to the Collection Purpose:-

*“52. ...We were provided with two copies of cross-marketing agreements between the Bank and CIGNA made in 2003 and 2005. However, we consider that the sale and purchase between the Bank and CIGNA of Ms Wong’s data is not a purpose which has the prescribed consent from her. In our view, it is not one of the stated purposes included in paragraph 11(c) of the Agreement document provided to Ms. Wong.*

*53. As schedule 3 of the Cross-Marketing Agreement between the Bank and CIGNA indicated, both parties envisaged the sale and purchase of no less than 200,000 relevant data of the Bank’s customers within a 12-month period.*

*54. Relevant data is defined in the Cross-Marketing Agreement to mean the names and telephone numbers of the Bank’s customers. We failed to see how such kind of commercial activity is something that Ms Wong can be said to have already given her prescribed consent,*

*just because she had received the application form and the Agreement. Such use of Ms Wong's data is not the purpose for which it was first collected and its use by the Bank cannot be said to relate directly to the original purpose the data was collected, namely, the purpose was quite simply the application for a credit card and vetting of the applicant for the purpose of considering the application.”(emphasis added)*

33. Having considered the circumstances and in light of the above comments from AAB, I am of the opinion that the Disclosure was outside the reasonable expectation of the Complainant, and thus not directly related to the Collection Purpose.

***Whether the Disclosure was with the Complainant's prescribed consent***

34. According to paragraph 8.4(b) of the Code of Banking Practice (the “**Code**”) issued by the Hong Kong Association of Banks (the “**Association**”), banking institutions should not disclose customers' names and addresses to companies which are not related companies within the same group for marketing purposes unless with the prescribed consent of its customers. As the Insurance Company is not an associated company of the Bank, the Bank should not disclose to the Insurance Company the personal data of the Complainant for the Promotion unless with her “prescribed consent”.

35. In this respect, the Bank argued that the Complainant had consented to the transfer of the Data to the Insurance Company. The Bank relies on the relevant paragraphs in the Circular and the Application Form mentioned in paragraph 6 above. In the circumstances, I have to consider whether the Complainant's signature on the Application Form could be regarded as the Complainant's “prescribed consent” for the purpose of the Disclosure.

36. Under section 2(3) of the Ordinance, “prescribed consent” means the express consent of the person given voluntarily. As prescribed consent has to be given expressly, having no objection to the change of use of personal data does not constitute prescribed consent. Furthermore, prescribed consent has to be given voluntarily.

37. It is noted that there is only one place for applicant's signature on the

Application Form. It does not allow the applicant to separately choose whether or not to disclose his/her personal data to unrelated parties for direct marketing purpose. By signing on the Application Form for opening a bank account, a customer has to agree to be bound by the T&C (including the Circular which mentions the transfer of customers personal data to selected companies). It follows that the applicant has to choose between (a) giving up the application for opening a bank account or (b) giving his “bundled consent” agreeing to the terms of the T&C for the provision of banking service as well as the use of his personal data as prescribed by the Circular when in fact he finds such prescribed use objectionable.

38. The following comments from the AAB Decision may shed some light on the question of “consent”:-

*“32. We believe that express consent should be given, as is normally the case, by for example inviting the customer to tick a box specifying whether the customer would agree to the possibility of using personal data for promotion by third party business.”*

39. The above comments made by the AAB support my view that “bundled consent” given for the transfer of personal data to selected companies for direct marketing purposes as well as provision of account service should not be regarded as an express or voluntary consent, hence falling outside the definition of “prescribed consent” under the Ordinance. I therefore find that the Disclosure was made without the Complainant’s prescribed consent.

40. Taking into account the circumstances of the case and the foregoing comments from the AAB, I am of the view that the Bank has contravened DPP3 in relation to the Disclosure.

### ***Conclusion***

41. In conclusion, I find that:-

- (1) The Bank has contravened the requirement under DPP1(3) in relation to its collection of the Complainant’s personal data; and

- (2) With regard to the Disclosure, the Bank has contravened the requirement under DPP3.

**Repeated Contraventions of the Bank are Unlikely**

42. Pursuant to Section 50(1) of the Ordinance, I may serve an enforcement notice on the Bank if I am of the opinion that the Bank is contravening the requirements under the Ordinance or has contravened the requirements under the Ordinance in circumstances that make it likely that the contraventions will continue or be repeated. In other words, an enforcement notice may not be served if continued or repeated contravention of the Bank is unlikely.

43. With regard to the contravening act or practice of the Bank identified in the investigation, I note that the Bank has stopped all programs and activities involving transfer of customer data to unconnected companies for marketing purposes. Besides, the Bank has issued a written notice to the Insurance Company demanding the Insurance Company to completely erase and destroy the personal data of the Complainant.

44. The Bank further gave me a written undertaking dated 10 January 2011 that it will take the following actions:-

- (1) On or before collecting personal data from customers (the “**Customers**”) opening bank accounts at the Bank, the Customers shall be informed of the matters under DPP 1(3)(b)(i) in writing (“the Personal Information Collection Statement” or “**PICS**”) in the following manner:-
  - (a) use a layout that is designed to ensure that the PICS is easily readable to individuals with normal eyesight, taking into account factors like font size, spacing, use of appropriate highlights, underlining, keywords and contrasts;
  - (b) where personal data of the Customers would be shared with business partners of the Bank under any joint



marketing program for monetary gains, explicitly inform this matter to the Customers and, if in writing, specifically state it in the PICS; and

- (c) where personal data of the Customers are to be transferred, the classes of transferees should be specified by their distinctive features, such as “insurance services companies”, so as to give a reasonable degree of certainty as to whom the data will be transferred;

the above measures will be implemented by the Bank by the beginning of April 2011;

- (2) In the event that the personal data of existing customers of the Bank would be shared with any business partners under any joint marketing program for monetary gains, prior prescribed consent to such use must be obtained from those existing customers.

45. In view of the matters presented in paragraphs 43 to 44, I am of the opinion that repeated contraventions of DPP1(3) and DPP3 on the part of the Bank in similar circumstances are unlikely. Therefore, an enforcement notice will not be issued and served on the Bank.

### **Other Comments**

46. The Bank had, for the purpose of the Promotion, disclosed to the Insurance Company the Complainant’s name, HKIC number, gender, date of birth, telephone number, address and savings account number. I am of the view that for the purpose of carrying out direct marketing activities as in the present case, disclosing the name and telephone number of the Complainant to the Insurance Company is already adequate. The Insurance Company may collect other personal data from the Complainant directly after she has agreed to subscribe to the Product during the direct marketing call. In this regard, I would like to refer to the following comments in the AAB Decision:-

*“58. ... although a definition for relevant data is provided in the Cross-Marketing Agreement, more data than that was specified in the Banking Code in relation to a bank customer were transferred by the Bank to CIGNA which included address, gender, date of birth, partial identity card number and credit card number. We note that §8.4(b) of the Banking Code says without the prescribed consent of its customer, a bank should not disclose his/her name and address to a company which is not a related company to its Group for the purposes of marketing. It is not an advice that the Bank has complied with. The amount of personal data for the purposes of cross-marketing here was not confined to name and telephone number. We do not think it was right if there appears to be no safeguard a data subject has if there is simply no limit on the amount of personal data that can be legitimately transferred.”*

### **Recommendations**

47. I appreciate that, in addition to banking services, banks may provide various other financial and insurance services or products to customers. The “bancassurance” model has become a common business practice in the banking industry. Apart from advertising through mass media its products or services, nowadays banks tend to contact customers directly in order to increase the success rate of promoting their products to potential customers. While a bank may use personal data of its customers for marketing its own insurance products, the transfer of such data to unconnected insurance company for direct marketing may result in the customers being approached by parties unknown to them. It would normally fall outside a customer’s reasonable expectation that his personal data would be transferred to or shared with an unrelated party for monetary gains.

48. In view of the public concern about the mishandling of customers’ personal data in direct marketing activities, I have issued a Guidance Note, titled “Guidance on the Collection and Use of Personal Data in Direct Marketing” (the “**Guidance Note**”), to provide data users with practical

guidance on compliance with the requirements under the Ordinance while engaging in the collection and use of personal data for direct marketing.

49. Compared with businesses and corporations, individuals stand at a relatively subservient position in their dealings with enterprises. It is incumbent upon banks not to exploit their dominant position vis-à-vis their customers in the collection and use of personal data. Sale of customers' personal data to unrelated parties without explicit and voluntary consent from the customers could jeopardize a bank's credibility and damage its reputation disproportionately.

50. I am glad to note that after my issuance of the Guidance Note, the Hong Kong Association of Banks has issued a circular to its members enclosing a revised pro-forma personal information collection statement with recommended wording for members to follow, having taken into account my recommendations. Respecting and protecting customers' personal data privacy is one of the essential factors enabling the banks to win customers' trust and support thereby raising their competitiveness, which will ultimately benefit their businesses. I hope this investigation report could serve as a warning to others engaging in similar practices to cease their current practices and to follow the advice in the Guidance Note when collecting and using customers' personal data for direct marketing.