

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

**(English translation)**

*(This is an English translation of the Report compiled in Chinese. In the event of any conflict between this English version and the Chinese version, the Chinese version shall prevail.)*

**Report Number: R11 – 8371**

**Date issued: 15 December 2011**



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

**Collection of Excessive Data from Savings Account Applicants**  
**by Hang Seng Bank Limited**

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 Hang Seng Bank 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**

## **Background**

In July 2009, the Complainant applied for a savings account at a branch of Hang Seng Bank Limited (“**Hang Seng**”) in Yuen Long. A staff member of the branch requested him to provide his personal data, including “education level” and “marital status”. In this regard, the Complainant wrote to Hang Seng expressing his dissatisfaction that he must supply “education level” and “marital status” for Hang Seng to consider his application to open the account.

2. Hang Seng replied to the Complainant in writing in August 2009 (“**the Reply**”). Hang Seng indicated : *“for the purposes of complying with the requirements of regulatory authorities and enabling [Hang Seng] to design banking/financial services or products for customers and promoting services or products of [Hang Seng], when opening an account for a customer, [Hang Seng] will request the customer to provide his/her personal data, including name, identification document number, date of birth, telephone number, residential address, education level and marital status, etc.”*

3. The Complainant was dissatisfied with the Reply. He considered that for the purpose of opening a savings account, the collection of his “education level” and “marital status” was excessive, so he lodged a complaint with this Office.

## **Relevant Provisions of the Ordinance**

4. Data Protection Principle (“**DPP**”) 1(3) of Schedule 1 to the Ordinance is relevant to this case. It stipulates 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; ... ”*

## **Information Collected during the Investigation**

5. In the course of investigation of this case, this Office received written replies and relevant information / documents from Hang Seng. Below is a summary of the information collected.

### *Account Application Form*

6. According to the information provided by Hang Seng, customers applying for a savings account (“**Applicants**”) must submit a completed and signed account application form (“**the Application Form**”). The information required in the Application Form included “education level” (University or above; Post-Secondary; Secondary Completed; Completed F.3; or Others) and “marital status” (Single or Married).

7. Hang Seng stated that the data items of “education level” and “marital status” were not compulsory. Applicants could still open a savings account without providing these two items. However, Hang Seng confirmed that at the time when the Complainant applied for a savings account, there was no remark in the Application Form indicating that the two data items of “education level” and “marital status” were optional. Hang Seng stated that Applicants might enquire with its staff about whether entry of a particular item in the Application Form was obligatory.

### *Purposes of Collecting “Education Level” and “Marital Status” by Hang Seng*

8. According to Hang Seng, Applicants would be provided with a notice about the Ordinance (“**the Notice**”) when opening accounts. The Notice set out the purposes of collection of personal data by Hang Seng as follows:

- “1. *From time to time, it is necessary for customers and various other individuals (...) (collectively “data subjects”) to supply the Bank with data in connection with various matters such as the opening or continuation of accounts and the establishment or continuation of banking/credit facilities or provision of related banking/financial services or compliance with any laws or guidelines issued by*

*regulatory or other authorities.*

2. *Failure to supply such data may result in the Bank being unable to approve the opening of or continue accounts or establish or continue banking/credit facilities or provide related banking/financial services or comply with any laws or guidelines issued by regulatory or other authorities.*

...

4. *The purposes for which data relating to data subjects may be used are as follows:-*

...

(vi) *designing banking/financial services or related products for data subjects' use;*

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

...

(x) *meeting the requirements to make disclosure under the requirements of any law binding on the Bank or any of its branches or under and for the purposes of any guidelines issued by regulatory or other authorities with which the Bank or any of its branches are expected to comply;*

...”

#### *Revision of the Application Form by Hang Seng*

9. In response to our investigation, Hang Seng revised the Application Form on 30 October 2010. In the revised Application Form, as far as opening a savings account is concerned, the items of “education level” and “marital status” were marked as “Applicant Supplementary Information (Optional Information)”. Moreover, Hang Seng stated that by an internal memo via email, it had reminded its staff of the revision of the Application Form and that the items of “education level” and “marital status” were “Optional Information”. Hang Seng has provided this Office with a sample of the revised Application Form and a copy of the internal memo as evidence.

## The Commissioner's Findings

### *Collection of "Education Level" and "Marital Status" for Marketing Purpose by Hang Seng*

10. In this investigation, I have to consider whether the collection of the Applicants' information on "education level" and "marital status" was necessary for or directly related to the purpose of opening savings accounts. In the course of investigation, Hang Seng told this Office that the collection of these data was not necessary for the purpose of opening savings accounts. The data were not required for customer verification as per the Supplement to the Guideline on Prevention of Money Laundering issued by the Hong Kong Monetary Authority. Hang Seng stated that the collection of the data was for business promotion or direct marketing purpose. According to Hang Seng, information on "education level" could assist in evaluating if appropriate investment products or services should be sold to customers, while information on "marital status" could help Hang Seng promote appropriate products or services to customers.

11. Direct marketing is a common business activity in Hong Kong and it always involves collection and use of personal data. For business organizations to successfully sell their services and products to customers, apart from collecting identity and contact information from customers for specific purpose(s) or reason(s) related to the organizations' functions or activities (e.g. provision of financial services by a bank), they may further collect additional personal data from the customers for direct marketing purpose.

12. According to the Guidance on the Collection and Use of Personal Data in Direct Marketing<sup>1</sup> ("**Guidance Note**") issued by this Office in October 2010, while a data user may collect personal data which are necessary for fulfillment of the specific purpose(s), it may only collect additional personal data from customers for direct marketing purpose if the customers voluntarily elect to supply the data. 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 customers in order to carry out customer profiling

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<sup>1</sup> [http://www.pcpd.org.hk/english/files/publicatons/DM\\_e.pdf](http://www.pcpd.org.hk/english/files/publicatons/DM_e.pdf)

and segmentation, thereby enhancing the cost-effectiveness of direct marketing. In such circumstance, the data user should inform its customers that the provision of such additional information is entirely voluntary.

13. I appreciate that the information on “education level” and “marital status” can assist Hang Seng in better understanding the background of its targeted customers and selecting appropriate services or products to be promoted, thereby enhancing the successful rate of direct marketing. In this case, Hang Seng requested its customers to provide their information on “education level” and “marital status” in the Application Form. Given that the data were intended for business promotion purpose, Hang Seng should not collect such data unless they were provided by the Applicants voluntarily.

*Contravention of DPP1(3)(a)(i)*

14. Under the requirement of DPP1(3)(a)(i), Hang Seng has to take all practicable steps to ensure that on or before collecting the Applicants’ information on “education level” and “marital status”, the Applicants are clearly informed that the provision of such data is voluntary.

15. I noticed that at the time when the Complainant applied for a savings account at Hang Seng, the items of “education level” and “marital status” in the Application Form were not marked as “Optional Information”. Although Hang Seng stated that the Applicants could enquire with its staff whether a particular data field needed to be filled in, I am of the view that as there was no indication as to which data entry was “obligatory” or “not obligatory”, the Applicants’ reasonable understanding would be that they had to fill in all the fields in the Application Form for account opening.

16. In this case, the Complainant claimed that he was told by a staff member of Hang Seng that it was necessary for him to supply the information on “education level” and “marital status” in order to open an account. This demonstrated that even the staff member of Hang Seng had mistaken that these two data entries were obligatory. Moreover, Hang Seng did not inform the Complainant in the Reply that these two items were “Optional Information” as far as opening a savings account was concerned.

## *Conclusion*

17. I am of the opinion that before the revision of its account opening form in October 2010, Hang Seng had not taken all practicable steps to ensure that the Applicants (including the Complainant) were explicitly or implicitly informed that, as far as opening a savings account was concerned, it was voluntary for them to supply information on “education level” and “marital status”. It thus contravened DPP1(3)(a)(i) of the Ordinance.

## **Enforcement Notice**

18. If I am of the opinion that a data user has contravened the DPP in circumstances that make it likely that the contravention will continue or be repeated, I may serve an enforcement notice on the data user pursuant to section 50 of the Ordinance directing it to take specified steps to remedy the contravention or the matters occasioning it. In considering that Hang Seng has revised the Application Form so that as far as opening a savings account is concerned, the data items of “education level” and “marital status” are marked as “Applicant Supplementary Information (Optional Information)” and Hang Seng has issued relevant internal guidelines to its staff, I am of the opinion that continued or repeated contravention on the part of Hang Seng is unlikely. Therefore, I have decided not to serve an enforcement notice on Hang Seng in consequence of this investigation.

## **Recommendations**

19. The efforts of business organizations to conduct direct marketing for boosting their sales performance are appreciated. However, when conducting marketing activities, business organizations should also respect customers’ right of privacy. Otherwise, business organizations may eventually lose the dissatisfied customers. Regarding how to protect customers’ personal data in direct marketing activities, the Guidance Note provides various recommendations. For example, a data user who seeks to collect customers’ personal data other than their names and contact information for direct marketing should inform the customers of their rights to choose whether or not to provide such information. This notification is necessary in order to comply with DPP1(3).



20. I am pleased to note that after publication of the Guidance Note, Hang Seng has immediately revised its account opening form and issued relevant guidelines to its staff to ensure that savings account applicants clearly know that it is voluntary for them to supply the information on “education level” and “marital status”.

21. Through the publication of this investigation report, I would like to urge business organizations to examine whether the design of their service application forms satisfies the following two principles:

- (1) the personal data collected should be necessary and not excessive; and
- (2) customers should be explicitly informed that it is voluntary for them to provide their personal data for direct marketing purpose.

22. I appeal to all banks and organizations involved in the collection and use of personal data for direct marketing activities that they have to follow the existing legal requirements and recommended good practice as explained in the Guidance Note. It is imperative that they take a proactive customer-centric and privacy-friendly approach in their marketing strategies and business processes. They should adopt a corporate-wide privacy strategy which emphasizes transparency in the collection of customers’ personal data and the right of self-determination over the data the customers provide to the organizations. In return, they would enjoy enhanced customer trust and loyalty, thus creating a win-win situation for both the customers and themselves.