

**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.)

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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 Personal Data Collected Unfairly from the Public by HK
Preventive Association Limited to AEGON Direct Marketing Services
Insurance Broker (HK) Limited for Use in Direct Marketing**

This report in respect of the investigation carried out by the Privacy Commissioner for Personal Data (the “**Commissioner**”) pursuant to section 38(a) of the Personal Data (Privacy) Ordinance, Cap. 486 (the “**Ordinance**”) against HK Preventive Association Limited and AEGON Direct Marketing Services Insurance Broker (HK) Limited is published in the exercise of the power conferred on the Commissioner 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

The Offer of Free Medical Check-up by the “Hong Kong Preventive Association” as Pretext to Collect Personal Data

Between April 2011 and March 2012, several persons complained¹ to this Office that the “Hong Kong Preventive Association” had collected their personal data over the phone by offering them free medical check-up in response to the “Universal Medical Check-up Scheme”. In fact, their personal data was provided to AEGON Direct Marketing Services Insurance Broker (HK) Limited (“**Aegon Direct**”) for use in direct marketing.

2. The “Hong Kong Preventive Association” is not a government-funded organisation or a charity. Its registered company name is “HK Preventive Association Limited” (“**HKPA**”). According to its website², HKPA provides laboratory testing and medical check-up services through cooperation with private laboratories. Moreover, according to HKPA’s representations to the Commissioner, it also operates call centres to provide marketing services for other commercial organisations.

Aegon Direct Used the Personal Data Provided by HKPA for Direct Marketing

3. Aegon Direct is an insurance broker operating in Hong Kong³ under the Aegon Group. To solicit personal data from target customers for future direct marketing use and maintain a long-term relationship with customers, Aegon Direct operates “Aegon Direct Club” (“**the Reward Programme**”) as a platform for promoting its insurance broker services to target customers and current members by offering discounts at designated merchants, insurance premium discounts and wealth management information.

4. According to Aegon Direct’s website⁴, membership of the Reward Programme is open to Hong Kong residents aged 18 or above with valid Hong Kong Identity Card. The personal data provided for the membership enrolment would be used for provision of membership offers and direct marketing purposes,

¹ A total of five complainants lodged complaints with this Office, and 11 people expressed their concerns about this matter through enquiries.

² <http://www.88hkpa.com>

³ Aegon Direct is a member of the Hong Kong Confederation of Insurance Brokers.

⁴ <http://www.aegondirect.com.hk>

including but not limited to the promotion of insurance products or services.

5. According to several complainants, they were attracted by the free medical check-up introduced by HKPA over the phone and provided their respective names, gender, mobile phone numbers, residential addresses and partial identity card numbers⁵ (“**the Data**”) to HKPA for registration for the free medical check-up.

6. The complainants subsequently received a promotional letter from Aegon Direct (“**the Welcome Letter**”) at their respective residential addresses, stating that they were registered as members of the Reward Programme and offered various welcome gifts by Aegon Direct, including a medical check-up coupon (“**the Coupon**”), a free lucky draw and an enrolment form for a free accident protection plan. In addition, if the complainants purchased other insurance products through Aegon Direct, they could enjoy premium discount.

7. Upon receipt of the Welcome Letter, the complainants realised that the true purpose of the call from HKPA was to collect their personal data and to provide it to Aegon Direct for use in direct marketing. The complainants were dissatisfied that HKPA’s telemarketers had not explicitly informed them that HKPA would transfer their personal data to Aegon Direct for use in direct marketing. Moreover, the complainants were also dissatisfied that Aegon Direct had used their personal data for direct marketing without their consent. Hence, they lodged complaints with this Office.

8. The Commissioner initiated a formal investigation against HKPA and Aegon Direct in respect of three complaints⁶ to ascertain whether their collection and use of the complainants’ personal data had contravened the relevant requirements under the Personal Data (Privacy) Ordinance⁷ (“**the Ordinance**”). As the marketing programme conducted by HKPA and Aegon Direct involved a large number of data subjects, the Commissioner also reviewed their practice of collection and use of personal data for direct marketing.

⁵ The first five alphanumeric characters of identity card number.

⁶ Of the five complainants who lodged complaints with this Office, two had subsequently withdrawn their complaints.

⁷ Certain parts of the Personal Data (Privacy) Ordinance were substantially amended on 1 October 2012. However, for the purposes of this investigation, the applicable law at the material time was the provisions of the Personal Data (Privacy) Ordinance as it stood prior to 1 October 2012.

Relevant Provisions of the Ordinance

9. Data Protection Principle (“DPP”)1 and DPP3 in Schedule 1 to the Ordinance are of direct relevance to this investigation.

DPP1(1)

“Personal data shall not be collected unless–

- (a) the data are collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;*
- (b) subject to paragraph (c), the collection of the data is necessary for or directly related to that purpose; and*
- (c) the data are adequate but not excessive in relation to that purpose.”*

DPP1(2)

“Personal data shall be collected by means which are–

- (a) lawful; and*
- (b) fair in the circumstances of the case.”*

DPP1(3)

“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–

...

- (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

“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).”*

10. The term “use”, in relation to personal data, was defined under section 2(1) of the Ordinance to include “disclosure” or “transfer” of the data.

11. Section 65 provides that:

“ (1) Any act done or practice engaged in by a person in the course of his employment shall be treated for the purposes of this Ordinance as done or engaged in by his employer as well as by him, whether or not it was done or engaged in with the employer’s knowledge or approval.

...

(3) In proceedings brought under this Ordinance against any person in respect of an act or practice alleged to have been done or engaged in, as the case may be, by an employee of his it shall be a defence for that person to prove that he took such steps as were practicable to prevent the employee from doing that act or engaging in that practice, or from doing or engaging in, in the course of his employment, acts or practices, as the case may be, of that description.

...”

Information Collected during the Investigation

12. In the course of investigation of this case, apart from collecting evidence from the complainants, this Office also received written replies from HKPA and Aegon Direct and interviewed the officer-in-charge of HKPA. Moreover, this Office examined the co-operation agreement signed between HKPA and Aegon Direct in respect of their marketing activities. As there was an allegation against HKPA’s telemarketers for using misleading means to collect personal data,

our officers also listened to the telephone conversation records between the relevant telemarketers and the complainants. Below is the relevant information obtained by this Office.

Business Relationship between HKPA and Aegon Direct

13. HKPA is a business partner of Aegon Direct, not its subsidiary or associated company. In January 2011, HKPA and Aegon Direct entered into a cooperation agreement (“**the Agreement**”) for a joint marketing programme (“**the Marketing Programme**”). The Marketing Programme commenced in December 2010 and lasted for one year, during which HKPA was responsible for making marketing calls to target customers to introduce a free insurance plan and/or a lucky draw entry provided by Aegon Direct (“**the Free Offer**”). After the target customers’ consent had been obtained, HKPA would transfer the Data provided by them to Aegon Direct for redemption of the Free Offer. Under the Agreement, Aegon Direct would pay HKPA a fixed amount of “administration fee” for each target customer who agreed to provide his personal data. Besides, Aegon Direct would pay for the cost of the Free Offer.

14. In December 2011, HKPA and Aegon Direct both agreed to extend the Marketing Programme to March 2013.

15. According to the Agreement, HKPA shall not be an agent of Aegon Direct under the Marketing Programme.

Telemarketing Scripts Used by HKPA under the Marketing Programme

16. Under the Agreement, the telemarketing scripts used by HKPA’s telemarketers were subject to Aegon Direct’s approval. Aegon Direct had provided this Office with the standard telemarketing script (“**the Script**”) applicable at the material time of the complaints. The extracts in sequential order are as follows⁸:

Opening

“Hi, My name is X, calling from Hong Kong Preventive Association. To support the Universal Medical Check-up Scheme, we’ll offer you a kidney function test of

⁸ The Script provides Chinese version only and the extracts are English translation.

18 items sponsored by Aegon Direct. I can assure you that it is totally free of charge.”

About Asking for Personal Data

“First, let me confirm your eligibility for the free medical check-up. Are you aged between 25 and 55? We’ll use your mobile phone number XXXXXX for registration. What is your full name in English on your ID card? We’ll later send the medical check-up coupon to your residential address by mail. What is your [residential address]?”

...

As each customer is only entitled to have the free medical check-up once, you must present the coupon and your ID card at the laboratory. Hence, we’ll make a one-off registration for you. What are the first five alphanumeric characters of your ID number?”

About Transfer of Personal Data to Aegon Direct

“Thank you, you’ve successfully registered as a member of Aegon Direct. Later, we’ll pass the registered information to Aegon Direct which offered this Programme. You are clear about this, aren’t you?”

About Other Gifts

“Apart from the free medical check-up, you can also get two welcome gifts from Aegon Direct at the same time. The first is a global accident protection plan with an insured amount of up to \$1 million. The second is a \$100 cash discount for the purchase of other insurance products through Aegon Direct. The third is a lucky draw entry. The first prize is an \$8,000 cash coupon of [a supermarket]; the second prize is a \$4,000 cash coupon of [a retail shop]; and the third prize is a \$2,000 cash coupon of [a department store].”

Mention of Aegon Direct as the Sponsor in the Last Part

“Aegon Direct will send you a welcome letter. In addition, a designated staff member from Aegon Direct will call you within one month to verify your information. As the administration and operation costs of this service are sponsored by Aegon Direct, we’ll collect the relevant fees directly from it. Let

me remind you once again, your membership registration and participation in the lucky draw are totally free of charge. You are clear about this, aren't you?"

Collection of Personal Data by HKPA

17. HKPA admitted that their telemarketers had made marketing calls to the complainants under the Marketing Programme and thus had collected the Data from the complainants.

18. According to HKPA, as their programme was targeted at the users of some 5 million valid mobile phone numbers in Hong Kong, it did not know the identities of these target customers before calling them.

19. According to HKPA, after collection of the personal data of the target customers, it would store the data in an encrypted CD and pass the CD to Aegon Direct on the same day. HKPA confirmed that it did not retain the personal data of the target customers.

20. HKPA admitted that the free medical check-up was not provided in cooperation with the Hong Kong Government. HKPA realised that to increase the chance of obtaining personal data from the target customers, some of their telemarketers had not followed the Script but attempted to mislead the target customers that HKPA was offering the free medical check-up on behalf of, or with the permission of, the Hong Kong Government. Furthermore, HKPA also knew that some telemarketers deliberately spoke faster and in a muffled voice when they came to the information about the transfer of personal data to Aegon Direct.

Telephone Conversation Records Involved

21. In order to understand the actual situation in which HKPA's telemarketers introduced the Marketing Programme to the complainants and obtained their personal data, our officers had listened to the relevant telephone conversation records. Relevant extracts of the records are as follows⁹:

⁹ The conversations were conducted in Cantonese.

Case of Complainant A

Telemarketer: *“Hi, I’m calling from the Hong Kong Preventive Association. Are you the user of (mobile phone number of Complainant A)?”*

...

“In response to the Government’s promotion of the Universal Medical Check-up Scheme, a free medical check-up is offered to Hong Kong residents by phone...”

...

Complainant A: *“Is this from the Government?”*

Telemarketer: *“Yes, we are. We call Hong Kong residents to support the Government’s Universal Medical Check-up Scheme. We are from the Hong Kong Preventive Association...”*

Case of Complainant B

Telemarketer: *“Hi, in response to the Government’s promotion of the Universal Medical Check-up Scheme, we, the Hong Kong Preventive Association, together with Aegon Direct offer you a free medical check-up. You don’t need to pay for any part of the medical check-up programme...”*

Complainant B: *“Are you a governmental organisation?”*

Telemarketer: *“Yes, we are a professional healthcare organisation accredited by the Hong Kong Government.”*

Complainant B: *“...accredited by the Hong Kong Government. But you are not a governmental organisation?”*

Telemarketer: *“But we are not selling products... and you do not have to buy anything. What we offer you is a free medical check-up...”*

Complainant B: *“I see, you are not selling products.”*

Telemarketer: *“Yes, we are not selling products...”*
...

Complainant B: *“But I don’t know who you are over the phone...I don’t know to whom the data collected by you here will be transferred.”*

Telemarketer: *“...Please be rest assured, Sir. After we send you the coupon and upon your completion of the check-up, we would delete all your information. We’ll give you the check-up result...This activity is proper and we need to obtain the Government’s blessing in advance...we would not talk to you recklessly.”*

Case of Complainant C

Telemarketer: *“Hi, Miss, I am calling from the Hong Kong Preventive Association. My surname is X. In order to ensure each citizen can benefit from a medical check-up, Aegon Direct offers you a free medical check-up. I can assure you that it is totally free of charge. Hong Kong citizens aged between 21 and 55 are eligible for it. Are you aged between 21 and 55?”*

22. On the other hand, it was noted that only after the complainants had provided their personal data for registration for the free medical check-up did the telemarketers then hurriedly mention towards the end of the call that Aegon Direct was the sponsor and the complainants had been registered as the members of the Reward Programme. Relevant extracts are as follows:

Case of Complainant A

Telemarketer: *“At last, Mr. X (Surname of Complainant A), may I tell you ... in 20 seconds. This activity is sponsored by Aegon Direct. Within one month, a designated staff member from Aegon Direct will contact you. Mr. X, your appointment is registered under Aegon Direct [scheme]. Mr. X, your participation in this activity is totally free of charge, and you can become a member of Aegon Direct. You’ll be given a global accident protection plan worth \$1 million, a \$100 premium discount, and a lucky draw entry with a chance of winning an \$8,000 cash coupon of [a supermarket]...”*

Case of Complainant B

Telemarketer: *“Now, I’ll help you to register as a member of Aegon Direct. We’ll send your information to our Association and Aegon Direct. In addition, I’d like to remind you that in the coming month, a designated staff member from Aegon Direct will contact you to confirm this activity. As the administration cost and operation cost of this activity are sponsored by Aegon Direct, your participation in this activity is totally free of charge. In addition to the free medical check-up, you are entitled to a global accident protection plan worth \$1 million and a \$100 insurance premium discount, and an entry to a lucky draw at the same time. You stand a chance of winning up to \$8,000. You are clear about this, aren’t you?”*

Case of Complainant C

Telemarketer: *“...Thank you, you’ve successfully registered as a member of Aegon Direct. In addition to the free medical check-up, you can participate in a lucky draw and the first prize is an \$8,000 cash coupon of [a supermarket]. I wish you best of luck in the draw.*

Aegon Direct will send you a membership welcome letter. A designated staff member from Aegon Direct will contact you within one month and offer you a free accident protection plan worth \$1 million and a \$100 insurance premium discount. As the administration cost and operation cost of this activity are sponsored by Aegon Direct, we'll recover the relevant costs from it. Let me remind you, your membership registration and participation in the lucky draw are totally free of charge. Miss, is that clear?"

Use of Complainants' Personal Data for Direct Marketing by Aegon Direct

23. Aegon Direct admitted that it had obtained the complainants' personal data from HKPA under the Marketing Programme and used their personal data to send them the Welcome Letter, including the Coupon, the enrolment form for a complimentary accident insurance plan and the terms and conditions of the Reward Programme.

24. In response to our investigation, Aegon Direct stated that it had listened to the telephone conversation records between HKPA's telemarketers and the complainants. Aegon Direct admitted that the telemarketers had not spelt out that the complainants' personal data would be transferred to Aegon Direct for registration for the Reward Programme.

25. After the intervention of this Office, Aegon Direct had ceased using the complainants' personal data for direct marketing and issued letters to the complainants to confirm that their personal data had been destroyed.

26. Besides, Aegon Direct stated that it had ceased sending out the Coupon to the target customers from March 2012. Aegon Direct had also amended the Script. Apart from cancellation of the introduction of "To support the Universal Medical Check-up Scheme", the amended Script required telemarketers to specify, before requesting the target customers to provide their personal data, that the target customers needed to register as members of the Reward Programme in order to enjoy the free protection plan and the lucky draw.

27. Aegon Direct stated that as at 6 February 2013, it had obtained personal data of 363,830 target customers from HKPA under the Marketing Programme.

The Coupon

28. This Office had examined the Coupon sent to the complainants by Aegon Direct. According to the Coupon, the complainants needed to call the hotline of The Spa House Ltd to make an appointment for the free check-up. This Office found from a company search that the registered address and shareholders of The Spa House Ltd were the same as those of HKPA. In response to our enquiry, HKPA replied that The Spa House Ltd did not have a substantive business. Moreover, HKPA admitted that it did not run any laboratory business, but only cooperated with other laboratories. Hence, HKPA is only an intermediary for medical check-up services.

29. According to HKPA, Aegon Direct had sent out 256,000 Coupons under the Marketing Programme and 168,000 people had the check-up done in the designated laboratories arranged by HKPA. The usage rate was about 65%.

The Commissioner's Findings

Unfair Collection of Complainants' Personal Data by HKPA

30. DPP1(2) requires that HKPA has to collect the complainants' personal data by means which are lawful and fair in the circumstances of the case. HKPA cannot use misleading means to collect the complainants' personal data.

31. Under the Marketing Programme, HKPA's true purpose of calling the complainants' was to collect their personal data for Aegon Direct's use in direct marketing. However, prior to the collection of personal data, the telemarketers of HKPA had not explicitly informed the complainants of this true purpose. Worse still, they provided false or misleading information to the complainants, who in return provided their personal data in ignorance of the intention of use by Aegon Direct in direct marketing. The Commissioner found that HKPA's misleading practices included:

- (a) When the telemarketers of HKPA introduced themselves to the complainants, they did not give the full name of HKPA, i.e.

they omitted the word “Limited”, and only referred to the organisation as “Hong Kong Preventive Association”. The Commissioner noted that the name “Hong Kong Preventive Association” in Chinese was similar to the Chinese names of some non-profit making organisations, e.g. Hong Kong Tuberculosis, Chest and Heart Diseases Association, Hong Kong Anti-Cancer Society, Hong Kong Federation of Youth Groups. Hearing the word “Association”, people would easily mistake HKPA as a non-profit making body, or even a government subsidised organisation. Although the mention of “Hong Kong Preventive Association” by the telemarketers may not amount to misrepresentation, their practice of offering free medical check-up to “Hong Kong citizens” on the pretext of “To support the Government’s Universal Medical Check-up Scheme” would easily mislead people into believing that HKPA was somehow connected with the Government, and into providing their personal data over the phone based on this belief.

- (b) When two complainants asked HKPA’s telemarketers whether they were governmental organisations, the telemarketers did not clarify that HKPA was not a governmental organisation. Instead, they “admitted” that HKPA had a connection with the Government, and conducted the promotion activity with the blessing of the Government. Such act revealed that the telemarketers intended to conceal the fact that HKPA was a commercial organisation and its true purpose to collect the complainants’ personal data for direct marketing.
- (c) A telemarketer even stressed that the personal data provided by the complainants for registration for the free medical check-up would be completely destroyed once the activity was over. On the contrary, the data was actually transferred to Aegon Direct for use in direct marketing. The representation of the telemarketer was obviously inconsistent with the facts.
- (d) The Commissioner also noted that though the Legislative Councilors had initiated a motion debate on “Promoting

medical check-up for the whole community” on 11 March 2009, so far the Government has no plan to provide Hong Kong citizens with free or subsidised regular basic medical check-up for the prevention of diseases. In fact, the “Universal Medical Check-up Scheme” did not exist. Therefore, HKPA’s offer of the free medical check-up “To support the Universal Medical Check-up Scheme” was a piece of misleading information provided to the complainants.

- (e) From the content of the Script and the telephone conversations between the telemarketers and the complainants, it is found that HKPA deliberately put emphasis on the free medical check-up. Though the telemarketers had mentioned that the free medical check-up was offered by Aegon Direct, they had not introduced the business of Aegon Direct or the content of the Reward Programme. Hence, the complainants were not explicitly informed that if they accepted the free medical check-up, Aegon Direct would subsequently use their personal data for sending them the Welcome Letter. Under such circumstances, the complainants could not make a timely objection to the transfer of their personal data to Aegon Direct by HKPA.

32. In view of the foregoing, the Commissioner believes that the collection of the complainants’ personal data by the misleading promotion practice of HKPA’s telemarketers was not fair in the circumstances of the case. Applying section 65(1) of the Ordinance, such act was treated as done by HKPA. Moreover, there is no evidence suggesting that HKPA, which was aware of its telemarketers’ misleading data collection approach, has taken any effective measures to rectify the wrongdoing. Hence, HKPA had contravened DPP1(2).

Complainants not informed of the Purpose of Use of their Personal Data and Classes of Data Transferees

33. Under DPP1(3)(b)(i), on or before collecting the complainants’ personal data, HKPA must take all practicable steps to explicitly inform them of such collection and the classes of persons to whom the data may be transferred. This principle is to require data users to provide data subjects with sufficient

information on the use of their personal data and the parties which could use their personal data before deciding whether to provide their personal data to data users.

34. From the content of the Script and the conversations between the telemarketers and the complainants, HKPA introduced the Marketing Programme to the complainants by bits and pieces. The telemarketers first requested the complainants to provide their name and residential address on the pretext of “sending the Coupon to the residential address of the complainants by mail”. Only after the data had been collected did the telemarketers mention that the data would be transferred to Aegon Direct. It is clear that the telemarketers selectively put emphasis on the gifts rather than to state that the Coupon would be sent to the complainants by Aegon Direct. Lastly, when the telemarketers stated that Aegon Direct would send out the Welcome Letter to the complainants, they did not introduce what the Reward Programme was about. In particular, before the end of the conversations, the telemarketers merely asked the complainants whether they understood that the membership registration for the Reward Programme was totally free of charge. They did not seek to confirm whether the complainants were clear about the use of their personal data. The Commissioner considers that what the telemarketers did was of no assistance to the complainants in understanding that HKPA’s true purpose of collecting the data was transfer to Aegon Direct for the latter’s direct marketing activities.

35. HKPA and Aegon Direct both admitted that the telemarketers had not explicitly told the complainants that their personal data would be transferred to Aegon Direct for registration for the Reward Programme. Furthermore, the Commissioner also noted that though the telemarketers had mentioned that the free medical check-up was offered by Aegon Direct, they had not explained what kind of company Aegon Direct was and its relation with HKPA. Hence, the complainants could not reasonably ascertain that their personal data would be used by an insurance broker for direct marketing. HKPA had thus contravened DPP1(3)(b)(i).

The Use of Personal Data for Direct Marketing by HKPA and Aegon Direct fell outside the Reasonable Expectation of the Complainants in Providing Their Personal Data

36. In this case, HKPA and Aegon Direct cooperated in the Marketing Programme to offer gifts to target customers with the true purpose of collecting their personal data for direct marketing. As mentioned above, when HKPA collected the complainants' personal data for the provision of the free medical check-up, it had not explicitly informed them that their data would be transferred to Aegon Direct for registration for the Reward Programme. Such purpose of use of the complainants' personal data by HKPA is obviously not the same as the purpose of use as stated when the data was collected, namely, the provision of the free medical check-up ("**the Collection Purpose**").

37. In deciding whether HKPA's transfer of the complainants' personal data to Aegon Direct under the Marketing Programme was a contravention of the requirements under DPP3, the Commissioner also needs to consider whether the transfer was directly related to the Collection Purpose. In this regard, the reasonable expectation of the complainants regarding the use of their personal data by HKPA is pertinent.

38. Under the Agreement, HKPA needed to, with the consent of its "clients", transfer their personal data to Aegon Direct for promotion of appropriate insurance products to the clients, and Aegon Direct was responsible for the cost of the gifts and had to pay the "administration fee" to HKPA. The Commissioner noted that under the Marketing Programme, HKPA was required to provide Aegon Direct with personal data of at least 2,000 target customers per month, and guarantee that it would strive to increase to 5,000 target customers per month. In return, HKPA received a considerable sum of money from Aegon Direct. The charge was based on the number of target customers who had provided their personal data. It was not a cost recovery charge based on the number of promotion calls made. Hence the so-called "administration fee" was in effect the monetary reward given to HKPA by Aegon Direct in return for the provision of personal data. In any event, as a business organisation, it is expected that HKPA participated in the Marketing Programme with the expectation of a financial gain.

39. On the other hand, the telemarketers of HKPA had not explained to the complainants Aegon Direct's business or details of the Reward Programme. The Commissioner considered that the true purpose of the offer of the free medical check-up by HKPA to attract people to provide their personal data was to collect personal data for sale in bulk to Aegon Direct for monetary gain. Such sale of personal data by HKPA apparently fell outside the reasonable expectation of the complainants who provided their personal data for registration for the free medical check-up, and thus could not be directly related to the Collection Purpose.

40. In a similar vein, as the telemarketers of HKPA only briefly mentioned that the free medical check-up was offered by Aegon Direct, and they had neither explicitly informed the complainants that their personal data would be transferred to Aegon Direct for registration for the Reward Programme nor explained what kind of company Aegon Direct was, the subsequent use of the complainants' personal data by Aegon Direct for direct marketing fell outside the reasonable expectation of the complainants in providing their personal data to HKPA. This is obviously the case for the 3 complainants who were very dissatisfied with the receipt of the Welcome Letter from Aegon Direct and requested cancellation of their membership.

41. It is worth noting that the complainants regretted providing their personal data to HKPA and did not take up the offer of the free medical check-up. After learning from the Welcome Letter the details of the free medical check-up¹⁰ and that Aegon Direct would use their personal data from time to time for promoting insurance products under the Reward Programme, the complainants gave up the free check-up offer instead of accepting the use of their personal data by Aegon Direct for direct marketing. In other words, had the complainants known their personal data would be transferred to Aegon Direct by HKPA, they would not have provided their personal data to HKPA in the first place.

42. In view of the above, the Commissioner found that neither the transfer of the complainants' personal data to Aegon Direct by HKPA nor the subsequent use of their personal data by Aegon Direct for direct marketing fell within the Collection Purpose or the reasonable expectation of the complainants. Since HKPA and Aegon Direct had not obtained the complainants' prescribed consent to so use the data, they both had contravened DPP3.

¹⁰ A kidney function test of 18 items

Collection of Excessive Personal Data for Direct Marketing by Aegon Direct

43. DPP1(1) provides that only necessary, adequate but not excessive personal data is to be collected by a data user for a lawful purpose directly related to its function or activity.

44. HKPA and Aegon Direct at first stated that the collection of partial identity card numbers of the complainants was to prevent repeated registration for the free medical check-up under the Reward Programme.

45. Regarding collection of partial identity card numbers for authentication purpose, the Commissioner pointed out in paragraph 3.10 of the investigation report for the Octopus case:— “[data user] *should be able to confidently authenticate the identity of a Member by using his name and contact information (i.e. item 6 (contact phone numbers) and item 7 (home address))*”. On this basis again, Aegon Direct’s collection of partial identity card numbers of the complainants for authentication purpose in this case was excessive. During the course of investigation, Aegon Direct eventually ceased the practice of collecting partial identity card numbers of the target customers as they agreed the collection of names, phone numbers and addresses was sufficient for authentication purpose to prevent repeated benefit claims.

46. The Commissioner is of the view that for contact purposes in direct marketing, collecting only the name, phone number and address of a target customer would suffice. Aegon Direct may collect the identity card number from a customer after he has agreed to purchase the insurance product in response to the direct marketing activities. Hence, Aegon Direct’s collection of the complainants’ partial identity card numbers under the Marketing Programme was excessive and in contravention of DPP1(1)(c).

Conclusion

47. In view of the foregoing, the Commissioner concluded that HKPA and Aegon Direct had contravened the following requirements under the Ordinance:

HKPA

- (1) **DPP1(2)** – for having collected the complainants’ personal data by unfair means;
- (2) **DPP1(3)** – for having failed to take all reasonably practicable steps to ensure that the complainants were explicitly informed of the transfer of their personal data to Aegon Direct for use in direct marketing; and
- (3) **DPP3** – for, without the complainants’ prescribed consent, having transferred their personal data to Aegon Direct for the latter’s use in direct marketing which was not the same as or directly related to the Collection Purpose.

Aegon Direct

- (1) **DPP1(1)** – for excessive collection of the complainants’ personal data, that is, having collected their partial identity card numbers for authentication purpose; and
- (2) **DPP3** – for, without the complainants’ prescribed consent, having used their personal data for direct marketing which was not the same as or directly related to the Collection Purpose.

Enforcement Notice

48. Pursuant to section 50(1) of the prevailing Personal Data (Privacy) Ordinance (“**PDPO**”) and in consequence of an investigation, if the Commissioner is of the opinion that the relevant data user is contravening or has contravened a requirement under the PDPO, the Commissioner may serve on the data user a notice in writing, directing the data user to remedy and, if appropriate, prevent any recurrence of the contravention.

49. In view of the Commissioner’s finding of contraventions on the part of HKPA and Aegon Direct and the likely damage and distress caused to the data subjects, and having regard to the likelihood of their future cooperation with each other or with other business partners in promotional activities which may involve

the collection and use of personal data, the Commissioner has served an enforcement notice on each party pursuant to section 50 of the PDPO.

50. The Commissioner directed HKPA to:

- (i) formulate relevant policies, work guidelines and/or procedures to prevent contravention of the direct marketing related requirements under Part VIA of the PDPO (including providing personal data to another person for the latter's use in direct marketing) in future; and
- (ii) inform the staff responsible for collection and handling of personal data and their supervisors of the policies, work guidelines and/or procedures mentioned in item (i) above, and adopt appropriate measures (e.g. training, frequent reminding and effective monitoring) to ensure their compliance with the requirements of the policies, work guidelines and/or procedures.

51. The Commissioner directed Aegon Direct to:

- (i) destroy all the personal data provided by HKPA under the Marketing Programme on or before 30 September 2013, (a) except the personal data of the data subjects who, as a result of HKPA's referral, had purchased insurance products through Aegon Direct, and (b) unless such data will be used before that date for direct marketing, in which case the provisions in Part VIA of the PDPO must be complied with;
- (ii) formulate relevant policies, work guidelines and/or procedures to prevent contravention of the direct marketing related requirements under Part VIA of the PDPO (including providing personal data to another person for the latter's use in direct marketing) in future; and
- (iii) inform the staff responsible for collection and handling of personal data and their supervisors of the policies, work guidelines and/or procedures mentioned in item (ii) above, and adopt appropriate measures (e.g. training, frequent

reminding and effective monitoring) to ensure their compliance with the requirements of the policies, work guidelines and/or procedures.

52. Although the Commissioner is of the opinion that Aegon Direct had contravened DPP1(1) for the collection of the target customers' partial identity card numbers, given that Aegon Direct has ceased such practice since May 2012 and destroyed the partial identity card numbers of customers who had not purchased any insurance products through Aegon Direct, the Commissioner considers that Aegon Direct has taken adequate steps to remedy the contravention. Accordingly, no enforcement notice has been served in this regard.

Other Comments

53. To enhance corporate reputation, business organisations often make publicity efforts through offer of gifts and service rewards to potential customers. Sometimes they also collect personal data for direct marketing, thus keeping the customers posted about the latest product information and offers. There is no dispute that direct marketing activities generate economic and social values through creation of business and job opportunities. However, commercial organisations should conduct direct marketing activities by legitimate means and in a responsible manner. They should not intrude into personal data privacy.

54. In 2010, Hong Kong witnessed the landmark privacy intrusion case of Octopus which involved contravention of the DPPs by the Octopus group of companies in the collection and use of the personal data of customers registered in the Octopus Rewards Programme. The Commissioner hopes the case had served as a wake-up call to corporate data users undertaking direct marketing activities. With regret, however, the Commissioner has found from recent investigation cases that there is still a long way to go for many of them in meeting customer expectations and compliance with the requirements of the Ordinance.

55. For example, when this Office published in October 2012 the report on its investigation into the "MoneyBack Programme" operated by A.S. Watson Group (HK) Limited ("ASW") through PARKnSHOP and Watsons, the Commissioner pointed out that ASW failed to learn from the Octopus case on two counts. First, it repeated the mistake of Octopus for collecting the customers' partial Hong

Kong Identity Card number for authentication purposes, when other contact information of the customer collected already sufficed. Secondly, it did not define clearly (i) the purpose of collection of the customers' personal data and (ii) to whom the data would be transferred. Its use of vague terms such as "subsidiaries", "partners", "affiliates", "third parties" and "any other persons under a duty of confidentiality to us", short of mentioning the nature of business of these entities, did not enable the customers to assess with a reasonable degree of certainty who, apart from ASW, could have use of their data.

56. In the present case, HKPA and Aegon Direct again repeated the mistake of excessive collection of personal data, namely, collecting the partial Hong Kong Identity card number of target customers for authentication purposes when other customer contact data already collected sufficed. Worse still, as in the Octopus case, a misleading or arguably deceitful communication approach was adopted. Obviously, this was calculated to enable HKPA to transfer the target customer's personal data to Aegon Direct for gain for the latter's direct marketing activities, at the expense of the customer's right to take an informed decision. Such irresponsible and recalcitrant behavior must be condemned.

57. Against this background, the introduction of a tighter regulatory regime under the Personal Data (Privacy) (Amendment) Ordinance 2012 for the collection and use of personal data in direct marketing with effect from 1 April 2013 is very opportune. The consequences of contravening the new requirements are dire. For example, the maximum penalty for the unauthorised transfer of the personal data of a data subject by a data user to a third party for the latter's use in direct marketing is a fine of \$500,000 and imprisonment for 3 years (or a fine of \$1,000,000 and imprisonment for 5 years if the transfer is for gain). This certainly provides an effective deterrent to future contraventions.

58. The Commissioner hopes that there will be no need to invoke this enhanced sanctioning power. He sincerely wishes all corporate data users to measure up to customers' expectations, and embrace privacy and data protection as a business imperative. At the minimum, they should seriously review their privacy policies and data protection practices to ensure compliance with the Ordinance as recently amended. Strategically, they are encouraged to build a privacy-respectful culture within their organisations so as to win customers' trust and enhance their competitive edge.