

**Application of the Personal Data (Privacy) Ordinance**

**Code of Practice on Human Resource Management**

**FREQUENTLY-ASKED QUESTIONS ABOUT RECRUITMENT  
ADVERTISEMENTS**

**Background**

The Privacy Commissioner for Personal Data issued a Code of Practice on Human Resource Management (“the Code”) pursuant to the requirements of the Personal Data (Privacy) Ordinance (“the Ordinance”) on 22 September 2000 concerning employment-related personal data privacy. The Code came into effect on 1 April 2001.

In relation to recruitment advertisements, the Code requires that parties that place recruitment advertisements must identify themselves and state the purpose for which the data are to be used **IF** they directly solicit personal data from job applicants in a recruitment advertisement. This fact sheet examines the particular requirements of the Code in respect of recruitment advertisements.

**Common questions**

**Q1 What is a “blind” recruitment advertisement in the context of the Code?**

A: Generally speaking, a "blind" recruitment advertisement is one that does not identify either the employer or the employment agency acting on its behalf.

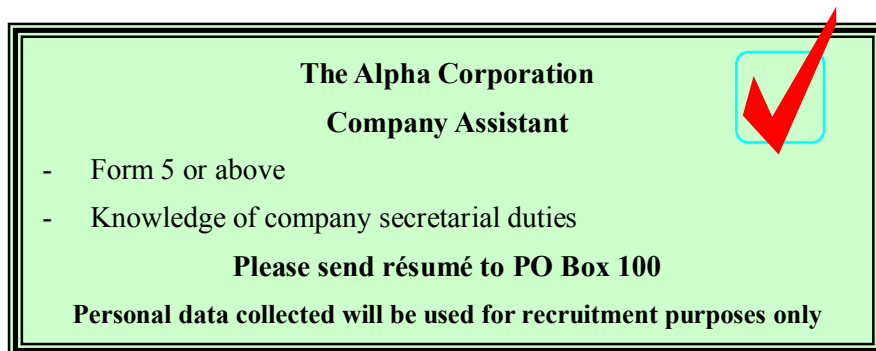
**Q2 Does the Code apply to all recruitment advertisements?**

A: No. The Code only applies to recruitment advertisements that directly solicit personal data from job applicants. Under the Code, an employer or the employment agency acting on its behalf is not permitted to place a “blind” recruitment advertisement that directly invites job applicants to submit their résumés or CVs. Where there are no direct solicitation of personal data in a recruitment advertisement, such an advertisement would not be subject to the requirements of the Code. For

example, if the advertisement merely invites job seekers to write in to obtain an application form or contact a representative person, there is no direct solicitation of personal data.

**Q3 Under what circumstances can job applicants be asked in a recruitment advertisement to submit personal data?**

A: An employer or recruitment agency who clearly indicates its identity may ask job applicants to submit personal data in a recruitment advertisement, provided that the data are adequate but not excessive in relation to the purpose of recruitment and are to be used lawfully (section 2 of the Code).



**Q4 Why is an employer required to identify itself in recruitment advertisements that solicit personal data from job applicants?**

A: An employer who collects personal data from job applicants without identifying itself, or an appointed recruitment agency, might have engaged in an act of unfair collection of personal data contrary to the requirement of Data Protection Principle 1(2) of the Ordinance ("DPP1(2)") (details of the Data Protection Principles are set out at the end of this Fact Sheet). DPP1(2) provides that personal data should be collected by means which are fair in the circumstances of the case. It would generally not be fair for persons collecting personal data not to identify themselves when collecting personal information.

Secondly, personal data collected from job applicants are subject to access and correction by the person concerned. Unless exempted from doing so under the Ordinance, an employer is required to provide a copy of the data no later than 40 days after receiving a data access request. Job applicants would not be able to exercise

their data access rights if they are denied the identity of the organization who collects their personal data (section 2.11 of the Code).

**Q5 What can an employer do if it wants to conceal its identity in a recruitment advertisement without contravening the Code?**

A: If an employer finds it necessary to conceal its identity in a recruitment advertisement, it should not require job applicants to submit their personal data in response to the advertisement. In this circumstance, an employer may provide job applicants, upon request, with an application form that bears the employer's identity. Alternatively, the employer may use a recruitment agency identified in the advertisement to receive the personal data solicited from applicants (2.3.3 of the Code).

**Company Assistant**

- Form 5 or above
- Knowledge of company secretarial duties

**Interested parties please contact Miss Chan on 2808-xxxx**



**Company Assistant**

- Form 5 or above
- Knowledge of company secretarial duties


**Interested parties please apply to our website at [www.abc.org.hk](http://www.abc.org.hk)**



**Company Assistant**

- Form 5 or above
- Knowledge of company secretarial duties

**Interested parties please write to PO Box 100 to obtain an application form**




**Our client seeks a Company Assistant**

- Form 5 or above
- Knowledge of company secretarial duties

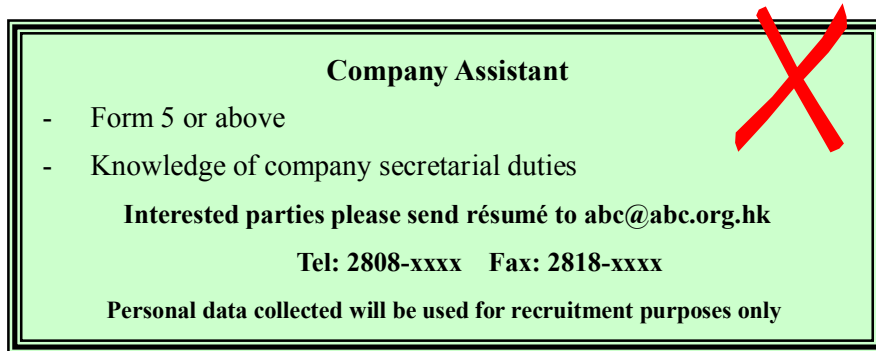
**Please send résumé to ABC Recruitment Agency at 5/F, 123 Kings Road, H.K.**

**Personal data collected will be used for recruitment purposes only**



**Q6 Can an employer directly solicit personal data from job applicants if it merely uses its company email address, telephone number or fax number as a means of identifying itself in a recruitment advertisement?**

A: No. A company email address, telephone number or fax number by itself is generally not considered to be sufficient identification of the employer.



**Company Assistant**

- Form 5 or above
- Knowledge of company secretarial duties

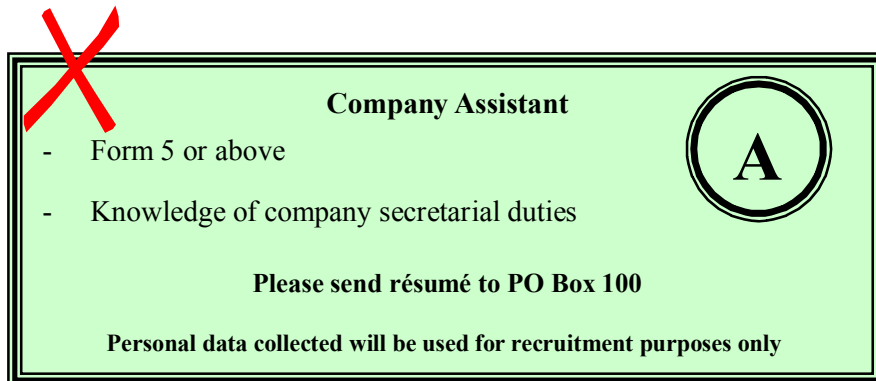
**Interested parties please send résumé to abc@abc.org.hk**

**Tel: 2808-xxxx Fax: 2818-xxxx**

**Personal data collected will be used for recruitment purposes only**

**Q7 Can an employer display its company logo as a means of identifying itself in a recruitment advertisement if it directly solicits personal data from job applicants?**

A: No. In this case the requirement of the Code is satisfied only if the full name of the company appears in the logo.

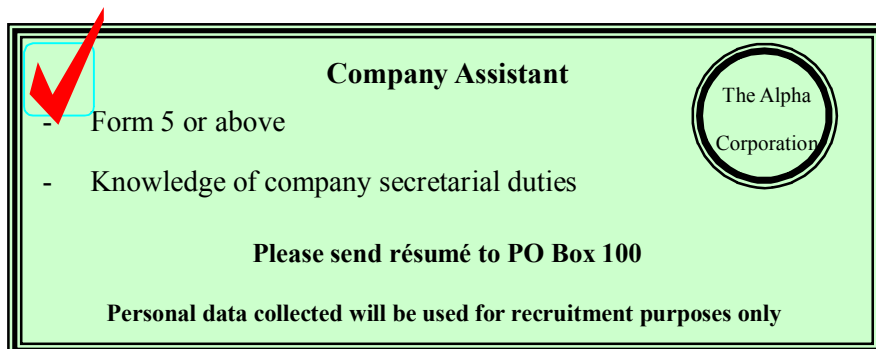


**Company Assistant**

- Form 5 or above
- Knowledge of company secretarial duties

**Please send résumé to PO Box 100**

**Personal data collected will be used for recruitment purposes only**



**Company Assistant**


- Form 5 or above
- Knowledge of company secretarial duties

**Please send résumé to PO Box 100**

**Personal data collected will be used for recruitment purposes only**

**Q8 Do people who want to hire a driver, gardener or domestic helper, in a personal capacity, have to identify themselves in a recruitment advertisement if they directly solicit personal data from job applicants?**

A: Yes. All employers, whether individuals or organizations, are required to comply with the provisions of the Code. In this respect, individuals must also identify themselves if they directly solicit personal data from job applicants in recruitment advertisements. If the employer does not wish to disclose its identity, it may simply provide a telephone number in the advertisement for further enquiries before any personal data are collected.



**Family Driver**

- 10 years driving experience

Interested parties please send personal details to 5/F, 123 Kings Road, H.K.

Personal data collected will be used for recruitment purposes only




**Family Driver**

- 10 years driving experience

Interested parties please call 2808-xxxx

**Q9 Some employers provide their fax number, postal address or e-mail address in a recruitment advertisement without explicitly asking job applicants to submit their personal data. Is this practice acceptable under the Code?**

A: No. The practice of employers providing a fax number, postal address or e-mail address in a recruitment advertisement is perceived as a way of inviting job applicants to submit their personal data and is not permissible under the provisions of the Code.



**Company Assistant**

- Form 5 or above
- Knowledge of company secretarial duties

Tel: 2808-xxxx E-mail: abc@abc.org.hk

Personal data collected will be used for recruitment purposes only

**Q10 If an employer engages an agent to undertake recruitment on its behalf, whose identity has to be revealed in the recruitment advertisement?**

A: In the case where an employer engages an agency to undertake recruitment, it would be sufficient for the agency only to be identified in the advertisement (2.2 and 2.3.3 of the Code).

**Q11 Can a subsidiary company place a recruitment advertisement under the name of the holding company?**

A: No. Unless it is made known in the advertisement that the holding company acts as agent in administering the recruitment process for the subsidiary company, otherwise the subsidiary company must disclose its identity in a recruitment advertisement.

**Q12 Should an employer provide a notification statement regarding the purpose of use of the personal data submitted by job applicants in a recruitment advertisement?**

A: Yes. The Code requires an employer to take all practicable steps to ensure that job applicants are informed of certain matters in accordance with the notification requirement of Data Protection Principle 1(3) of the Ordinance. ("DPP1(3)"). Generally, the notification can be made in the form of a Personal Information Collection Statement ("PICS") on or before personal data are collected. In the case of a recruitment advertisement that directly solicits personal data from job applicants for recruitment purposes, a statement – "Personal data collected will be used for recruitment purposes only" should be included as an integral part of the advertisement.

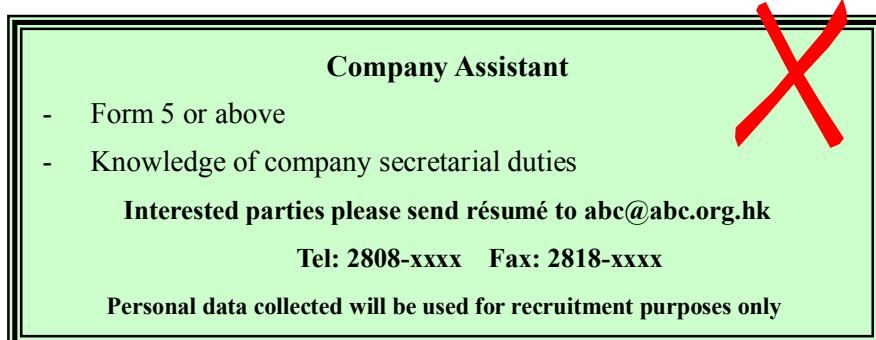
**Q13 What can an employer do if it does not wish to include a PICS in a recruitment advertisement?**

A: An employer may state in the recruitment advertisement the telephone number and contact person from whom a copy of the PICS pertaining to recruitment may be obtained. Alternatively, employers may invite job applicants to respond by

completing a job application form issued by the employer that details the PICS. A statement to the following effect should be included – “Personal data provided by job applicants will be used strictly in accordance with the employer’s personal data policies, a copy of which will be provided **immediately** upon request.” In this case, contact details of the employer should be stated in the advertisement.

**Q14: Would an employer be exempted from disclosing its identity by providing a PICS if it wants to directly solicit personal data from job applicants in a recruitment advertisement?**

No. An employer needs to provide a PICS only when job applicants are required to provide personal data. If an employer merely asks job applicants to contact the company by telephone or request an application form by mail, a PICS would not be required at this stage. However, if an employer wants to solicit personal data directly from job applicants in a recruitment advertisement, it must identify itself in the first place.



**Q15 Can an employer invite job applicants in a recruitment advertisement to submit a job application online at the employer’s website?**

A: An employer may do so but must ensure compliance with the requirements of the Code as an application invited online amounts to the collection of personal data from applicants. When an employer requires job applicants to submit personal data in an online format on the company web page, the identity of the employer should be disclosed, and the PICS notification requirement complied with. In this case, the PICS can be displayed as a linked page to the online form or as a “pop-up” screen when a “confirm” button is pressed prior to the transmission of the online form (section 2.2.6 of the Code).

**PERSONAL DATA (PRIVACY) ORDINANCE**  
**(Chapter 486)**

**SCHEDULE 1**  
**DATA PROTECTION PRINCIPLES**

Principle 1 - Purpose and Manner of Collection of Personal Data

- (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.
- (2) Personal data shall be collected by means which are
  - (a) lawful; and
  - (b) fair in the circumstances of the case.
- (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
  - (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
    - (ii) on or before first use of the data for the purpose for which they were collected, of -
      - (A) his rights to request access to and to request the correction of the data, and
      - (B) the name and address of the individual to whom any such request may be made,

unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data were collected and that purpose is specified in Part VIII of this Ordinance as a purpose in relation to which personal data are exempt from the provisions of data protection principle 6.

#### Principle 2 - Accuracy and Duration of Retention of Personal Data

- (1) All practicable steps shall be taken to ensure that -
  - (a) personal data are accurate having regard to the purpose (including any directly related purpose) for which the personal data are or are to be used
  - (b) where there are reasonable grounds for believing that personal data are inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used -
    - (i) the data are not used for that purpose unless and until those grounds cease to be applicable to the data, whether by the rectification of the data or otherwise, or
    - (ii) the data are erased
  - (c) where it is practicable in all the circumstances of the case to know that -
    - (i) personal data disclosed on or after the appointed day to a third party are materially inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used by the third party, and
    - (ii) that data were inaccurate at the time of such disclosure, that the third party-
      - (A) is informed that the data are inaccurate and
      - (B) is provided with such particulars as will enable the third party to rectify the data having regard to that purpose.
- (2) Personal data shall not be kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data are or are to be used.

#### Principle 3 - Use of Personal Data

- 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).

#### Principle 4 - Security of Personal Data

All practicable steps shall be taken to ensure that personal data (including data in a form in which access to or processing of the data is not practicable) held by a data user are protected against unauthorized or accidental access, processing, erasure or other use having particular regard to -

- (a) the kind of data and the harm that could result if any of those things should occur;
- (b) the physical location where the data are stored;
- (c) any security measures incorporated (whether by automated means or otherwise) into any equipment in which the data are stored;
- (d) any measures taken for ensuring the integrity, prudence and competence of persons having access to the data, and
- (e) any measures taken for ensuring the secure transmission of the data.

#### 5. Principle 5 – Information to be Generally Available

All practicable steps shall be taken to ensure that a person can –

- (a) ascertain a data user's policies and practices in relation to personal data;
- (b) be informed of the kind of personal data held by a data user;
- (c) be informed of the main purposes for which personal data held by a data user are or are to be used.

#### 6. Principle 6 - Access to Personal Data

A data subject shall be entitled to -

- (a) ascertain whether a data user holds personal data of which he is the data subject;
- (b) request access to personal data -
  - (i) within a reasonable time;
  - (ii) at a fee, if any, that is not excessive;
  - (iii) in a reasonable manner and
  - (iv) in a form that is intelligible;
- (c) be given reasons if a request referred to in paragraph (b) is refused;
- (d) object to a refusal referred to in paragraph (c);
- (e) request the correction of personal data;

(f) be given reasons if a request referred to in paragraph (e) is refused; and  
(g) object to a refusal referred to in paragraph (f).

**Important Note:** The information given in this document is for general reference only. For a definitive statement of the provisions of the Code of Practice on Human Resource Management, reference should be made to the text of the Code approved and issued by the Privacy Commissioner for Personal Data on 22 September 2000.

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June 2001

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