

**Compliance Checks Report:  
Overview of Personal Data Collection  
in Shopping Mall Membership Programmes and  
Online Promotion Activities**

**25 April 2019**

# **Compliance Checks Report: Overview of Personal Data Collection in Shopping Mall Membership Programmes and Online Promotion Activities**

## **EXECUTIVE SUMMARY**

In order to understand the collection of personal data by shopping mall operators in Hong Kong, and in response to the public concerns on personal data collection during online promotion activities, the office of the Privacy Commissioner for Personal Data, Hong Kong (“PCPD”) visited 100 shopping malls and reviewed 300 webpages requesting personal data in exchange for benefits, and conducted compliance checks against 41 shopping malls that had membership programmes during the site-visit period and 19 website operators that appeared to have excessive collection of personal data in 2018 (see paragraphs 2 to 8).

### **Shopping mall membership programmes**

The results of the compliance checks on shopping malls reveal that 31 membership programmes (60% of a total of 52 membership programmes<sup>1</sup> found in the site visits) adopted a "the more the merrier" approach when collecting personal data including contact information, sensitive personal data and information relating to personal and family status, contrary to the no-excessive data collection principle under the Personal Data (Privacy) Ordinance, Chapter 486 of the Laws of Hong Kong (“**Ordinance**”) and the practice of collecting minimum information for the purpose of data collection.

The shopping malls implemented membership programmes so as to increase people flow and stimulate spending, and such programmes involved collection of a wide variety of personal data, varying from basic contact information (such as name, telephone number, address and email address), more sensitive personal data (such as date of birth, age, Hong Kong Identity (“**HKID**”) Card number) to personal data relating to personal and family status (such as education level, occupation, company name, position held, monthly income, marital status, number of children, interest, whether a car owner or not, and license plate number, etc). Three membership programmes (6% of 52 membership programmes) required collection of 18 personal data items, and 20 membership programmes (38% of 52 membership programmes) required compulsory provision of unnecessary personal data. In addition, from the design of eight membership programmes (15% of 52 membership programmes), customers were forced to agree that the relevant organisations could use their personal data for direct marketing purposes, leaving individual customers with no choice at all. This "bundled consent" design and practice obtained no meaningful and real consent

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<sup>1</sup> These 52 membership programmes were hosted by the 41 shopping malls.

and was effectively unfair collection of personal data, and should therefore be discontinued. The malls concerned have rectified the situation accordingly (see paragraphs 31 to 32).

The Privacy Commissioner for Personal Data, Hong Kong (“**Privacy Commissioner**”) reviewed the personal data items collected by membership programmes. Generally speaking, the Privacy Commissioner accepts the collection of contact information for the purposes of identification and communication. However, the collection of HKID Card number by membership programmes is generally considered excessive because HKID Card number is sensitive in nature and improper processing of this data may cause unnecessary risks including identity theft, impersonation for criminal activities, financial or property loss, etc. Collection of personal data relating to personal and family status, on the other hand, is generally acceptable for the purposes of market analysis and provision of suitable offers but members should be given a choice of not providing such information. The Privacy Commissioner is pleased to note that 45 membership programmes (87% of 52 membership programmes) did not collect HKID Card number, and 32 membership programmes (62% of 52 membership programmes) either provided members with an option not to provide certain personal information (such as age, working district, occupation, etc.) and family status or did not request such information at all (see paragraph 34).

### **Online promotion activities**

Online promotion activities are marketing tools assisting businesses in building corporate branding, and in establishing customer contact and relationship by offering free or privilege on products and services. In the review, it is noted that beauty industry (44% of 300 webpages) heavily used online promotion to build business contact with potential customers by offering free sessions of beauty treatment and providing free samples of beauty product. Education institutions (18% of 300 webpages) usually offered free trial lessons to attract enrolments while health products and services industry (8% of 300 webpages) would provide free sample products to build customer contact. Given the purpose is simply to attract customers for promotional offers, only 20 online promotion activities (6% of 300 webpages) involved excessive collection of personal data, such as HKID Card number, date of birth, age and monthly income (see paragraphs 6 and 31).

With the development and increasing application of big data, and information and communication technology (“**ICT**”), the resulting network security risks have elevated to an unprecedented high level and will only become more serious over time. The more personal data collected, the greater the risk associated (for example identity

theft and financial loss caused by hacking). The Privacy Commissioner does advocate and facilitate the legitimate use of big data without compromising individuals' privacy right, and would highly recommend the practice of minimum collection of personal data. Organisations, including small and medium enterprises, should develop their own Privacy Management Programme, and embrace personal data protection as part of their corporate governance responsibilities and apply the programme as a business imperative throughout the organisation, starting from the boardroom. The Privacy Commissioner further recommends that organisations should incorporate data governance, stewardship and ethics - being respectful, beneficial and fair, as part of the corporate governance and a long term solution for personal data protection (see paragraphs 40 to 42).

## **BACKGROUND**

1. In order to understand the collection of personal data by shopping mall operators in Hong Kong, and in response to the public concerns on personal data collection during online promotion activities, PCPD visited 100 shopping malls and reviewed 300 webpages requesting personal data in exchange for benefits, and conducted compliance checks against 41 shopping malls that had membership programmes during the site-visit period and 19 website operators that appeared to have excessive collection of personal data in 2018.

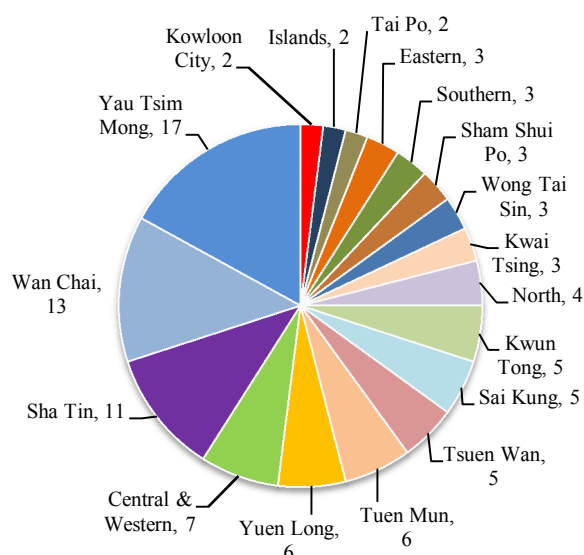
### **Shopping mall membership programmes**

2. In February and March 2018, PCPD visited 100 shopping malls, including shopping malls listed on the Hong Kong Tourism Board's website<sup>2</sup> and at least two shopping malls in each of the 18 districts of Hong Kong. The distribution of shopping malls visited by PCPD and those that had membership programmes at the time of the visit are shown in the charts below:

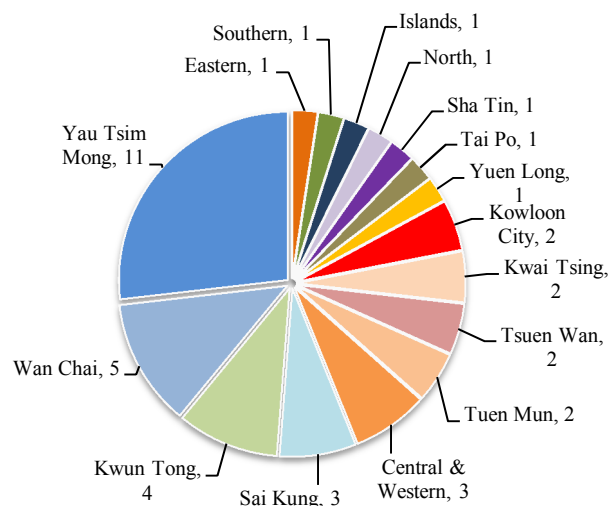
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<sup>2</sup> The purpose of shopping malls being listed in Hong Kong Tourism Board's website " <http://www.discoverhongkong.com/eng/shop/where-to-shop/malls-and-department-stores/index.jsp>" is to introduce major malls to tourists.

**Number of shopping malls visited by district  
(total 100 shopping malls)**



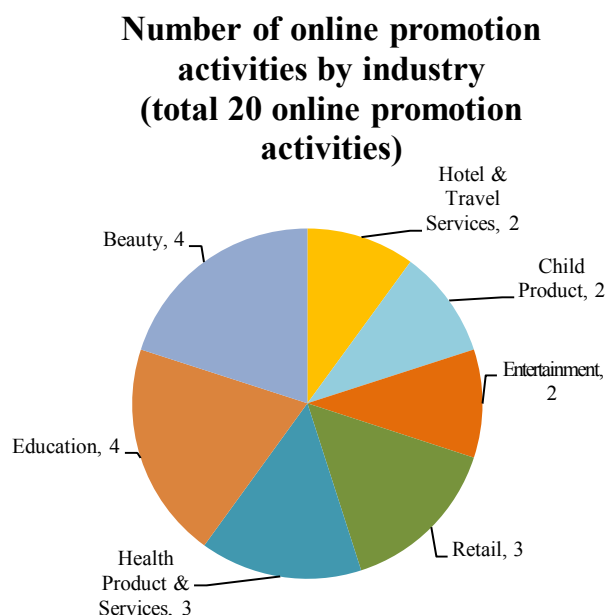
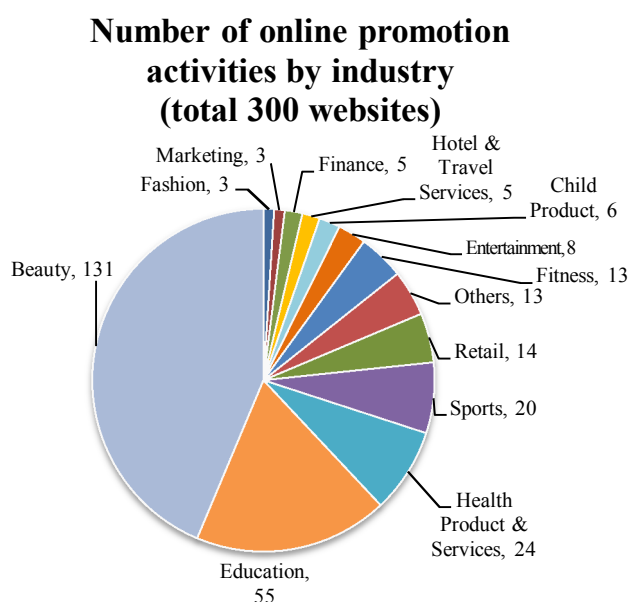
**Number of shopping malls having membership programme(s) by district  
(total 41 shopping malls)**



3. PCPD obtained preliminary information on the membership programmes of shopping malls through the following methods:
  - Browsed the shopping malls' websites;
  - Read promotional leaflets and posters;
  - Made enquiries to the concierges;
  - Observed the application procedures of membership programmes; and
  - Applied for membership programmes where spending of public money was not required.
  
4. PCPD subsequently initiated compliance checks against 41 shopping malls that had membership programmes during the site-visit period. They were requested to provide further information as follows:
  - Terms and conditions for the membership programmes;
  - Details of personal data handling practices, such as the kinds and purposes of personal data collected, practices of data disclosure and transfer; and
  - Documents related to personal data handling, such as membership application forms, Personal Information Collection Statements ("PICS") and staff guidelines, etc.

## Online promotion activities

5. From February to April 2018, in order to understand whether the collection of customers' personal data was common in online product and service promotion activities in Hong Kong, PCPD browsed the Internet and searched for relevant activities by using corresponding keywords<sup>3</sup>. A total of 300 websites offering online promotion activities which requested for collection of personal data were reviewed. These websites involved various businesses including beauty, education, health products and services, sports, retail, fitness, entertainment, child product, hotel and travel services, finance, marketing and fashion. PCPD initiated compliance checks in relation to 19 website operators (concerning 20 online promotion activities) which appeared to have excessively collected personal data and hence might have contravened the Data Protection Principles ("DPPs") requirements of the Ordinance. The industry distribution of the 300 websites and the 20 online promotion activities are shown in the charts below:



6. The top three industries that offered online promotion activities were:
- beauty industry (43% of 300 webpages), which offered free sessions of beauty treatment and free samples of beauty product;
  - education institutions (18% of 300 webpages), which offered free trial lessons; and
  - health products and services industry (8% of 300 webpages), which offered free sample products.

<sup>3</sup> E.g. "free", "offer". "promotions", "gift redemption" etc.

7. In the compliance checks in relation to the 20 online promotion activities, PCPD requested the website operators to provide details of the online promotion activities, including the purposes of collecting and using customers' personal data, the contents of the PICS and Privacy Policy, and the ways by which the relevant policy and statement were provided.
8. After reviewing all the information available, PCPD made, where appropriate, recommendations and requested the operators to make improvements.

## **INFORMATION OBTAINED**

### **Types of personal data collected**

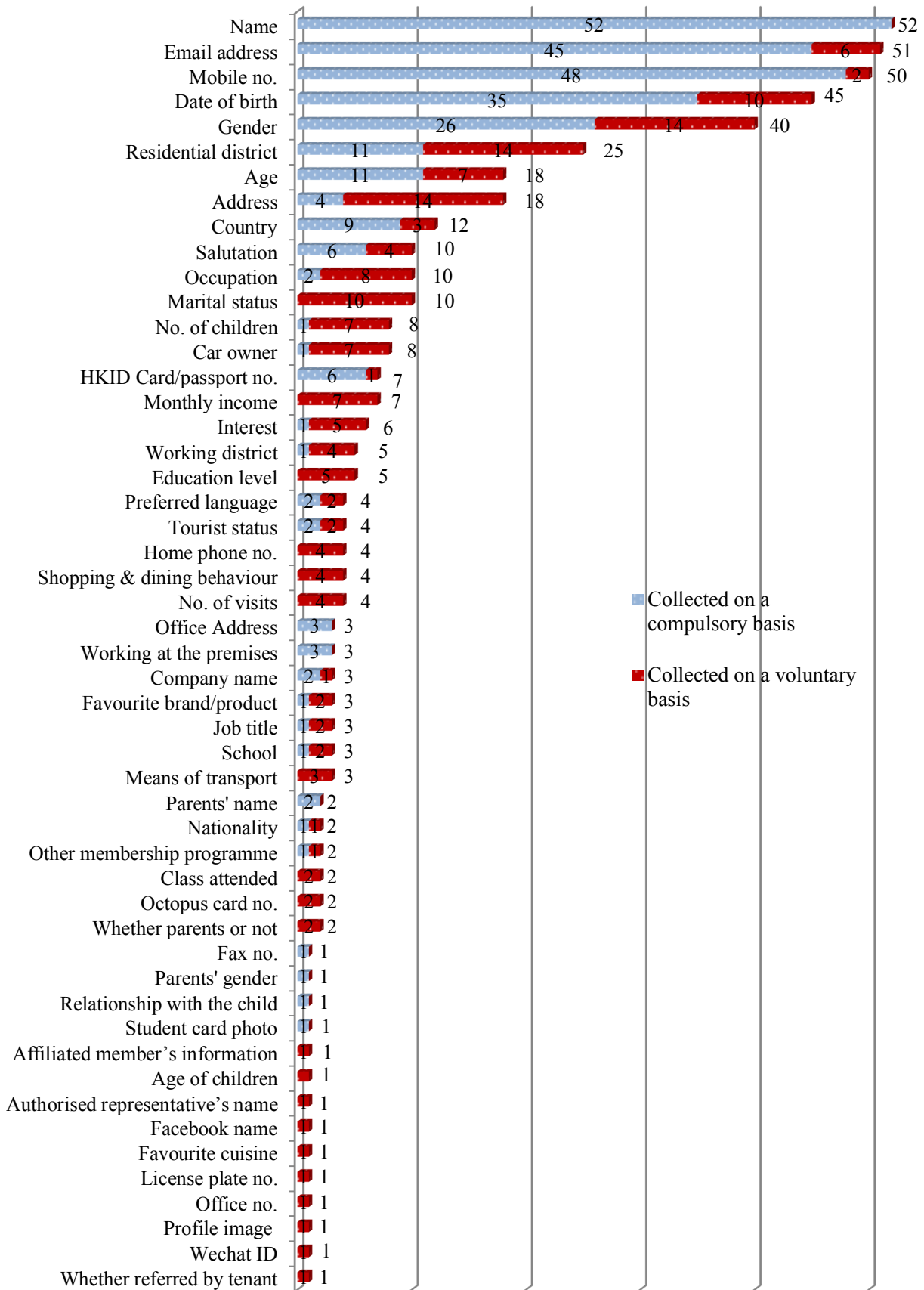
#### **(A) Shopping mall membership programmes**

9. Of the 100 shopping malls visited, 41 held a total of 52 membership programmes<sup>4</sup>. The membership programmes aimed to enhance customer loyalty, understand customer preferences and consumption patterns and provide services and consumer intelligence that could meet customers' requirements, so as to attract them to continue to visit and spend in the shopping malls.
10. A total of 51 personal data items were collected by these membership programmes, including basic contact information (such as name, telephone number and email address), more sensitive personal data (such as HKID Card number, date of birth), and personal data relating to personal and family status (such as occupation, marital status, number of children, monthly income, education level, etc). The chart below shows the types of personal data collected in descending order of the number of membership programmes involved:

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<sup>4</sup> One membership programme was held in each of the 33 shopping malls, while two to four membership programmes were held in each of the other eight shopping malls.

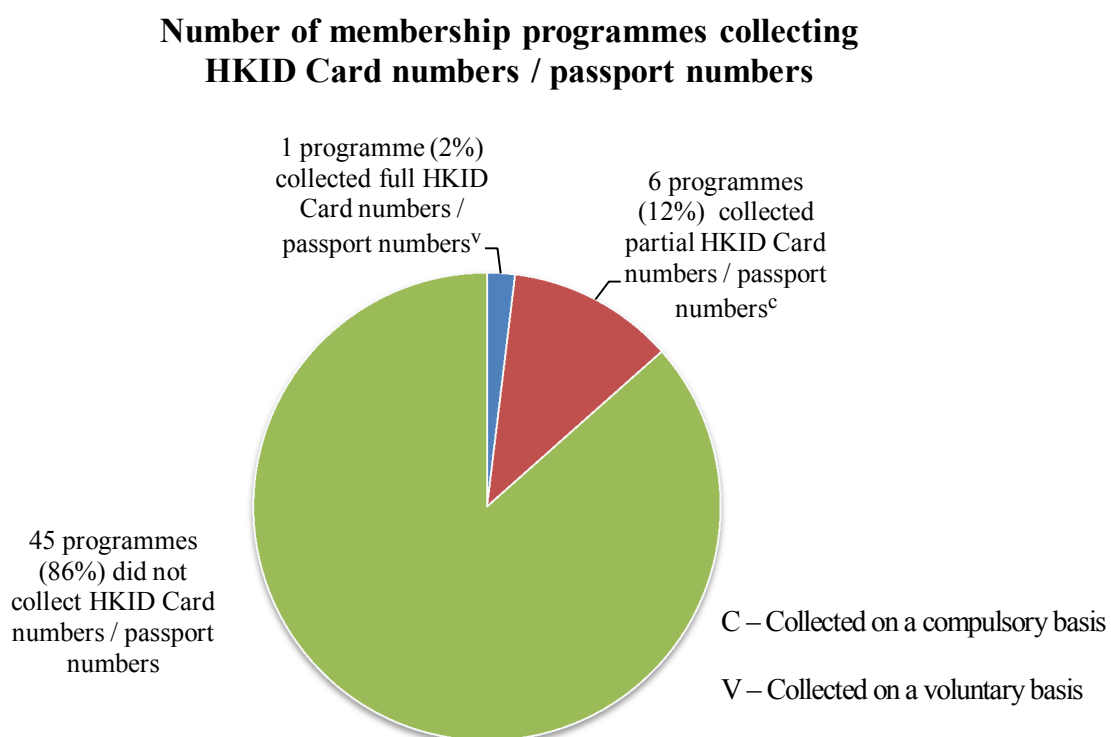
## Types of personal data collected via membership programmes



11. The number of personal data items collected by a membership programme ranged from three to 18. On average, a membership programme collected 11 personal data items.
12. Generally speaking, the Privacy Commissioner accepts the collection of members' contact information for the purposes of identification and communication. However, the collection of HKID Card number for the sole purpose of identification and the collection of full birthday information for the sole purpose of providing benefits during birthday months, no matter on a compulsory or voluntary basis, were generally considered excessive. As for the collection of personal data relating to members' personal and family status for the purposes of market analyses and provision of suitable offers, members should be given a choice of not providing such information.

(a) *HKID Card number*

13. Seven membership programmes (13% of 52 membership programmes) collected HKID Card numbers or passport numbers as illustrated in the chart below.



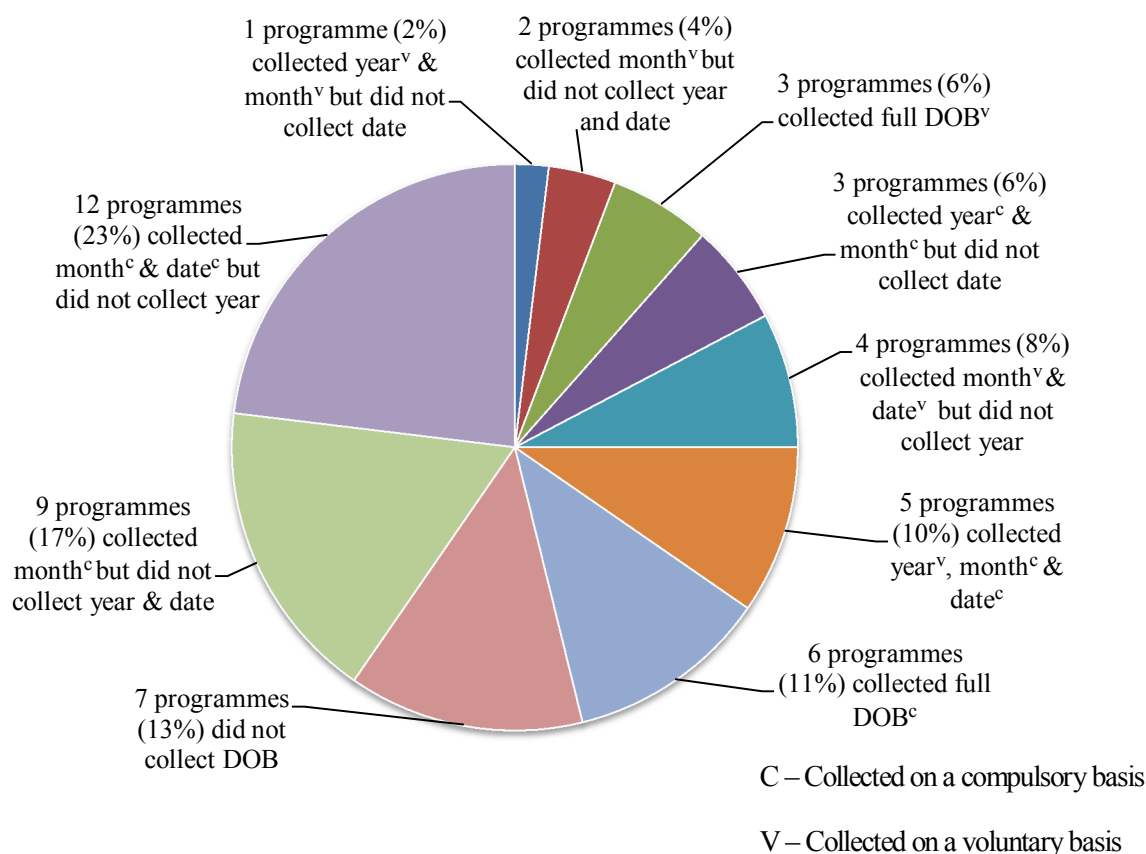
14. Out of the seven membership programmes which required collection of HKID Card numbers / passport numbers:

- (a) Three membership programmes (6% of 52 membership programmes) of malls located in Central & Western, Kowloon City and Tsuen Wan Districts collected HKID Card numbers or passport numbers for the sole purpose of member identification; and
- (b) Four membership programmes (8% of 52 membership programmes) located in Wan Chai and Yau Tsim Mong Districts collected partial HKID Card numbers or passport numbers on a compulsory basis for preventing significant loss (of up to 6-digits Hong Kong dollar) for wrongful redemption of case points of a member by others or wrongful provision of such points to others.

(b) *Birthday information*

15. 45 membership programmes (87% of 52 membership programmes) collected full or partial birthday information from members as shown in the chart below:

**Number of membership programmes collecting date of birth –  
Date/Month/Year (DOB)**



16. The PCPD requested the mall operators of the 45 membership programmes to provide the purposes of collecting birthday information, as summarised below:

- (a) 35 membership programmes (67% of 52 membership programmes) collected months and/or dates of birth for the provision of birthday offers. Among them, seven membership programmes (13% of 52 membership programmes) located in Wan Chai, Yau Tsim Mong, North, Sai Kung, Tsuen Wan, Tuen Mun and Yuen Long Districts offered birthday offers to members during their birthday months only. However, in addition to collecting members' months of birth, these programmes also collected members' years and dates of birth, which were not used for any purposes;
- (b) Five membership programmes (10% of 52 membership programmes) explained that months and dates of birth were collected for verification during account recovery process. Among them, four membership programmes (8% of 52 membership programmes) located in Eastern, Kwun Tong, Kwai Tsing and Sai Kung Districts only required the months of birth for verification in account recovery. However, in addition to collecting months of birth, these programmes also collected the dates of birth;
- (c) Two membership programmes (4% of 52 membership programmes) located in Kowloon City and Yau Tsim Mong Districts that targeted children members collected full dates of birth of the children for the reason that the membership of the children would automatically expire when the children reached the age of 13; and
- (d) Three membership programmes (6% of 52 membership programmes) located in Wan Chai, Islands and Tsuen Wan Districts failed to provide justifications for their collection of years, months and/or dates of birth.

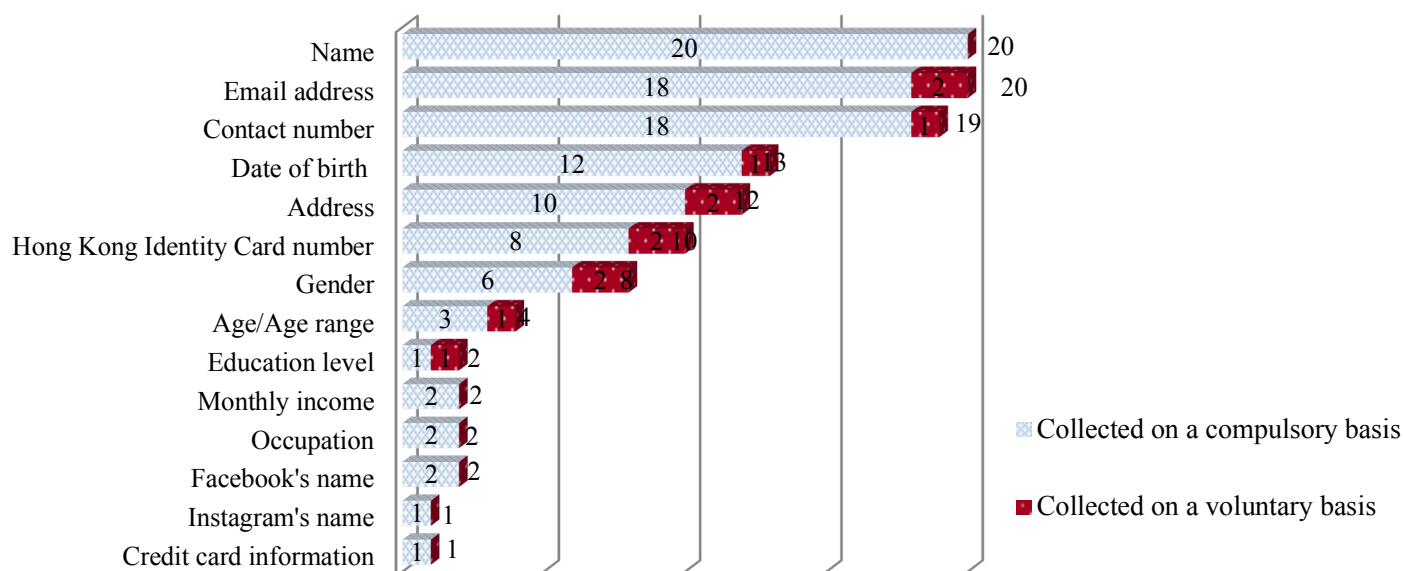
(c) *Other information*

17. 44 membership programmes (85% of 52 membership programmes) collected from members other information including residential district, working district, occupation, age, and numbers of children, etc. for market analysis, customer classification and direct marketing purposes.

(B) Online promotion activities

18. A total of 14 personal data items were collected in the 20 selected online promotional activities, with the number of personal data items being required for each activity varying from four to 11. On average, an online promotional activity collected 6 personal data items.

**Types of personal data collected by online promotion activities**



(a) *HKID Card number*

19. 10 online promotion activities (50% of 20 online promotion activities) required customers to provide their HKID Card numbers (either in full or partial). The relevant website operators claimed that the collection was for identification when customers showed up to redeem the promotion items and services.

(b) *Birthday information*

20. 13 online promotion activities (65% of 20 online promotion activities) collected full or partial birthday information from customers for confirming their eligibility for the benefits, identification or market analyses.

c) *Other information*

21. Two online promotion activities (10% of 20 online promotion activities) compulsorily required customers to provide their education level, monthly

salary and occupation for market analyses when they applied for the promotion benefits.

### **Use of personal data**

22. Eight membership programmes (15% of 52 membership programmes) located in Wan Chai, Kowloon City, Yau Tsim Mong, Islands and Tsuen Wan Districts required applicants to agree to the use of their personal data for direct marketing purposes alongside the PICS and Terms and Conditions.
23. No such practice was found in online promotion activities.

### **Transparency**

24. All membership programmes (100% of 52 membership programmes) and 17 online promotion activities (85% of 20 online promotion activities) provided customers with a PICS and / or Terms and Conditions to inform them whether it was obligatory or voluntary for them to supply the data, (if they were obliged to do so) the consequences for not supplying the data, as well as the purpose for which the data is to be used and the classes of transferees of the data.
25. However, eight membership programmes (15% of 52 membership programmes) located in Eastern, Kwun Tong, Kowloon City, Yau Tsim Mong, Islands, Kwai Tsing and Sai Kung Districts and nine online promotion activities (45% of 20 online promotion activities) did not indicate which kinds of personal data on their application forms were compulsorily required.
26. Besides, seven membership programmes (13% of 52 membership programmes) located in Wan Chai and Yau Tsim Mong Districts and seven online promotion activities (35% of 20 online promotion activities) did not state on their PICS or relevant documents the name (or job title) and address of the officer responsible for data access and correction requests.

### **THE LAW**

27. DPP 1 of Schedule 1 to the Ordinance (Data Collection) is relevant to this exercise, and it provides that:

*“(1) Personal data shall not be collected unless-*

- (a) *the data is 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 is adequate but not excessive in relation to that purpose.*
- (2) *Personal data shall be collected by means which are*
  - (a) *lawful; an*
  - (b) *fair in the circumstances of the case.*
- (3) *Where the person from whom personal data is or is 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 is 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 it was collected, of-*
      - (A) *his rights to request access to and to request the correction of the data; and*
      - (B) *the name or job title, and address, of the individual who is to handle any such request made to the data user, unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data was collected and that purpose is specified in Part 8 of this Ordinance<sup>5</sup> as a purpose in relation to which personal data is exempt from the provisions of data protection principle 6<sup>6</sup>. ”*

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<sup>5</sup> Part 8 of the Ordinance provides for specific exemptions from all or some of the provisions of the Ordinance. Broadly speaking, the exemption provisions may be divided into 21 categories, including performance of judicial functions, domestic purposes, employment – staff planning, relevant process, personal references, security, etc.

<sup>6</sup> Data protection principle 6 of Schedule 1 to the Ordinance (Data Access and Correction) provides a data subject the right to access to his personal data and make corrections if it is inaccurate.

## **Code of Practice on the Identity Card Number and Other Personal Identifiers (“Code”)**

28. The Privacy Commissioner issued the Code to provide guidance on the appropriate handling of personal identifiers in general, HKID Card number and its copy in particular:

Paragraph 2.1 of the Code states that:

*“Unless authorized by law, no data user may compulsorily require an individual to furnish his HKID Card number.”*

Paragraph 2.3 of the Code states that:

*“A data user should not collect the HKID Card number of an individual except in the following situations:*

*...*

*2.3.3 to enable the present or future correct identification of, or correct attribution of personal data to, the holder of the HKID Card, where such correct identification or attribution is or will be necessary :*

*2.3.3.1 for the advancement of the interest of the holder;*

*...*

*2.3.3.3 to safeguard against damage or loss on the part of the data user which is more than trivial in the circumstances;”*

## **CONCLUSIONS**

### **Collection of personal data**

29. DPP1(1) of Schedule 1 to the Ordinance states that personal data shall not be collected unless the data is collected for a lawful purpose directly related to a function or activity of the data user who is to use the data and the collection of the data is necessary for or directly related to that purpose. Furthermore, the data is adequate but not excessive in relation to that purpose.
30. In light of the information collected, the Privacy Commissioner has the following observations to make:

- (1) The membership programmes provided by shopping mall operators were marketing activities that aimed to motivate members' loyalty through various marketing promotions, while simultaneously uncovering member preferences and spending habits to enhance services and encourage spending from members. The Privacy Commissioner considers that the purposes of collection of members' personal data for the provision of the membership programmes were lawful and were directly related to those purposes within the meaning of DPP 1 of Schedule 1 to the Ordinance.
- (2) The online promotion activities provided by the relevant website operators were also marketing activities whereby customers benefited from the marketing offers of products and services. The Privacy Commissioner considers that the purposes of collection of customers' personal data for the provision of such marketing offers were likewise lawful and were directly related to those purposes.
- (3) The Privacy Commissioner considers that, for the purpose of communication with customers (regardless of collecting comments from customers on the promotion products or services provided, or establishing business relationship with them), collection of basic contact information (namely name, contact number and email address) was adequate and not excessive within the meaning of DPP 1 of Schedule 1 to the Ordinance.

## **Contraventions**

31. The Privacy Commissioner finds that 31 membership programmes<sup>7</sup> (60% of 52 membership programmes) and 20 online promotion activities (6% of 300 webpages) adopted a "the more the merrier" approach when collecting personal data. They excessively collected HKID Card or passport number, birthday information or compulsorily collected other information, thereby amounting to contravention of DPP 1 of Schedule 1 to the Ordinance:

### **(A) Excessive collection of personal data - HKID Card or passport number**

- (1) HKID Card number is a piece of sensitive personal data. Improper treatment of HKID Card number would cause unnecessary risks including identity theft, impersonation for criminal activities, financial or property

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<sup>7</sup> The 31 membership programmes were hosted by 25 shopping malls in 13 districts, including five in Yau Tsim Mong District, four in Wanchai District, three in Sai Kung District, two each in Central & Western, Kwun Tong and Tsuen Wan Districts, and one each in Eastern, Islands, Kowloon City, Kwai Tsing, North, Tuen Mun and Yuen Long Districts.

loss, etc. Without proper justification, collection of HKID Card number would generally be regarded as excessive. This view has been established since the *Octopus* case and subsequent investigations against membership programmes in 2012.

- (2) In this compliance checks exercise, three membership programmes (6% of 52 membership programmes) collected HKID Card numbers or passport numbers for the sole purpose of member identification. Similarly, 10 online promotion activities (50% of 20 online promotion activities) collected HKID Card numbers for identification when customers showed up to redeem the promotion products and services.
- (3) Clause 2.3.3.3 of the Code provides that a data user should not collect the identity card number of an individual except to *“enable the present or future correct identification of, or correct attribution of personal data to, the holder of the identity card, where such correct identification or attribution is or will be necessary to safeguard against damage or loss on the part of the data user which is more than trivial in the circumstances”*.
- (4) The Privacy Commissioner considers that a combination of personal data (such as name and other basic contact information) without the use of HKID Card number or passport number would be less privacy-intrusive and serve the identification purpose sufficiently. Furthermore, the Privacy Commissioner considers that the value of the promotion products and services (e.g. free trial services or free sample products) was not justifiable for the collection of customers’ HKID Card number under paragraph 2.3.3.3 of the Code. Hence, such collection of HKID Card number or passport number by the membership programmes and the online promotion activities stated in (2) above was excessive and constituted contravention of DPP 1(1) of Schedule 1 to the Ordinance.

(B) Excessive collection of personal data - birthday information

- (5) Collection of birthday information must be necessary and directly related to the intended collection purpose and the information collected should be adequate but not excessive in relation to that purpose. In this regard, collection of full birthday information (i.e. day, month and year of birth date) should be prudently considered.

- (6) In relation to the membership programmes, the following facts were found:
- (a) Seven membership programmes<sup>8</sup> (13% of 52 membership programmes) collected members' full birthday information for the purpose of offering birthday benefits to members during their birthday months;
  - (b) Four membership programmes (8% of 52 membership programmes) collected "date" and "month" of birth for verification during account recovery process but were later found that the collection of the month of birth for such purpose was sufficient; and
  - (c) Three membership programmes (6% of 52 membership programmes) failed to provide justifications for their collection of full birthday information.
- (7) The Privacy Commissioner considers that for offering birthday benefits in birthday months by shopping malls, collection of "month of birth" would suffice, while for verification of identity during account recovery process, combination of partial birthday information and other contact information would in general serve the purpose. In this regard, the Privacy Commissioner considers that collection of full birthday information (whether on a compulsory or voluntary basis) by the 14 membership programmes (27% of 52 membership programmes) was excessive and constituted contravention of DPP 1(1) of Schedule 1 to the Ordinance.
- (8) 13 online promotion activities (65% of 20 online promotion activities) collected full birthday information from customers for confirming their eligibility of the benefit, identifying the customers or for the use of market analysis. After reviewing the relevant collection purposes, the Privacy Commissioner considers that such collection of full birthday information (whether on a compulsory or voluntary basis) was excessive and constituted contravention of DPP 1(1) of Schedule 1 to the Ordinance. For example, if age (e.g. 18 years or above) is one of the requirements for eligibility for the promotion offer, the collection of month and year of birth would suffice and full date of birth information is unnecessary and privacy-intrusive because the expiry of promotion offer could be pre-determined. Besides, the Privacy Commissioner considers that it is

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<sup>8</sup> One membership programme located in Tsuen Wan District also excessively collected HKID Card numbers/passport numbers.

generally unnecessary to collect full birthday information for the use of market analyses. Instead, collection of “age range” would suffice.

(C) Compulsory collection of other information

- (9) 20 membership programmes<sup>9</sup> (38% of 52 membership programmes) compulsorily required members to provide other information including areas of residence, ages, and number of children during the application process. Further, two online promotion activities (10% of 20 online promotion activities) compulsorily required customers to provide their education level, monthly salary and occupation when they applied for the promotion offers. These additional data items were used for customer analysis and issuing of relevant direct marketing information<sup>10</sup>, which were not necessary for the purpose of offering membership benefits or promotion offers. The Privacy Commissioner considers that members/customers should be given the choice to decide whether or not to provide such additional data items for the said purposes, and thus the collection practice by the membership programmes and online promotion activities constituted contravention of DPP 1(1) of Schedule 1 to the Ordinance.

(D) Unfair collection

- (10) DPP 1(2) of Schedule 1 to the Ordinance requires a data user to collect personal data by means which are lawful and fair in the circumstances of the case. Eight membership programmes (15% of 52 membership programmes) required applicants to agree to the use of their personal data for direct marketing purposes alongside the PICS and Terms and Conditions. The result was that applicants were unable to refuse the use and/or transfer of their personal data for direct marketing purpose, or would have their applications denied altogether. Collection of personal data through the said design of “bundled consent” and practice would amount to unfair collection of personal data, which constituted contravening DPP 1(2) of Schedule 1 to the Ordinance.

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<sup>9</sup> Two membership programmes located in Kowloon City and Tsuen Wan Districts also excessively collected HKID Card numbers/passport numbers, and three membership programmes located in Yau Tsim Mong, Islands and Tsuen Wan Districts also excessively collected dates of birth.

<sup>10</sup> Paragraph 2.2 of “New Guidance on Direct Marketing” issued by PCPD states that a data user may only collect additional personal data from the customer for direct marketing purpose (e.g. customer profiling and segmentation) if the customer elects to supply the data on a voluntary basis.

(E) Failure to inform the data subjects

- (11) DPP 1(3)(b) of Schedule 1 to the Ordinance requires a data user to take all reasonably practicable steps to ensure that a data subject is explicitly informed, on or before collection of the personal data, the purpose (in general or specific terms) for which the data are to be used, and the classes of persons to whom the data may be transferred.
- (12) The Privacy Commissioner appreciates that operators of all (100% of 52 membership programmes) membership programmes and 17 online promotion activities (85% of 20 online promotion activities) were aware of the notification requirements. These operators provided clarity to customers on (a) how their personal data would be handled, (b) whether it was obligatory or voluntary for them to supply the data, (c) (if they were obliged to do so) the consequence for not supplying the data, (d) the purpose for which the data is to be used and (e) the classes of transferees of the data. The Privacy Commissioner also appreciates that 7 membership programmes (13% of 52 membership programmes) and operators of 11 online promotion activities (55% of 20 online promotion activities) indicated that they would not transfer the collected personal data to third parties.
- (13) Nevertheless, the Privacy Commissioner notes that eight membership programmes (15% of 52 membership programmes) and nine online promotion activities (45% of 20 online promotion activities) failed to indicate in their application forms or websites the kinds of personal data compulsorily required or otherwise. Without such indication, customers would be unaware of their control over their personal data and would unduly supply the same which was unnecessary. Hence, failure to explicitly inform the customers accordingly amounted to contravention of DPP 1(3) of Schedule 1 to the Ordinance.
- (14) Besides, seven membership programmes (13% of 52 membership programmes) and seven online promotion activities (35% of 20 online promotion activities) contravened DPP 1(3) of Schedule 1 to the Ordinance by failing to state the name (or job title) and address of the officer who is responsible for data access and correction requests. Members and customers were then not informed of their rights for making data access and correction requests and the relevant channel to make such request.

## **Remedial Actions**

32. The Privacy Commissioner welcomes the following remedial actions taken by the malls and website operators concerned:

### Both shopping mall membership programmes and online promotion activities:

- (1) These programmes and activities have ceased collecting sensitive information such as HKID Card numbers, passport numbers and birthday information that was considered excessive for the purposes of the membership programmes and online promotion activities;
- (2) All such data collected previously has been destroyed;
- (3) The PICS has been revised to comply with the requirements under DPP 1(3) of Schedule 1 to the Ordinance;

### Shopping mall membership programmes:

- (4) The malls concerned have removed those unnecessary items from the membership application forms;
- (5) The application forms have been redesigned to include independent tick boxes, intending to solicit applicants' consent for their personal data to be used and/or transferred by mall operators for direct marketing; and

### Online promotion activities:

- (6) The website operators concerned have undertaken not to collect customers' HKID Card number and/or birthday information in future promotion activities.

## **Good Practices**

33. In the compliance checks exercise, the Privacy Commissioner finds some good practices that were worth mentioning.

(A) Minimum collection of personal data

34. The Privacy Commissioner is pleased to note that shopping mall operators adopted the following practices of minimum collection of personal data:
- (1) 45 membership programmes (87% of 52 membership programmes) did not collect HKID Card or passport numbers from members;
  - (2) 17 membership programmes (33% of 52 membership programmes) either provided members with the option to provide birthday information or did not request birthday information at all; and
  - (3) 32 membership programmes (62% of 52 membership programmes) either provided members the option to provide their personal and family information such as residential district, working district, occupation, age, etc. or did not request such information at all.
35. In addition, 44 membership programmes (85% of 52 membership programmes) provided a separate tick box for members to agree to the use of their personal data for direct marketing purposes, and all membership programmes (100% of 52 membership programmes) provided PICS to members.
36. The “VIP” programme of The Whampoa in Kowloon City District, operated by Hutchison Estate Agents Limited, collected only three personal data items, being the least amount of personal data collected among the 52 membership programmes in this compliance checks exercise. The personal data items collected, the main collection purposes and whether such collection was on a compulsory or voluntary basis as listed in the table below:

Item	Description	Purpose	Compulsory/voluntary
1	Name	Verification	Compulsory
2	Mobile number	Verification	Compulsory
3	Email address	Promotion	Voluntary

37. The membership was valid for two years, and all the personal data collected would be destroyed within one month after the expiry of the membership. The Privacy Commissioner commends that only minimal amount of personal data was collected and there was a schedule for destroying the data collected.

(B) Data deletion right

38. The “*LC Club*” of Langham Place in Yau Tsim Mong District, operated by Eagle Property Management (CP) Limited, stated in its Terms and Conditions that members had the rights and channels to cancel their membership, and that their personal data would be permanently deleted. According to the response submitted by the mall operator, the personal data would be deleted within seven days upon receipt of the membership cancellation request. The Privacy Commissioner commends the transparency in informing the customers of their rights.

(C) Meaningful choices given

39. “*Windsor Club*” of Windsor House in Wan Chai District and “*The ONE Club*” of The ONE in Yau Tsim Mong District were both operated by Chinese Estates Group. Both programmes allowed members either to object to the use of personal data for direct marketing purposes or to have a choice of consenting to the use of personal data for direct marketing purposes by (i) Windsor House/The ONE only or (ii) Chinese Estates Group. The Privacy Commissioner commends that choices were given to members and clearly presented, which would help make members’ consent a meaningful one.

**COMMENTS AND RECOMMENDATIONS**

40. The Privacy Commissioner is pleased to note that most shopping malls and website operators (whether big-, small- or medium-sized enterprises) have demonstrated satisfactorily their awareness and legal obligations to comply with the legal requirements to protect customers’ personal data. It is particularly encouraging to see that customers tend to have more control of whether to provide their personal data in applying for membership and online promotion activities (i.e. provision of personal data was “voluntary” instead of “compulsory”) and are well notified of the purposes of the collection and the use of the personal data collected.
41. The Privacy Commissioner notes in this compliance checks exercise that the number of personal data items collected by luxury malls in Central & Western District was higher than the average. For providing relevant privileges and enhance shopping experiences, those malls collected customers’ nationalities and whether the customers are tourists, etc. The Privacy Commissioner also notes that different membership programmes, even operated by the same

operator, would collect different personal data items depending on the marketing strategies of the programmes and the malls. Medium sized operators were also found to adhere to the principle of minimum collection of personal data.

42. With the development and increasing application of big data and ICT, the resulting network security risks have elevated to an unprecedented high level. There is little doubt that the more personal data collected and stored by an organisation, the greater the risk of personal damage caused by hacking (for example identity theft and financial loss). The Privacy Commissioner does advocate and facilitate the legitimate use of big data without compromising individuals' privacy right, and would highly recommend the practice of minimum collection of personal data. The Privacy Commissioner published the "2018 Study Report on Implementation of Privacy Management Programme by Data Users"<sup>11</sup> on 5 March 2019 and advocates that organisations, including small and medium enterprises, should develop their own Privacy Management Programmes, and embrace personal data protection as part of their corporate governance responsibilities and apply the programme as a business imperative throughout the organisation, starting from the boardroom. The Privacy Commissioner further recommends that organisations should incorporate data governance, stewardship and ethics - namely being respectful, beneficial and fair, as part of corporate governance and a long term solution for personal data protection<sup>12</sup>.

- End -

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<sup>11</sup> [https://www.pcpd.org.hk/english/resources\\_centre/publications/surveys/files/sweep2018\\_e.pdf](https://www.pcpd.org.hk/english/resources_centre/publications/surveys/files/sweep2018_e.pdf)

<sup>12</sup> [https://www.pcpd.org.hk/english/news\\_events/media\\_statements/press\\_20181024.html](https://www.pcpd.org.hk/english/news_events/media_statements/press_20181024.html)