



## Code of Practice on Human Resource Management: Compliance Guide for Employers and Human Resource Management Practitioners

### Introduction

#### What does the Code of Practice cover?

- The Code of Practice on Human Resource Management (the “**Code**”) provides employers and Human Resource Management (“**HRM**”) practitioners with a practical guide to the application of the provisions of the Personal Data (Privacy) Ordinance (the “**Ordinance**”) to employment-related personal data.
- The Code draws on the Data Protection Principles (“**DPPs**”) in Schedule 1 to the Ordinance and applies them to the management of personal data in three important areas: recruitment, current employment and former employees’ matters. It also illustrates good personal data practices that apply to HRM activities.

#### What happens if the Code is not complied with?

- Non-compliance with the Code will give rise to a presumption against the employer, or any third party contracted to act on the employer’s behalf, in any proceedings involving an alleged breach of the Ordinance unless there is evidence that the requirements under the Ordinance were actually complied with in a different way. These proceedings could be before the Administrative Appeals Board, a magistrate or a court.
- Non-compliance with the Code would also weigh against the party concerned in any case under investigation by the Privacy Commissioner for Personal Data, Hong Kong (the “**Commissioner**”).

# Key Features of the Code

## Recruitment

- An employer should not solicit personal data from job applicants, e.g. their personal resumes, in a recruitment advertisement that provides no identification of either the employer or the employment agency acting on its behalf.
- If an employer finds it necessary to conceal its identity in recruitment advertisements, it may ask the applicant to obtain an application form in the advertisement. Alternatively, it may use a recruitment agency, which should be identified in the advertisement, to receive the personal data solicited from job applicants.
- Recruitment advertisements that directly ask job applicants to provide their personal data should include a statement, as an integral part of the advertisement, informing applicants about the purposes for which their personal data is to be used, e.g. “Personal data collected will be used for recruitment purposes only”. Alternatively, a statement to the following effect may 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 information of the employer should be stated in the advertisement.
- Personal data collected from job applicants should be adequate but not excessive, and it should be relevant to the purpose of identifying suitable candidates for the job.
- An employer should not collect a copy of the Hong Kong Identity Card of a job applicant during the recruitment process unless and until the individual has accepted an offer of employment.
- Information may be compiled about a job applicant, e.g. by means of security vetting or integrity checking, to supplement other data collected at the time of the original application. Such supplementary information should be collected for the purpose of assessing the suitability of potential candidates for the job, and the data collected should be relevant to the nature of the job.
- Personal data concerning the health condition of a selected candidate may be collected by means of a pre-employment medical examination if the data directly relates to the inherent requirements of the job, and employment is conditional upon the fulfilment of the medical examination. However, such data should only be collected after the employer has made a conditional offer of employment to the selected candidate.
- Personal data of unsuccessful applicants may be retained for a period of up to two years from the date of rejecting applicants and should then be destroyed. The data may be retained for a longer period if there is a subsisting reason that obligates the employer to do so, or the applicants have given their consent for the data to be retained beyond two years.

## Current Employment

- On appointment, an employer may collect additional personal data from an employee and his family members for the purpose of employment, or to fulfil the lawful requirements that regulate the affairs of the employer.
- On or before collection of personal data from an employee, an employer should provide the employee with a Personal Information Collection Statement (“**PICS**”) pertaining to employment. The PICS should inform the employee about the purposes for which the data is to be used, the classes of persons to whom the data may be transferred, the rights of the employee to make data access and correction requests, and the name or job title, and address, of the person to whom the employee can make any such request.
- Information compiled about an employee in the process of disciplinary proceedings, performance appraisal or promotion planning should only be used for purposes directly related to the process concerned. The information should not be disclosed to a third party unless such party has legitimate reasons to have access to that data.
- An employer should not disclose employment-related data of employees to a third party without first obtaining the employees’ express and voluntary consent unless the disclosure is for purposes directly related to the employment, or such disclosure is required by law or by statutory authorities.
- When employment-related data is transferred or disclosed to a third party, an employer should avoid disclosure of data in excess of what is necessary for the purpose of use by the third party.
- An employer who engages a third party organisation<sup>1</sup> to perform its employment-related functions must use contractual or other means to ensure that the data transferred to the third party organisations is not kept longer than is necessary for the purpose for which the data was entrusted to them and is protected against unauthorised or accidental access, processing, erasure, loss or use. In addition, the employer will be held accountable in its capacity as principal for the act or omission of the third party organisations.

## Former Employees’ Matters

- Personal data of a former employee may be retained for a period of up to seven years from the date the former employee ceases to be employed. The data may be retained for a longer period if there is a subsisting reason that obligates the employer to do so, or the data is necessary for the employer to fulfil contractual or legal obligations.
- An employer must take all practicable steps to ensure that only relevant and necessary information of the former employee is retained after the employment relationship ends.

<sup>1</sup> Where the third party organisation is a “data processor” under the Ordinance (which means a person who (a) processes personal data on behalf of another person; and (b) does not process the data for any of the person’s own purposes), please refer to the Information Leaflet entitled “Outsourcing the Processing of Personal Data to Data Processors” issued by the Commissioner on outsourcing arrangement, available at [www.pcpd.org.hk/english/resources\\_centre/publications/information\\_leaflet/files/dataprocessors\\_e.pdf](http://www.pcpd.org.hk/english/resources_centre/publications/information_leaflet/files/dataprocessors_e.pdf).

- In any public announcement notice regarding a former employee having left employment, the employer should take care not to disclose the Hong Kong Identity Card number of the employee concerned in the notice. Care should also be taken to ensure that no excessive personal data, for instance, the reasons for leaving employment that third parties have no legitimate concern, is disclosed in the notice.
- An employer should not provide a reference concerning a former employee to a third party without first obtaining the employee's express and voluntary consent unless the employer is satisfied that the third party requesting the reference has obtained the prior consent of the employee concerned.

## Personal Information Collection Statements – Illustrative Examples

**Recruitment** – The Alpha Corporation<sup>2</sup> has a vacancy for a secretary. It advertises the vacancy by means of a vacancy notice in which it indicates the job specification and qualification requirements for the post. In the vacancy notice, the company provides a contact so that interested applicants may request a job application form.

**Compliance measures** – To comply with the notification requirements<sup>3</sup> of the Ordinance, the company has prepared a PICS pertaining to recruitment (Annex A). The PICS is printed as part of the job application form. Upon request, the company sends the form to the applicant who, after completing the information required on the form, returns it to the company together with the necessary supporting documents.

**Employment** – The Alpha Corporation has successfully recruited a secretary. The company offers overtime allowance and medical benefits as part of the conditions of employment.

**Compliance measures** – To comply with the notification requirements of the Ordinance, the company has prepared a PICS pertaining to employment (Annex B). The PICS is included as part of the company's policy handbook for employees, which all employees are required to read.

<sup>2</sup> This is a fictional organisation.

<sup>3</sup> Data Protection Principle 1(3)

# Appendix I

## The Alpha Corporation

### Personal Information Collection Statement pertaining to Recruitment

The personal data collected in this application form will be used by the Alpha Corporation to assess your suitability to assume the job duties of the position for which you have applied and to determine preliminary remuneration, bonus payment, and benefits package to be discussed with you subject to selection for the position.

Personal data marked with (\*) on the application form is regarded as mandatory for selection purposes. Failure to provide this data may affect the processing and outcome of your application.

It is our policy to retain the personal data of unsuccessful applicants for future recruitment purposes for a period of two years.

Under the Personal Data (Privacy) Ordinance, you have a right to request access to, and to request correction of, your personal data in relation to your application. If you wish to exercise these rights, please complete the “Data Access Request Form” specified by the Privacy Commissioner for Personal Data and forward it to our Data Protection Officer, the Human Resources Department, 1/F, ABC Building, Central, Hong Kong.

**Note:** The content of each Personal Information Collection Statement is invariably different from one to another having regard to the nature of the employer’s business and the purposes for which personal data was to be collected. This illustrative example is offered as a reference model that employers may wish to give consideration to when drafting their own PICS befitting each recruitment exercise.

## Appendix II

### The Alpha Corporation

#### Personal Information Collection Statement pertaining to Employment

Throughout the course of your employment with the Alpha Corporation, we may collect personal data from you in relation to your employment for various human resource management purposes. These purposes include, but are not limited to: provision of benefits, compensation and payroll; facilitating performance appraisals, promotion and career development activities; making tax returns; and the review of employment decisions.

The personal data that we have collected may be transferred to our subsidiary and associate companies; our insurers and bankers; medical practitioners providing medical cover for employees; administrators or managers of our provident fund scheme; and other companies engaged to perform any of the human resource functions on our behalf; for the above mentioned purposes for which the personal data is to be used.

It is our policy to retain certain personal data of employees when they cease to be employed by us. Such data is required for handling post-employment matters, such as the provision of job references; processing applications for re-employment matters relating to retirement benefits and allowing us to fulfil contractual or statutory obligations.

Under the Personal Data (Privacy) Ordinance, you have a right to request access to, and to request correction of, your personal data in relation to your employment. If you wish to exercise these rights, please complete the “Data Access Request Form” specified by the Privacy Commissioner for Personal Data and forward it to our Data Protection Officer in the Human Resources Department, 1/F, ABC Building, Central, Hong Kong.

**Note:** The content of each Personal Information Collection Statement is invariably different from one to another having regard to the nature of the employer’s business and the purposes for which personal data was to be collected. This illustrative example is offered as a reference model that employers may wish to give consideration to when drafting their own PICS for employment purposes.

This booklet is issued only for general guidance and should not be relied upon when determining whether or not an act or practice complies with the Code of Practice on Human Resource Management. For a complete statement of the requirements of the Code, reference should be made to the Code itself.



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## Disclaimer

The information and suggestions provided in this publication is for general reference only. It does not provide an exhaustive guide to the application of the Personal Data (Privacy) Ordinance (the “Ordinance”). For a complete and definitive statement of law, direct reference should be made to the Ordinance itself. The Privacy Commissioner for Personal Data (the “Commissioner”) makes no express or implied warranties of accuracy or fitness for a particular purpose or use with respect to the information and suggestions set out in this publication. The information and suggestions provided will not affect the functions and powers conferred upon the Commissioner under the Ordinance.

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