

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

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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**

The Collection and Use of Personal Data of Members
under the Octopus Rewards Programme
run by Octopus Rewards Limited

This report in respect of investigations carried out by the Commissioner pursuant to section 38(b) of the Personal Data (Privacy) Ordinance, Cap 486 (“**the Ordinance**”) against Octopus Rewards Limited and its holding company, Octopus Holdings 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

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CHAPTER ONE

INTRODUCTION

Background

1.1 The core business of the Octopus group of companies is the provision of an extensive smartcard payment system with a great number of service providers and a vast network of Octopus readers. Capitalising on its huge customer database, it also collaborates with business partners to deliver direct marketing and customer loyalty programs.

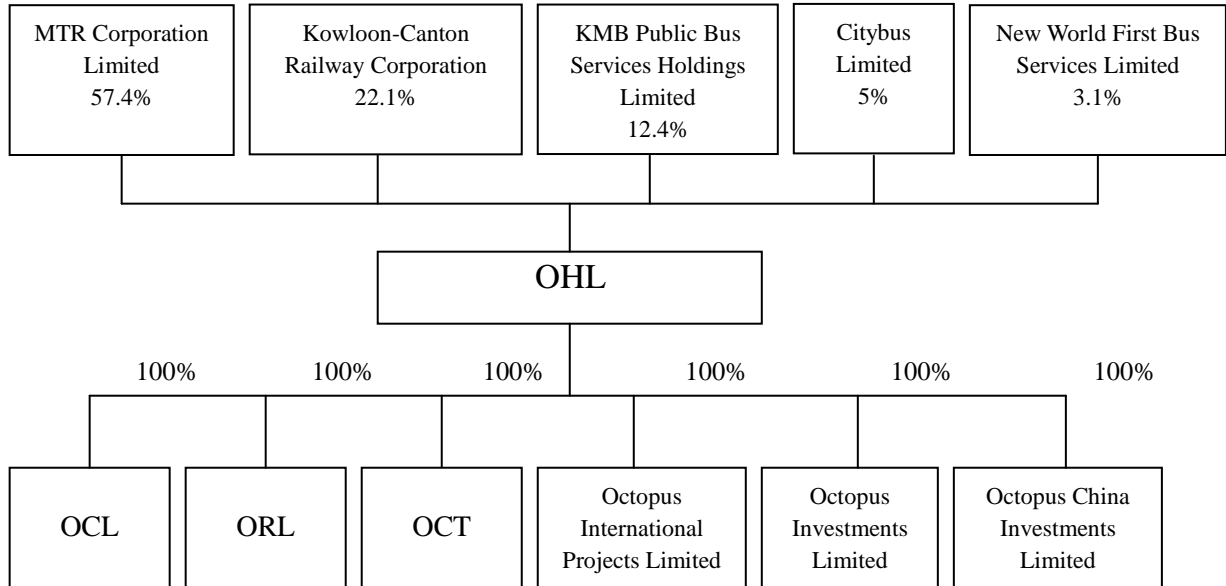
1.2 Incorporated in 2003¹, Octopus Holdings Limited (“OHL”) is a holding company jointly owned by five transport companies in Hong Kong: 57.4% by MTR Corporation Limited, 22.1% by Kowloon-Canton Railway Corporation, 12.4% by KMB Public Bus Services Holdings Limited, 5% by Citybus Limited, and 3.1% by New World First Bus Services Limited.

1.3 Presently, there are six wholly owned subsidiaries of OHL:-

- **Octopus Cards Limited (“OCL”)** operates the core business of Octopus cards in Hong Kong as an electronic payment system.
- **Octopus Rewards Limited (“ORL”)** operates the direct marketing and customer loyalty program under the name of “Octopus Rewards Programme” (“**the Program**”).
- **Octopus International Projects Limited** provides international consultancy services for automatic fare collection systems.
- **Octopus Investments Limited** is an investment holding company.
- **Octopus China Investments Limited** is an investment holding company for China-related projects.
- **Octopus Connect Limited (“OCT”)** previously provided customer relationship management and customer research services to OCL and ORL. It has been dormant since December 2009.

¹ According to OHL, OHL was incorporated on 28 February 2003 as a shelf company and its shares were acquired and became an Octopus group company on 3 November 2005.

Shareholders and Subsidiaries of OHL



1.4 Since late March 2010, there had been mounting public concerns about the handling of personal data by Octopus group of companies. In particular, some members of the Program operated by ORL also expressed concerns about their personal data being transferred to third parties for direct marketing purposes without their knowledge or consent.

1.5 On 9 July 2010, an individual (“**the Informant**”) who claimed to be a former employee of one of ORL’s business partners, CIGNA Worldwide Life Insurance Company Limited (“**CIGNA**”), reported to the press and the Office of the Privacy Commissioner for Personal Data (“**this Office**”) that ORL had sold the personal data of some 2.4 million members of the Program to CIGNA for direct marketing purposes. According to the Informant, CIGNA’s staff had access to personal data² of members of the Program from CIGNA’s computer system.

1.6 On 20 July 2010, ORL openly admitted to the public that it had transferred personal data of members of the Program (“**the Members**”) to both

² Including names, telephone numbers, Hong Kong identity card numbers and dates of birth

CIGNA and another business partner, Card Protection Plan Limited (“**CPP**”).

1.7 In view of the seriousness of the above allegations that personal data were sold to third parties without the data subjects’ knowledge or consent, the Privacy Commissioner for Personal Data (“**the Commissioner**”) commenced investigations on 22 July 2010 against OHL and ORL pursuant to section 38(b) of the Ordinance to find out whether there had been contraventions of the requirements under the Ordinance, including but not limited to Data Protection Principle (“**DPP**”)1, DPP3 and section 34 of the Ordinance in respect of the collection and use of Members’ personal data under the Program run by ORL, a company wholly owned by OHL.

Relevant Provisions of the Ordinance

1.8 The following provisions of the Ordinance are relevant to the investigations:-

- (1) Section 2(1) of the Ordinance provides that “**personal data**” means “*any data –*

- (a) relating directly or indirectly to a living individual;*
- (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and*
- (c) in a form in which access to or processing of the data is practicable;*

“use”, in relation to personal data, includes disclose or transfer the data.”

- (2) According to section 2(3) of the Ordinance, “**prescribed consent**” “*(a) means the express consent of the person given voluntarily; (b) does not include any consent which has been withdrawn by notice in writing served on the person to whom the consent has been given (but without prejudice to so much of*

that act that has been done pursuant to the consent at any time before the notice is so served)".

(3) **DPP1** in Schedule 1 to the Ordinance stipulates that –

“(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.”

(4) **DPP3** provides that –

“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).”

(5) **Section 34** provides that:-

“(1) A data user who–

(a) has obtained personal data from any source (including the data subject); and

(b) uses the data for direct marketing purposes,

shall-

(i) the first time he so uses those data after this section comes into operation, inform the data subject that the data user is required, without charge to the data subject, to cease to so use those data if the data subject so requests;

(ii) if the data subject so requests, cease to so use those data without charge to the data subject.

(2) *In this section -*

“direct marketing” means —

- (a) the offering of goods, facilities or services;*
- (b) the advertising of the availability of goods, facilities or services; or*
- (c) the solicitation of donations or contributions for charitable, cultural, philanthropic, recreational, political or other purposes,*

by means of-

- (i) information or goods sent to any person by mail, facsimile transmission, electronic mail, or other similar means of communication, where the information or goods are addressed to a specific person or specific persons by name; or*
- (ii) telephone calls made to specific persons.”*

(6) **Section 65 (2)** provides that:-

“Any act done or practice engaged in by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of this Ordinance as done or engaged in by that other person as well as by him.”

The Investigations

1.9 For the purpose of the investigations, the Commissioner conducted a public hearing on 26 July 2010, in which oral evidence of the Chief Executive Officer of OHL (also a director of ORL), the Chief Executive Officer of CIGNA and the Authorized Representative of CPP were received.

1.10 In addition, the Commissioner has considered written replies and obtained documentary evidence from OHL, ORL, CIGNA and CPP in the course of the investigations. The Commissioner also considered the public announcements and written responses made by OHL and ORL to the Panel on

Financial Affairs of the Legislative Council (“**the Panel**”) and inspected the documents made available for inspection by the Panel as well as records of meetings of OHL.

1.11 The investigations have far-reaching implications, involving the personal data privacy of two million Members. In an attempt to keep the public informed of the progress of the investigations and to make timely suggestions on good privacy practice to the parties concerned and other data users who may be engaged in transfer of customers’ personal data similar to those undertaken by ORL and OHL, the Commissioner issued an interim report during the course of the investigations on 30 July 2010. It was expressly stated in the interim report that the observations and comments made in the interim report were subject to review as the investigations progressed. Since then, further evidence was obtained and considered by the Commissioner in reaching his conclusion of the investigations. This is set out in Chapter Three of this report.

CHAPTER TWO

THE OCTOPUS REWARDS PROGRAMME

The Program

2.1 The Program was launched and has been operated by ORL since November 2005. Under the Program, Members could earn Reward Dollars (“**Reward Dollars**”) every time they make a purchase from ORL’s “business partners” (“**the Business Partners**”) by presenting his registered Octopus card. The Reward Dollars earned by a Member may be used to redeem certain goods and services with the Business Partners.

2.2 In order to be registered as a Member, the applicant for the Program (the “**Applicant**”) must be a holder of an Octopus Card and has to complete and sign a registration form (“**the Registration Form**”) designed and provided by ORL. As at 30 June 2010, over 2.4 million Octopus cardholders were registered as Members.

2.3 Basically, there are three ways to obtain the Registration Form:-

- (i) Registration Form printed on the promotional leaflet of the Program (the “**Leaflet**”);
- (ii) Registration Form downloadable from the official website of ORL (i.e. <http://www.octopusrewards.com.hk>); and
- (iii) An online Registration Form on the official website of ORL.

2.4 A copy of the Registration Form is attached as Annex A.

The Registration Form

2.5 In the Registration Form, the Applicant is requested to supply 16 items of personal information to ORL. The requested information is grouped under two parts, namely “My Information” and “My Other Information”. Certain items of information requested in the Registration Form under “My Information” are marked with an asterisk which, according to the description at the top of the Registration Form, means that the requested information are “Required Fields” (i.e. the fields which are mandatory). Particulars of the requested information are set out below:

“My Information”

The items of information marked by an asterisk (i.e. Required Fields) are :-

- (1) Octopus number
- (2) English name appeared on Hong Kong Identity Card / Passport / Birth Certificate
- (3) Hong Kong Identity Card number or Passport / Birth Certificate number
- (4) Gender
- (5) Month and year of birth
- (6) Contact mobile and home / office numbers
- (7) Home address

Other items of information not marked with an asterisk are :-

- (8) Chinese name as appeared on Hong Kong Identity Card / Passport / Birth Certificate
- (9) Email address³

³ Unlike the Registration Form in the Leaflet and the Registration Form downloadable from ORL Website, email address was also marked with an asterisk in the online Registration Form.

“My Other Information”

- (10) Language preferred in communication (Chinese or English)
- (11) Marital status (Single or Married)
- (12) Education level (Primary, Secondary, University, Post-graduate, or Others)
- (13) Occupation (Self-employed, Housewife, Professional/ Manager / Executive, Clerical / Administration, Civil Servant, Technical, Student, Retired, or Others)
- (14) Monthly personal income (No income, \$8,000 or below, \$8,001 - \$15,000, \$15,001 - \$25,000, \$25,001 - \$35,000, \$35,001 - \$50,000, or \$50,000 above)
- (15) Monthly household income (No income, \$10,000 or below, \$10,001 - \$20,000, \$20,001 - \$40,000, \$40,001 - \$60,000, \$60,001 - \$80,000, or \$80,000 above)
- (16) Interests (Sports, Beauty, Fashion, Fitness & Healthcare, Travel, Movie / Music, Dining Out, Investment, Personal Education, Computer / IT Products, Audio & Video Products, or Driving)

Terms and Conditions for the Program

2.6 The rights and obligations of the parties under the Program are regulated by the Terms and Conditions (“**T&C**”) which are printed on the Registration Form and can also be separately downloaded from the official website of ORL. The T&C contain provisions relating to the benefits Members may enjoy under the Program (Clauses 3 and 5), registration of Members (Clause 4), uses of Members’ personal data collected under the Program (Clause 6), recovery of benefits in case of malfunction or loss of a registered Octopus Card (Clause 7), cancellation of membership (Clause 8), provision of new services under the Program (Clause 9), etc. Clause 6 of the T&C will be discussed in detail in Chapter Three of this report. A full set of the T&C is found in the Registration Form at Annex A.

CHAPTER THREE

THE INVESTIGATION RESULTS

DPP1: COLLECTION OF PERSONAL DATA

3.1 In deciding whether ORL’s collection of personal data under the Program was in compliance with the Ordinance, it is necessary to consider the types of services offered in the Program.

Services available under the Program

3.2 According to the T&C, Members are provided with the benefits of: (i) earning Reward Dollars from the Business Partners by purchasing from them upon presentation of Members’ registered Octopus Cards (“**Standard Benefits**”); and (ii) receiving selected offers from ORL and its Business Partners (“**Promotional Benefits**”)⁴.

3.3 Members who do not want to receive direct marketing materials from ORL and the Business Partners may notify ORL by calling a telephone number or in writing⁵. Those who do not want ORL to use their personal data for provision of selected offers, promotions and benefits by ORL, its subsidiaries, affiliates and/or the Business Partners, and for selecting goods and services for them may request ORL not to so use their personal data by informing ORL by phone or in writing.⁶

Purpose of Collection

3.4 At the public hearing, the Chief Executive Officer of OHL (also a director of ORL) was specifically asked whether in providing only the Standard

⁴ See Clauses 2.3 (a), 2.3(i) and 3.3 of the T&C.

⁵ See Clauses 3.3 and 6.5(d) of the T&C.

⁶ See Clauses 6.5(d) and 6.9 of the T&C.

Benefits to a Member it was feasible to have the Member's name and Octopus Card number only. The Chief Executive Officer answered in the affirmative. The relevant part of the transcript of the hearing in Chinese and its English translation are set out below:-

專員： 唏，我唔想拉到去太遠。我即係話，如果嗰個客人只係想要嗰個最基本嗰個獎償，嗰個優惠，咁基本上就係如果佢俾嗰個名，同埋佢想要參與嗰張卡嘅號碼，就係，即係你覺得唔係話唔可以嘅？

證人： 我地會考慮。

專員： 我而家問你呀，我而家唔係問你可吾可以考慮，我而家問你，係咪你覺得係可以嘅？

證人： 可以。

English translation:

The Commissioner: I don't want to go too far. What I mean is, where a customer only wants to have the standard rewards benefits, then you would consider it feasible if you were provided with the customer's name and card number only, wouldn't you?

Witness: We would consider.

The Commissioner: I am not asking you whether or not you would consider. What I am asking is whether you consider it feasible?

Witness: It is feasible.

3.5 In response to subsequent written enquiries from this Office, OHL advised that the purposes of collection of each item of information requested under the Registration Form are as shown below:-

Table 1 – Purposes of collection of personal data under the Registration Form

Requested Information			Purpose of Collection
1	*	Octopus card number	Providing the Standard Benefits to Members
2	*	English name appeared on Hong Kong Identity Card / Passport / Birth Certificate	
3	*	Hong Kong Identity Card number or Passport / Birth Certificate number	Customer authentication (<i>Note 1</i>)
4	*	Gender	Courtesy for customer contact
5	*	Month and Year of Birth	Customer authentication (<i>Note 1</i>)
6	*	Contact mobile and Home / Office numbers	
7	*	Home address	
8		Chinese name as appeared on Hong Kong Identity Card / Passport / Birth Certificate	Providing the Promotional Benefits to Members
9		Email address	
10		Language preferred in communication	
11		Marital status	
12		Education level	
13		Occupation	
14		Monthly Personal Income	
15		Monthly Household Income	
16		Interests	

*Required Field

Note 1: According to OHL, the purposes of collection is for “*customer identity authentication when providing customer service, including Reward Dollars transfer to replacement card after reported lost card or card malfunctioned, enquiry of Reward Dollars transaction, opt-out, customer information update*”.

Collection of personal data

3.6 To comply with DPP1(1), ORL shall not collect personal data unless the data are collected for a lawful purpose directly related to a function or activity of ORL. Moreover, the collection of the data must be necessary for or

directly related to that purpose, and the data are adequate but not excessive in relation to that purpose.

3.7 As explained in paragraph 3.2 above, the Program is a consumer rewards scheme whereby Members benefit from redemption of goods and services as well as direct marketing offers. The Commissioner considers that the purposes of collection of Members' personal data as summarized in paragraph 3.5 above are lawful and are directly related to ORL's function or activity.

3.8 Under Clause 5.12 of the T&C, Reward Dollars or any benefits are personal to an individual Member and cannot be transferred. In the circumstances, the Commissioner is satisfied that, in order to provide the Standard Benefits to Members, it is necessary for ORL to collect the number of the Octopus Card (i.e. item 1 of Table 1) and the name of the Cardholder (i.e. item 2 of Table 1).

3.9 ORL claimed that collection of items 3, 5, 6 and 7 of Table 1 are for customer authentication purpose when providing customer service, including Reward Dollars transfer to replacement card after reported loss card or card malfunction, enquiry of Reward Dollars transactions, opt-out and customer information update. Given that the Reward Dollars or other benefits are personal to the Members, the Commissioner accepts that ORL may need to authenticate the identity of a Member. However, the question remains whether the amount of personal data collected is necessary for the purpose.

3.10 In the Commissioner's view, ORL 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)). ORL's further collection of item 5 (month and year of birth) and item 3 (Hong Kong Identity Card number or Passport / Birth Certificate number) for the same purpose is regarded as excessive.

3.11 In particular, the Commissioner notes that Hong Kong Identity Card (“**HKIC**”) numbers or passport / birth certificate number (item 3) are sensitive personal data and their collection by ORL must be regarded as excessive even in circumstances of malfunction or loss of Octopus Card based on the following analysis:-

3.11.1 Under Clause 7.1 of the T&C, in case of malfunction of a registered Octopus Card, the Member may recover the Reward Dollars and other benefits accrued by presenting the Octopus Card to OCL or contacting the issuing bank or financial institution for card replacement and transfer of the benefits. As OCL and the relevant banks and financial institutions are responsible for authenticating the identity of the Members based on the information already in their possession, there was no need for ORL to collect item 3 under the Program.

3.11.2 In case of lost card, under Clause 7.2 of the T&C, recovery of the remaining Reward Dollars is available only to Personalized Octopus cardholders and users of the Automatic Add Value Service. These Members are required to report the loss to OCL or the issuing banks or financial institutions, who should be able to authenticate the identity of the Member based on the information already in their possession. Again as ORL is not involved in the authentication process, there is no need for its collection of item 3 under the Program.

3.11.3 In any event, the potential damage or loss on the part of ORL in the case of misidentification of a Member seeking recovery of Reward Dollars and other accrued benefits is trivial since under Clause 5.13 of the T&C, a registered Octopus Card can only store up to a current maximum amount of Reward Dollars of \$1,000. Hence, the collection

of Members' HKIC number is not justified under paragraph 2.3.3.3 of the Code of Practice on the Identity Card Number and other Personal Identifiers (“**the PI Code**”)⁷ issued by this Office in December 1997;

3.12 As regards the collection of gender (item 4 of Table 1), the Commissioner accepts that for good customer service ORL should know Members' gender in order to address Members properly. As such, the Commissioner is satisfied that the collection of this information is directly related to the purpose of provision of the Standard and Promotional Benefits and is not excessive.

3.13 According to OHL, items 8 to 16 of Table 1 were collected for provision of the Promotional Benefits. In this respect, the Commissioner recognizes that item 8 (Chinese name) and item 9 (email address) are used by ORL to contact Members in making offers to them. As regards items 10 to 16, the Commissioner further recognizes that the information may enable ORL to better understand Members' background and thus to make offers more suited to their needs. In the circumstances, the Commissioner is of the view that the collection of items 8 to 16 is directly related to the purpose of providing the Promotional Benefits to Members and is not excessive.

3.14 Summing up, of the items of personal data collected by ORL from registration of membership under the Program, the Commissioner finds ORL's collection from Members of item 3 (HKIC number or passport / birth certification number) and item 5 (month and year of birth) excessive for the purpose of customer authentication. **This is a contravention of DPP1(1).**

Fairness of means of collection

3.15 DPP1(2) of the Ordinance requires data users to collect personal data

⁷ 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.

by means which are lawful and fair in the circumstances of the case. There is no evidence before the Commissioner that the means of collection of Applicants' personal data under the Program by ORL is unlawful.

3.16 Given that a feature of the Program is to promote the products and services of ORL and the Business Partners, it should be within the reasonable expectation of the Applicants of the Program that, upon becoming a Member, promotional information and materials relating to the products and services of ORL and the Business Partners offered under the Program would be communicated to them.

3.17 Additionally, the Commissioner notes that items 10 to 16 are not "required fields" in the Registration Form and it is expressly stated at the top of the Registration Form that they are collected in order to help ORL and the Business Partners to make carefully selected offers that will be of interest and value to Members. As such, Applicants who elect to provide items 10 to 16 should have been aware that their provision of their personal data is voluntary and that the data provided would be so used by ORL.

3.18 The Commissioner finds no evidence that in collecting personal data from the Applicants of the Program, ORL had used any means that was unfair in the circumstances, e.g. by deception or coercion.

DPP1(3): DUTY TO INFORM DATA SUBJECTS

3.19 DPP1(3)(b) requires a data user to take all reasonably practicable steps to ensure that the data subject is explicitly informed, on or before collection of 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.

Stated purpose and classes of transferees

3.20 A notice relating to ORL's collection and use of Members' personal

data is contained in Clause 6 of the T&C. Clauses 6.3 and 6.4 of the T&C, in particular, have significant impact on the Applicant's / Member's personal data privacy.

3.21 Clause 6.3 of the T&C states that: *“You agree that all the personal information and data provided to us and all information relating to the use of your Membership Octopus may be used by us for:*

- (a) processing your registration for Membership Octopus;*
- (b) providing you with carefully selected offers, promotions and benefits by us, our subsidiaries, our affiliates and/or Our Partners. We, our subsidiaries, our affiliates and Our Partners may need to carry out matching procedure (as defined in the Ordinance)⁸ to enable us/them to better understand your characteristics and to provide other services better tailored to your needs (such as offering special birthday promotions to you), to assist us and Our Partners in selecting goods and services that are likely to be of interest to you and to establish whether you already have a relationship with our selected business partners;*
- (c) provide you with regular communications (other than direct marketing materials) from us with details of the programme and its benefits;*
- (d) the normal management, operation and maintenance of the Octopus Rewards system, including audit;*
- (e) designing new or improving existing services provided by us, our subsidiaries and our affiliates (that is, any other entity which directly or indirectly controls us, is controlled by us, or is under common control with us) for customers' use;*
- (f) investigation of complaints, suspected suspicious transactions and research for service improvement;*

⁸ “Matching procedure” is defined in section 2(1) of the Ordinance as a procedure whereby, briefly stated, personal data collected for different purposes in respect of 10 or more data subjects are compared where the comparison may be used for the purpose of taking adverse action against the data subjects. Either one of the two principal conditions set out in section 30(1) of the Ordinance must be satisfied before this specific procedure can be carried out, namely, with the data subjects' prescribed consent or with the Commissioner's consent.

- (g) *prevention or detection of crime;*
- (h) *disclosure as required by law;*
- (i) *aggregated behavioural analysis which is non-identifying and anonymous. This may be shared with Our Partners and third parties; and*
- (j) ***as a source of information and data for other related purposes.***
(emphasis added)

3.22 On this basis, Clause 6.3 of the T&C has defined the purposes of use of the customer data in extremely wide terms. It not only enables ORL to use the personal data collected for provision of the Promotional Benefits under the Program, but is wide enough to cover designing new or improving existing services provided by ORL, its subsidiaries and affiliates, and performing behavioural analysis. Finally, Clause 6.3 of the T&C ends with the catch-all term: “*as a source of information and data for other related purposes.*” Without an emphasis that such “related purposes” are “directly related purposes”, they could well include “remotely related purposes”.

3.23 For the broad range of purposes set out in Clause 6.3 of the T&C, the Applicants were deemed by virtue of Clause 6.4 of the T&C to have further agreed that ORL may transfer or disclose their personal data to literally **any person** (whether within or outside Hong Kong) who was under a duty of confidentiality to ORL. This is because Clause 6.4 of the T&C reproduced below, incorporates catch-all terms such as “any other person” and “any person” to define those persons to whom data may be transferred:-

“Data held by us relating to you will be kept confidential by us, but you agree that for the purposes set out in clause 6.3, we may transfer or disclose such information to the following parties (whether within or outside Hong Kong):

- (a) *any agent, contractor or third party service provider under a duty of confidentiality to us who provides administrative, telecommunications, computer, payment, data processing or other*

- services to us in connection with the operation of our business;*
- (b) *any other person under a duty of confidentiality to us including our subsidiaries, our affiliates and Our Partners; and*
- (c) *any person to whom we, our subsidiaries, our affiliates or Our Partners, is under a binding obligation to make disclosure under the requirements of any law, rule and regulation, including those of countries outside of Hong Kong for data transferred to those countries, but such disclosure will only be made under proper authority.” (emphasis added)*

3.24 Given the very liberal delineation of the extent to which data may be used and the types of persons to whom data may be transferred under Clauses 6.3 and 6.4 of the T&C, ORL should ensure that the Applicants know and understand the existence and the terms of the Clauses. In other words, the Clauses should not be presented in such a way that may escape easily the attention of the Applicants.

Small Print

3.25 Although the declaration in the Registration Form made specific reference to Clause 6 of the T&C, the declaration itself and the entire T&C, including Clause 6, were printed in much smaller fonts (about 1mm x 1mm for English and about 2mm x 2mm for Chinese) than those adopted in other parts of the Leaflet. Moreover, the entire Clause 6 was cramped into a single paragraph in 42 lines in English and 32 lines in Chinese in the Registration Form⁹.

3.26 In this regard, it is relevant to note that the Administrative Appeals Board (“**AAB**”) in AAB No.38 of 2009 denounced the use of small print in the personal information collection statements made by a bank to its customer applying for a credit card and emphasized that greater care is expected in collecting personal data from consumers, as distinct from companies or business individuals. In its Decision, the AAB stated as follows:-

⁹ According to the photocopy of the Registration Form provided by OHL

“15. The first observation of this document is that the print is so small that no one could reasonably be expected to be able to read the content without the aid of some form of magnifying glass...”

“16. Whilst this Board does not wish to encourage people to sign a document without reading the content and only to rely later upon an non est factum plea, the very design of this application form in our view simply discouraged people from reading the fine print...”

“22. ...The credit card in the present case was issued to Ms Wong as a consumer and not a company or an individual in the context of negotiating commercial contract where greater care is expected. This is particularly relevant to our preliminary observation that the prints were so small that it discouraged applicants from reading the contents.

“24. Further, we are of the view that if the data user had the intention of providing the personal data to a third party, it must be clearly stated in a legible manner. Small prints are of little if any use for important terms that would bind a consumer customer. The provisions sought to be relied upon are clauses selected from documents in which the print had to be enlarged for submission purpose. This further proves the point that the consumer would have had difficulties in reading the terms in fine print.”¹⁰

3.27 The use of small print for credit card application documents in that case was one of the major determining factors under which the AAB ruled that the bank had not taken any sufficient step to make sure the terms and conditions of the credit card agreement were brought to the attention of the data subject concerned at the time when the application form was filled.¹¹ By analogy, the Commissioner considers that ORL has fallen short of taking all

¹⁰ AAB No. 38 of 2009, decided on 19 August 2010.

¹¹ Paragraphs 27 and 31 of the Decision.

practical steps to explicitly inform the Applicants/Members of Clause 6 of the T&C.

Data subjects' right to be informed of the purpose of use and classes of transferees

3.28 The requirements of DPP1(3)(b)(i) relate to the data user's duty to inform data subjects of the purposes and the classes of transferees of their personal data. While the purposes may be stated in general or specific terms, the transferees shall be specified according to classes. In this manner, the extent to which the data will be used and the type of persons to whom the data may be transferred are defined with a reasonable degree of certainty.

3.29 The moot point is whether ORL has provided the Members with a reasonable degree of certainty as regards the classes of transferees of their personal data under the Program. As explained in paragraph 3.23 above, pursuant to Clause 6.4 of the T&C, as long as the purposes of data use fall within the enormity of Clause 6.3, ORL may transfer or disclose the Members' personal data to **any person**, who is under a duty of confidentiality to ORL. As admitted by the Chief Executive Officer of OHL at the public hearing, it was entirely up to ORL to decide what personal data and to whom the data were to be transferred. Accordingly, the Commissioner does not consider that ORL has discharged its obligation under DPP1(3)(b)(i)(B) by informing the Applicants of the data transferees in such general terms. Loose descriptions of data transferees such as "any other person..." cannot be accepted as a proper class for the purpose of DPP1(3)(b)(i)(B). Although the Leaflet and the website of ORL contain a list of Business Partners which Applicants / Members may check for themselves, the list is not assured to be exhaustive and is subject to changes at ORL's entire discretion. Applicants / Members are unable to ascertain with any reasonable degree of certainty the classes of transferees to whom their personal data will be transferred.

3.30 The upshot of the analysis in paragraphs 3.20 to 3.29 above is that through the use of small print in the Personal Information Collection Statement

and the failure to define in any reasonable degree of certainty the classes of transferees of personal data, **ORL has contravened DPP1(3)**.

DPP3: USE OF PERSONAL DATA

3.31 During the course of the investigations, OHL admitted that between 2002 and 2010, personal data of Cardholders / Members were disclosed to six Business Partners, namely:

- (i) American International Underwriters Limited (“**AIU**”) / American International Assurance Company Limited (“**AIA**”), an authorized insurer that provides various insurance products;
- (ii) CIGNA, an authorized insurer that provides various insurance products;
- (iii) Cimigo Limited (“**Cimigo**”), a company that provides research and marketing consulting services to companies;
- (iv) CPP, a company that provides card protection service;
- (v) Magazines International (Asia) Limited (“**MIL**”), a company that provides magazine subscription service; and
- (vi) Taylor Nelson Sofres Hong Kong Limited (“**TNS**”), a company that provides research and marketing consulting services to companies.

(A summary of the contractual arrangements between OCL / ORL and these six Business Partners is provided in Annex B)

3.32 According to the agreement between OCL and AIU / AIA dated 3 July 2002, their cooperation (which ended on 15 September 2002) related to promotion of insurance products to Personalized Octopus Cardholders. As the agreement ended some 3 years before the Program was launched in 2005, the collection and use of the personal data fall outside the scope of the present investigations, which only involved OHL and ORL, and Members of the Program.

3.33 As regards the agreements between ORL and the five Business Partners, the evidence available shows that Members' personal data were disclosed by ORL to the Business Partners for monetary gains as follows:-

CIGNA

3.33.1 According to the agreement between ORL and CIGNA dated 1 March 2009¹², ORL was entitled to receive an "Annual Minimum Revenue Guarantee" on provision of a list of 750,000 customer counts to CIGNA in a contract year, irrespective of the sale of any products and/or services by CIGNA. In addition, various kinds of bonus (namely commission, performance bonus and persistency bonus) would be paid to ORL on successful sale of any products and/or services by CIGNA.

3.33.2 From 2006 to June 2010, a total of 1,073,000 Cardholders' and/or Members' personal data (with total contact records of 2,105,000) were provided to CIGNA, for which the Octopus group of companies, including ORL, received a revenue of \$40,700,000.

MIL

3.33.3 According to the agreement between ORL and MIL dated 1 July 2007, ORL was obliged to provide a call list to MIL containing at least 20,000 times of contact access to Members in each telemarketing campaign and would charge MIL at the rate of \$1 per time of contact access in return. ORL was also entitled to a set-up fee of \$15,000 for each telemarketing campaign. Moreover, ORL was entitled to a guarantee revenue under the agreement.

¹² The date of the agreement as shown on its cover page was 27 February 2009.

3.33.4 According to OHL, a total of 60,000 Cardholders' and/or Members' personal data (with total contact records of 60,000) were provided to MIL from 2006 to June 2010, and a revenue of \$100,000 was received.

TNS

3.33.5 According to the agreement between ORL and TNS dated 7 May 2008, ORL was obliged to provide a customer database selected from its customer list to TNS for research initiatives. In consideration of ORL's provision of the customer database, TNS would pay a fee to ORL.

3.33.6 Personal data of 61,000¹³ (with total contact records of 183,000) Cardholders and/or Members were disclosed to TNS between 2006 and June 2010. The Octopus group of companies, including ORL, received a revenue of \$100,000.

Cimigo

3.33.7 According to the agreement between ORL and Cimigo dated 15 May 2008, ORL was obliged to provide a customer database selected from its customer list to Cimigo for research initiatives. In consideration of ORL's provision of the customer database, Cimigo would pay a fee to ORL.

3.33.8 Personal data of a total of 512,000¹⁴ (with total contact records of 697,000) of Cardholders and/or Members were

¹³ The figure is the same as that supplied by OHL to the Panel on Financial Affairs of Legislative Council on 13 August 2010. However, after completion of the investigations, OHL advised the Commissioner that the correct figure should be 5,500 instead of 61,000.

¹⁴ The figure is the same as that supplied by OHL to the Panel on Financial Affairs of Legislative Council on 13 August 2010. However, after completion of the investigations, OHL advised the Commissioner that the correct figure should be 30,000 instead of 512,000.

disclosed to Cimigo from 2006 to June 2010. As a result, the Octopus group of companies, including ORL, received a revenue of \$1,600,000.

CPP

3.33.9 According to the agreement between ORL and CPP dated 21 June 2010, ORL was entitled to a set-up fee with a maximum of \$28,000 for each target marketing program launched, irrespective of the sale of any products and/or services by CPP.

3.33.10 Personal data of a total of 260,000 (with total contact records of 295,000) of Cardholders and/or Members were disclosed to CPP from 2006 to June 2010. As a result, the Octopus group of companies, including ORL, received revenue of \$1,800,000.

3.34 It is clear from the five contracts described above that the transfer of Members' personal data by ORL to the Business Partners was made in return for monetary gains. The arrangement was in essence sale of personal data.

3.35 It is pertinent to note that the provision Members' personal data to Business Partners for monetary gains is not stated in the T&C of the Program. This is in accord with the oral evidence of the Chief Executive Officer of OHL given at the public hearing. She stated that the purpose of the Program is twofold, namely, to promote Octopus Cards as a convenient payment platform and to reward customers. She did not mention sale of personal data of Members for monetary gains as a purpose of the Program. The relevant part of the oral evidence in Chinese and its English translation are reproduced below:-

專員： 唔。好嘞，我又再講到你另有間公司係叫做 Octopus Reward Limited 嘅，咁呢個就推出咗一個叫做日日賞計劃嘅，或者你簡單咁講講呢

個計劃係乜嘢?

證人： 呀，成立咗八達通日日賞嘅目的呢，係希望透過一啲特選嘅客戶去合作提供一啲更多嘅消費同埋優惠同埋啲獎賞，令到我地啲客戶能夠有多啲嘅得益。呀，咁一方面係為咗呢，係推廣八達通成為一個好方便嘅付款平台，咁而另外一方面呢個計劃亦都係想回饋客戶對我地嘅支持。咁呢個就係大致上日日賞嘅目的嘞。咁但係呢度我想講呢，就係話我地其實喺呢件事呢，已經得到填寫表格會員嘅同意，但係大部份嘅情形之下呢，參與嘅商戶嗰個訊息呢都係由八達通獎賞有限公司呢向會員發出嘅。

English translation:

Commissioner: I refer to your other company named Octopus Rewards Limited, which launched a program called Octopus Rewards Program. Could you briefly explain what this program is about?

Witness: The purpose of the Program is to give our customers more benefits through our cooperation with some selected partners in the provision of more consumers' privileges and rewards. On one hand, to promote Octopus as a convenient payment platform, and on the other hand, to reward our clients for their support. This is basically the purpose of the Octopus Rewards. I wish to point out that we have obtained the members' consent by the registration form they completed. In most cases, the messages of participating partners are sent to the members by Octopus Rewards Limited.

3.36 In the Commissioner's view, the purposes of the Program as stated by OHL's Chief Executive Officer at the public hearing should also be the reasonable expectation of the Members. While some business-oriented Members may conceive that the Program is profit-motivated, the average Members, representing the majority, would have regarded the Program merely as a customer loyalty exercise rather than an arrangement for ORL to sell their

personal data for monetary gains.

3.37 According to OHL, details of the provision of personal data of Cardholders / Members by ORL to the five Business Partners are listed below:-

Table 2 – Summary of personal data transferred to Business Partners

Name of Business partners	CIGNA	CPP	TNS	MIL	Cimigo
Types of personal data transferred					
(1) Name	✓	✓	✓	✓	✓
(2) Contact telephone no.	✓	✓	✓	✓	✓
(3) Octopus card no.	✓	✓	✓	✓	✓
(4) First 5 digits of HKIC no.	✓	✓			
(5) Month and year of birth	✓				
(6) Partial mailing address	✓	✓		✓	
(7) Occupation indicator	✓				
(8) Salary range	✓				
(9) Gender	✓	✓			
(10) Duration of membership under the Program	✓				
(11) Bank code		✓			
(12) Partial credit card no.		✓			
(13) Indicator showing whether Member is a traveler		✓			
(14) Indicator showing whether Member has lost card history		✓			
(15) Indicator showing whether Member has credit card		✓			

3.38 In determining whether ORL had contravened DPP3 of the Ordinance, the Commissioner relies upon the decision made by the AAB in AAB No. 38 of 2009. That case involved the sale by a bank of the personal data of its credit card customer to its business partner to enable the latter to market its insurance product, but without the customer's prescribed consent. The AAB found that

the bank was in contravention of DPP3. In its decision, the AAB stated as follows:

“52. ...We were provided with two copies of cross-marketing agreements between the Bank and CIGNA made in 2003 and 2005. However, we consider that the sale and purchase between the Bank and CIGNA of Ms Wong’s data is not a purpose which has the prescribed consent from her. In our view, it is not one of the stated purposes included in paragraph 11(c) of the Agreement document provided to Ms. Wong.

“53. As schedule 3 of the Cross-Marketing Agreement between the Bank and CIGNA indicated, both parties envisaged the sale and purchase of no less than 200,000 relevant data of the Bank’s customers within a 12-month period.

“54. Relevant data is defined in the Cross-Marketing Agreement to mean the names and telephone numbers of the Bank’s customers. We failed to see how such kind of commercial activity is something that Ms Wong can be said to have already given her prescribed consent, just because she had received the application form and the Agreement. Such use of Ms Wong’s data is not the purpose for which it was first collected and its use by the Bank cannot be said to relate directly to the original purpose the data was collected, namely, the purpose was quite simply the application for a credit card and vetting of the applicant for the purpose of considering the application.”

3.39 The AAB recognized that the original purpose of data collection was application for a credit card and decided that the sale and purchase of the data of the bank’s credit card customer was not the original purpose of data collection, nor a directly related purpose.

3.40 In the present case, the provision of Members’ personal data for monetary gains was not expressly stated in the T&C and is therefore not the

purpose for which data were to be used when first collected, nor would it be a directly related purpose, applying the test of reasonable expectation of Members on the use of their personal data. As such, the Applicant's signature on the Registration Form agreeing to the T&C cannot constitute his prescribed consent to the sale of Members' personal data to CIGNA, CPP, Cimigo, MIL and TNS for monetary gains. The Commissioner thus finds **ORL has contravened DPP3**.

SECTION 34(1) OF THE ORDINANCE

3.41 A data user who uses a data subject's personal data for direct marketing purposes notwithstanding the data subject's previous request for cessation of such use will be in contravention of section 34(1) of the Ordinance. The Commissioner finds no evidence showing that ORL had done so. Thus, **contravention of section 34(1)(ii) on the part of ORL is not established**.

OHL'S LIABILITY UNDER SECTION 65(2) OF THE ORDINANCE

3.42 According to the records maintained by the Companies Registry, since November 2005, there have been 11 to 14 directors in the Board of OHL and 4 to 6 directors in the Board of ORL. Up to 4 have been common directors of the two Boards since November 2005. OHL also confirmed that the Senior Management Group comprising the Chief Executive Officer, Finance Director, Sales and Marketing Director, Technical Director, International Operations Director, Head of Operations, Head of Human Resources & Administration, Head of Risk Management and Head of Corporate Communications are common to OHL, ORL and OCT. It is therefore obvious that the persons who managed OHL have been fully aware of the operation of ORL and the Program.

3.43 The idea of operating customer loyalty programmes similar to the Program was conceived in early 2002. According to the paper: "Octopus Expansion Strategy 2003 to 2007" discussed at the OCL Board meeting held on 26 March 2002, it was identified that "*Loyalty programmes allow Octopus cardholders to save points every time they conduct transactions using their*

cards, and to draw on these points to redeem goods and services...Another important opportunity arising from loyalty programmes is the provision of CRM services. These programmes allow us (and, in turn, our service providers) to collect and collate meaningful customer information by tracking their spending and usage patterns.”

3.44 The purpose of establishing ORL for operating the Program became apparent in 2004. According to the paper: “Octopus – 2005 Strategic Plan” prepared by the management of the Octopus group, the Program was described as “*the first major non-payment business expansion in Hong Kong, in preparation for launch in 2005*”, and ORL would be launched in 2005 as the first major non-payment business in Hong Kong of which the aim was “*to add value to both the consumer and service provider relationships, generating new revenues not only for itself but also for the existing Octopus payments business.*” (emphasis added) It should be clear at that time that the Program was meant to serve, among other things, generating revenue for the Octopus group of companies.

3.45 The concrete plan of OHL in engaging “data business” is found in the paper: “Octopus – 2006 Strategic Plan” prepared by the management of the Octopus group, according to which:-

3.45.1 The Program was “*positioned as a highly cost effective tool for marketers in mass consumer retail and service industries to recognize, reward and target consumers regardless of payment type.*”

3.45.2 OCT was “*positioned as both a source of consumer insight from a rich profile database...and as a highly cost effective tool for marketers in mass consumer retail and service.*”

3.45.3 OCT was “*able to capitalize on the strength of Octopus’s trusted ubiquitous relationship with consumers both for payments and with the launch of Octopus Rewards for a value*

added relationship.” OCT’s growth strategy would be to “rapidly build generic profiles of consumers from behaviour patterns within Octopus payments, Octopus Rewards, publish information, registration information and where appropriate survey information” and to “identify other opportunities to monetarise the profile database, in particular online research surveys and strategy insights.”

3.45.4 *“The role of Octopus Connect is to seek to monetarise the value of the data either on behalf of a group company such as Octopus Rewards or on its own behalf.”*

3.46 OHL confirmed that the “Octopus – 2006 Strategic Plan” was presented to the Board of OHL as part of a report on the activities of the various subsidiaries (including ORL and OCT). It set out the objectives of the Octopus Group (including financial information) for the applicable year so that the Board can approve the Group budget for the coming year.

3.47 There is also evidence as shown in the 2008 Review and 2009 Budget of the Octopus Group that OHL was fully aware of the source of income of the “data business” being derived “*from **commission** arising from...the provision of consumer database to third parties for direct selling and marketing.*” (emphasis added)

3.48 In about September 2009, OHL resolved that the **retained profits** of the “data business” would be distributed by way of dividends to OHL before the end of 2009 and OCT would become dormant from 31 December 2009, but would be retained for future projects. After the cessation of business of OCT, guardianship of the physical database of Members was assigned to ORL.

3.49 Section 65(2) of the Ordinance provides that any act done or practice engaged in by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of the Ordinance as done or engaged by that

other person as well as by him. Having considered the corporate governance of the Octopus group of companies and the history and development of the Program as detailed above, the Commissioner finds that ORL was OHL's agent with authority in operating the Program and engagement in the "data business" by reasons of the following:-

- 3.49.1 The mastermind of the Program and the sharing of Members' personal data with Business Partners for monetary gains was the management of the Octopus Group;
- 3.49.2 The idea of operating loyalty programs was conceived in early 2002 in a meeting held by OCL regarding "Octopus Expansion Strategy 2003 to 2007", prior to the establishment of ORL;
- 3.49.3 ORL was established by OHL as its wholly owned subsidiary in 2005 to operate the Program and that OHL and ORL have up to 4 common directors since November 2005;
- 3.49.4 The same senior management team runs OHL, OCT and ORL concurrently;
- 3.49.5 OHL has been fully aware of the data business and the income derived from the provision of consumer database to third parties for direct marketing;
- 3.49.6 The Octopus - 2006 Strategic Plan contains concrete plan of OHL in engaging in "data business" which includes monetarizing the value of the data. The plan was presented to the Board of Directors of OHL for approval of the budget; and
- 3.49.7 The retained profits of the data business were distributed by way of dividends to OHL.

3.50 Hence, by virtue of section 65(2) of the Ordinance, the act done by ORL should be treated as done by OHL. Accordingly, the Commissioner finds **OHL contravened DPP1(1), DPP1(3) and DPP3 of the Ordinance.**

CHAPTER FOUR

CONCLUSION

Contravention of DPPs

4.1 Upon completion of the investigations, the Commissioner concludes that ORL has contravened the following requirements under the Ordinance:-

- (i) **DPP1(1)** for having collected excessive personal data (Hong Kong Identity Card number / Passport number / Birth Certificate number, and month and year of birth) for the purpose of customer authentication;
- (ii) **DPP1(3)** for having failed to take all reasonably practicable steps to ensure that the Applicants were explicitly informed of the classes of persons to whom the data may be transferred; and
- (iii) **DPP3** for having shared Members' personal data with CIGNA, CPP, Cimigo, MIL and TNS for monetary gains without the Members' prescribed consent.

4.2 The Commissioner is also satisfied that the contravening act or practice by ORL was done or engaged with the authority of OHL, its holding company. Therefore, OHL is liable for the contravening act or practice of ORL pursuant to section 65(2) of the Ordinance.

4.3 During the course of investigations, the Commissioner noted OHL's announcements to the public that it would:-

- (i) immediately discontinue the provision of customer data to third parties for marketing purposes; and

- (ii) take immediate steps to delete any non-essential personal data on record in the Octopus database. An independent auditor will thereafter be appointed to confirm that such non-essential personal data has been deleted and also reconfirm that personal data transferred to merchant partners had been returned to Octopus or deleted.

4.4 On deletion of Members' personal data, OHL confirmed to this Office that it is in the progress of identifying any personal data that are no longer accurate or necessary and will take into account the Commissioner's recommendations made in this report. Further, OHL confirmed it would continue to delete any "non-essential personal data" of those Members who would have elected to "opt-out" from receiving direct marketing material from ORL.

Repeated contraventions of OHL and ORL are unlikely

4.5 Pursuant to Section 50(1) of the Ordinance, the Commissioner may serve an enforcement notice on ORL and OHL if he is of the opinion that ORL and OHL are contravening the requirements of the Ordinance or have contravened the requirements of the Ordinance in circumstances that make it likely that the contraventions will continue or be repeated. In other words, an enforcement notice may not be served if continued or repeated contraventions of ORL and OHL are unlikely.

4.6 With regard to the contravening act or practice of ORL identified in the investigations, the Commissioner notes that:

- 4.6.1 On 25 July 2010, OHL publicly announced that it and all its subsidiaries would no longer participate in any further activities that require the provision of customer personal data to merchant partners for marketing purposes;

4.6.2 OHL publicly announced on 13 August 2010 that provision of customer data to merchant partners for marketing purposes had been terminated with effect from 25 July 2010, and the registration of new Members under the Program had been suspended pending the release of a new registration form. The new registration form has not been issued; and

4.6.3 In response to public criticism on OHL's sale of personal data, the Chairman of MTR Corporation Limited (OHL's major shareholder) told the media at the end of July 2010 that OCL "*should focus its core business on providing smart cards to customers as a convenient electronic means for payment, and not on the selling the personal data of its cardholders*".¹⁵

4.7 With regard to the disposal of Members' personal data having been shared with CIGNA, CPP, Cimigo, TNS and MIL under the Program, the Commissioner notes that:

4.7.1 The Chief Executive Officer of CIGNA told the Commissioner at the public hearing that the Members' personal data transferred to it under the Program would be purged within 90 days after receipt. OHL confirmed to the Commissioner that ORL had suspended all marketing activities with CIGNA and both of them were actively working on a formal cessation of their existing agreement;

4.7.2 CPP confirmed to the Commissioner at the public hearing that it would delete in three months Members' personal data previously transferred from ORL (except for the names of the Members which would be kept for six months in case of customer enquiries). OHL confirmed to the Commissioner that the cooperation between ORL and CPP had ceased, and

¹⁵ <http://app2.rthk.org.hk/pda/news/content.php?id=687574>

ORL had reached an understanding with CPP and were actively working on an early termination of their agreement;

4.7.3 OHL confirmed that, except for OCT and ORL, no other companies in the Octopus group had entered into any agreement with Cimigo. OCT and ORL have ceased cooperation with Cimigo on 21 March 2008 and 31 December 2008 respectively;

4.7.4 OHL confirmed to the Commissioner that the cooperation between ORL and TNS had ceased on 31 December 2008; and

4.7.5 OHL advised that the cooperation with MIL had ceased on 5 October 2007.

4.8 On 14 October 2010, ORL gave an undertaking (“**the Undertaking**”) to the Commissioner that it will take the following actions:-

(1) For registration of Members under the Program and in informing the Applicants of the matters under DPP1(3)(b)(i) of the Ordinance in writing (“**the Personal Information Collection Statement**”):

a. Use a layout that is designed to ensure that the Personal Information Collection Statement is easily readable to individuals of normal eyesight, taking into account factors like font size, spacing, use of appropriate highlights, underlining, keywords and contrasts;

b. If in the future personal data of the Applicants were to be shared with future business partners for monetary gains, explicitly inform this matter to the Applicants and, if in writing, specifically state it in the Personal Information

Collection Statement;

- c. Where personal data of the Applicants are to be transferred, the classes of the transferees should be specified by their distinctive features, such as “financial services companies” and “telecommunications service providers”, so as to give a reasonable degree of certainty as to whom the personal data will be transferred;
- (2) In the event that the personal data of the existing Members were to be shared in the future with any business partners under the Program for monetary gains, prescribed consent (as defined under section 2(3) of the Ordinance) to such use must be obtained from Members;
 - (3) Completely erase and destroy within 2 months from ORL’s data base and other records of (i) the Hong Kong Identity Card number or (if any) Passport/Birth Certificate number and (ii) the month and year of birth of the existing Members collected under the Program;
 - (4) Produce to the Commissioner within 3 months a certificate or report issued by an independent professional third party as may be approved by the Commissioner, certifying that the data have been completely erased and destroyed as directed in paragraph 4.8(3) above;
 - (5) To the extent that ORL has not already received the confirmations as indicated in sub-paragraphs (i), (ii), (iv) and (v) below, issue a written notice to each of the following parties within 7 days from the date of the Undertaking, demanding them to:
 - a. Completely erase and destroy within 2 months from the date of the written notice all personal data ORL has disclosed to

them for monetary gains under the Program (if personal data have not been erased and destroyed); and

- b. Where ORL considers appropriate, demanding them to produce to ORL a certificate or report issued by an independent professional third party certifying that the personal data referred to in paragraph 4.8(5)(a) above have been completely erased and destroyed:
 - i. CIGNA (confirmed by CIGNA as erased and destroyed);
 - ii. CPP (confirmed by CPP as erased and destroyed);
 - iii. TNS;
 - iv. MIL (confirmed by MIL as erased and destroyed);
 - v. Cimigo (confirmed by Cimigo as erased and destroyed); and

- (6) Provide the Commissioner with a true copy of each of the written notice issued or confirmations received under paragraph 4.8(5) above within 14 days from the date of the Undertaking.

4.9 Furthermore, OHL has passed a resolution on 13 October 2010 directing ORL to comply with the Undertaking.

4.10 In view of the matters presented in paragraphs 4.5 to 4.9, the Commissioner is of the opinion that repeated contraventions of DPP1(1), DPP1(3) and DPP3 on the part of OHL and ORL in similar circumstances are unlikely. Therefore, an enforcement notice will not be issued and served on OHL and ORL.

CHAPTER FIVE

COMMENTS AND RECOMMENDATIONS

5.1 The Commissioner is fully aware that the present investigations are of general public interest because they have implications which relate not only to the handling of personal data of more than two million people in Hong Kong, but also to the practice of many data users and associated parties involved in direct marketing of products and services. The Commissioner therefore considers it appropriate to set out in this report his comments and recommendations arising from these investigations for promoting compliance with the provisions of the Ordinance.

5.2 Whether there is a contravention of the requirements under the Ordinance must be decided on the facts of each case. However, the comments and recommendations on the collection and use of personal data in direct marketing recommended in this Chapter extend beyond mere remedies of contravention of the requirements under the Ordinance. Irregularities which do not amount to such contravention are also identified. Further, recommended practices for better personal data privacy protection are included. Hence the comments and recommendations are of wide and general application and data users are advised to take note and adopt them where appropriate while conducting direct marketing activities.

Direct Marketing

5.3 The Commissioner recognizes that direct marketing programs are normal business activities that enable consumers to obtain product or service information which may be of interest to them, and actual sale and purchase may conclude. The Commissioner has no intention to restrain or to curb direct marketing activities. If anything, he wishes to help the trade to be more customer-focused and user-friendly. In making his recommendations, therefore, he is mindful of the need to give practical guidance to data users on how to

comply with the requirements under the Ordinance in carrying out direct marketing activities, and the need to better protect the general public's data privacy rights.

5.4 The recommendations mentioned in this report will focus mainly on how consumers' personal data should be collected and transferred to unrelated third parties with the ultimate purpose of using them for direct marketing.

Position of data user vis-à-vis data subject

5.5 Octopus is a household name in Hong Kong. With an enormous number of service providers and a vast network of Octopus readers, the extensive smartcard payment system it provides is very heavily relied on by the average citizen for commuting on public transport and daily shopping. People place great trust on the system and expect from the Octopus management nothing less than good governance and a high standard of compliance with the law.

5.6 As far as compliance with the requirements under the Ordinance is concerned, the subject matter is the protection of individuals in relation to personal data. Compared with businesses and corporations, individuals stand at a relatively subservient position in its dealings with OHL/ORL. It is incumbent upon OHL/ORL not to exploit their dominant position vis-à-vis its customers in the collection and use of personal data. Any irregularities on their part could jeopardize their credibility and damage their reputation disproportionately.

Recommendation

- (1) OHL/ORL should be mindful of their dominant position vis-à-vis their customers, exercise great care in the collection and use of customers' personal data, and ensure that the requirements under the Ordinance are duly complied with.

Collection and use of personal data for direct marketing

5.7 The Program is clearly designed as a consumer rewards scheme whereby Members benefit from redemption of goods and services (Standard Benefits) as well as direct marketing offers (Promotional Benefits). The collection and use of personal data to serve these purposes are therefore proper.

5.8 The Commissioner notes that the Report on Reform of the Law Relating to the Protection of Personal Data (August 1994) supported the “opt-out” rather than the “opt-in” approach. He further notes that the direct marketers advocate strongly in favour of “opt-out” and this option is still very much the international practice. Under the Ordinance as it now stands, there is no requirement for “opt-in” at the data collection stage as long as the direct marketing purpose is the original or directly related purpose for which the data were to be used at the time of collection. However, the Commissioner considers that “opt-in” definitely affords better data privacy protection for individuals and seems to be in line with public expectation for strengthening regulation in this area.

5.9 It is relevant to note that “opt-out” at the stage of use of personal data is presently provided for in section 34 of the Ordinance whereby a data user has to inform the data subject of the latter’s right to “opt-out” the first time his personal data are used for direct marketing purposes. In this regard, Clauses 6.5(d) and 6.9 of the T&C is relevant in that it spells out Members’ right to request ORL not to use their personal data for direct marketing purposes and ORL’s obligation to comply with such requests at no cost to Members.

Recommendation

(2) In the coming months when the Government’s package of legislative proposals on amendments to the Ordinance will be discussed in the public, a serious debate on the subject of “opt-in” vis-à-vis “opt-out” should be promoted among the stakeholders so that a consensus view could be reached for due incorporation into the new legislative

amendments, if necessary.

Voluntary supply of personal data for marketing purposes during registration

5.10 The Commissioner notes that the Registration Form provides for the Applicant to supply, on a voluntary basis, personal data for marketing purpose. It was expressly stated in the form that personal data items 10 to 16 are voluntary and that they are collected in order to help ORL and the Business Partners to make carefully selected offers that will be of interest and value to Members.

5.11 Since a substantial proportion of the Applicants might elect to receive the Standard Benefits but not the Promotional Benefits, the design of the Registration Form could be improved to clearly inform the Applicants that they can indeed make such an election and to this end they need only provide limited specified personal data. The existing Registration Form does not expressly indicate that such election is feasible.

Recommendation

- (3) The Registration Form should be re-designed to communicate ORL's message to Members that in joining the Program, they may elect to receive only the Standard Benefits of redemption of goods and services. If the Applicant so elects, he should be clearly informed that only the personal data specified for enjoyment of the Standard Benefits are required.

No excessive collection of data

5.12 The Ordinance provides that only adequate but not excessive personal data are collected by a data user for a lawful purpose directly related to its

function or activity.

5.13 ORL claimed that collection of the following are required for customer authentication purpose:-

- Mobile and home/office telephone numbers
- Home address
- Hong Kong identity card number or passport/birth certificate number
- Month and year of birth

5.14 The Commissioner considers that the collection of the Hong Kong Identity Card number / passport number / birth certificate number, and month and year of birth was excessive for the purpose of customer authentication.

Recommendations

- (4) ORL should not collect excessive personal data. In particular, Hong Kong Identity Card number is sensitive information and extra care should be exercised to ensure its collection is necessary. The PI Code issued by the Commissioner should be followed.
- (5) Similarly, ORL should not collect the month and year of birth of individuals for authentication where the same purpose can be achieved by reference to other more widely-adopted contact data such as telephone numbers and home address.

Data subject to be informed of the purpose of use of personal data and classes of data transferees

5.15 A data user is required to take all reasonably practicable steps to explicitly inform the data subject on or before the collection of his personal data and among other things, the purpose of use of the data and the classes of

persons to whom the data may be transferred. It is recommended that the communication is done in writing by way of a Personal Information Collection Statement (“**PICS**”).

5.16 Whether all reasonably practical steps have been taken by a data user to inform a data subject of the PICS shall be considered in the light of all the relevant circumstances of the case concerned.

5.17 In this case, both the PICS (contained in Clause 6 of the T&C) and the Applicant’s declaration are printed in unreasonably small fonts on the Registration Form. They do not represent effective communication.

Recommendation

- (6) To ensure that a PICS is effectively communicated to the data subjects, it is necessary for data users to take into consideration the following factors:-
 - (a) whether the layout of the PICS (including the font size, spacing, underlining, use of appropriate highlights, key words and contrasts) has been designed so that the PICS is easily readable to individuals of normal eyesight;
 - (b) whether the PICS is presented in a conspicuous manner? (e.g. the PICS should be a stand-alone section and its contents should not be buried among the T&C for the provision of the data user’s services.)
 - (c) whether the languages used in the PICS is reader friendly? (e.g. the use of simple rather than difficult words and the avoidance of use of legal terms or convoluted phrases.)
 - (d) whether further assistance from the data user such as help desk or enquiry service is given to enable the data subject to understand the contents of the PICS?

The purpose of use and classes of data transferees

5.18 While the purpose of use of personal data may be defined in general or specific terms, the data transferees have to be specified by classes.

5.19 In the present case, the formulation of Clauses 6.3 and 6.4 of the T&C are important because they contain the Applicant's agreement to how their personal data supplied to ORL can be dealt with.

5.20 Under Clause 6.3 of the T&C, an Applicant agrees to let ORL use all his personal data for a range of different purposes including "as a source of information and data" for purposes loosely defined as "*other related purposes*".

5.21 For the purpose of Clause 6.3 of the T&C, an Applicant is deemed to have agreed under Clause 6.4 that ORL may transfer or disclose data held by ORL relating to the Applicant to "*any person*" who is under a duty of confidentiality to ORL including its subsidiaries, its affiliates and its business partners, whether within or outside Hong Kong.

5.22 In short, ORL has not provided Members with a reasonable degree of certainty as regards the classes of transferees of their personal data under the Program. As admitted by the Chief Executive Officer of OHL at the public hearing, it was entirely up to ORL to decide what personal data and to whom the data were to be transferred.

Recommendations

- (7) Data users should not define the purpose of use and class of data transferees in such liberal and vague terms that it would not be practicable for data subjects to ascertain with a reasonable degree of certainty how their personal data could be used and who could have the use of the data.

- (8) While a data user is only required to inform the data subject the purpose of collection in general terms rather than specific terms, it should refrain from using loosely defined terms such as “*other related purposes*” to cover direct marketing as a purpose of data collection.
- (9) On the other hand, a data user should define the class of data transferees by its distinctive features, such as “financial services companies”, “telecommunications service provider”, etc. Definitions couched in vague terms such as “*any person*” who is under a duty of confidentiality to ORL including its subsidiaries, its affiliates and its business partners, whether within or outside Hong Kong, should be avoided.

Sale of customers’ data for monetary gains

5.23 ORL entered into contracts with 5 Business Partners for the sharing of Members’ personal data. ORL selected the required customer data and received monetary gains from the Business Partners in reward for the data transfer. The transactions in essence were sale of personal data.

5.24 Although the sale of personal data by ORL is not prohibited by the Ordinance, it cannot be regarded as the original purpose of data collection or as a directly related purpose. The average Member would have expected the Program as a customer loyalty exercise but not as an arrangement for ORL to sell their personal data for monetary gains. The sale for profit is not stated in the T&C of the Program or in the oral testimony of the Chief Executive Officer of ORL as a purpose of data collection. As such, the Applicant’s signature on the Registration Form agreeing to the T&C cannot constitute his explicit consent to the sale of personal data and ORL has thus contravened DPP3 of the Ordinance.

Recommendation

- (10) If a data user intends to sell its customer data to third parties for monetary gains and this is not the original purpose or directly related purpose for which the data were to be used at the time of data collection, express and voluntary consent from the customers must be sought. The consent may be indicated by a signature to that effect or by ticking a box.

Extent of transfer of data for direct marketing

5.25 In the course of investigations, it was found that ORL not only provided names and contact telephone numbers to CIGNA but also supplied other information that does not seem to have direct relevance to the selling of insurance products, including Hong Kong Identity Card number, occupation and spending data. Not all personal data may be transferred for such purpose. Normally, the names and contact information of the customers should be adequate.

Recommendations

- (11) In cross-marketing, the transferor company should ensure that any customers' personal data transferred to the partner company are only for the purpose of carrying out the agreed cross-marketing activities. Typically, the data to be transferred should be confined to contact data, e.g. name, address and telephone number, enabling the partner company to approach the customer. There should be no transfer or disclosure of the customers' sensitive data such as credit card number and/or Hong Kong Identity Card number to the partner company, unless there are justifications based on direct relevance to the marketing purpose.

- (12) Upon the customers' agreement to purchase the services or products provided under the cross-marketing scheme, the partner company may seek data other than contact data directly from the customer. Alternatively, the customers' prescribed consent may be obtained for the transferor company's disclosure to the partner company of other personal data necessary for the transaction.
- (13) As a matter of good practice and to enhance the transparency of any planned cross-marketing scheme, the transferor company is advised to take steps to make prior announcement of such a scheme to its customers, e.g. by mailing to its customers information leaflets describing the nature and subject of the scheme, the identity and contact number of the partner company, whether any personal data of the customers will be transferred, the kind of data to be transferred, and any measures to prevent data disclosed from being misused by the partner company.

Control over the third parties

5.26 Before customers' personal data are transferred to third parties, the data users should take steps to ascertain that the level of data protection afforded by the third parties is adequate.

5.27 In this regard, the Commissioner notes from the agreements between ORL and the five Business Partners, namely CIGNA, CPP, Cimigo, MIL and TNS contain provisions relating to personal data protection, including imposing the following obligations on the Business Partners:-

- (1) use the customers' data solely for the purpose of the agreements;
- (2) keep the customers' data confidential;
- (3) take reasonable care to prevent unauthorized use or disclosure;
- (4) ensure the telemarketers were fit and proper in performing the role of making marketing calls; and

- (5) limit the access of customers' personal data to making direct marketing calls only.

5.28 The Commissioner further notes that ORL had conducted annual on-site inspections on CIGNA since 2006. According to copies of the reports submitted by OHL to the Commissioner, the inspections covered data access control, encryption of data and purging of data.

5.29 Notwithstanding the above proactive measures, the Commissioner finds it appropriate to recommend the following good practices for consideration of adoption by ORL and other data users engaged in similar business activities.

Recommendations

- (14) Data users who intend to transfer personal data to third parties for processing should conduct appropriate assessment of the third parties to ensure that they would provide adequate measures to protect the personal data transferred to them. Where appropriate, a privacy impact assessment by a professional third party should be considered.
- (15) For the contracts with the third parties, the following standard terms should be considered:
 - (a) that the third parties are prohibited from using or disclosing the personal data for purposes other than the agreed direct marketing activities;
 - (b) that a reasonable period be specified within which the third parties have to return the transferred personal data, including copies or reproductions thereof; alternatively, the customers' personal data shall be safely erased when the direct marketing activities are completed. It would be prudent to obtain a professional third party's verification on the safe erasure;

- (c) that the third parties are required to either confirm with the data user the accuracy of the mailing or call list, or to check with the data user the latest opt-out list before making any direct marketing approaches;
 - (d) where transfer of personal data outside Hong Kong is not permitted, it should be explicitly made known in the contract;
 - (e) that proper logs of direct marketing calls and other contacts shall be kept so that compliance check can be conducted by the data user;
 - (f) that appropriate security measures be put in place to protect the personal data from loss and unauthorized or accidental access and processing;
 - (g) that the third parties shall comply with the Ordinance and all applicable guidelines, codes of practices issued by the Commissioner and other relevant regulatory or professional bodies.
- (16) After the engagement of the third parties, data users should carry out regular compliance audits on them to ensure that the promised level of data protection measures is maintained.

Conduct in making direct marketing calls

5.30 It was revealed in the investigations that ORL and CIGNA had engaged in a “secondment” arrangement under Clause 4.7 of the Cooperation Agreement, which provides that “*CIGNA shall second Telemarketers to ORL for making the Marketing Calls for and on behalf of ORL at no cost to ORL.*” What the parties did in gist was that ORL would send a list of Members to

CIGNA, whose telemarketer would make direct marketing calls to the members of the Program “in the name of ORL”. In other words, they were authorized by ORL to represent themselves as ORL’s staff.

5.31 Under this arrangement, Members receiving the marketing calls were not aware that their personal data had already been transferred to CIGNA and they were in fact dealing with CIGNA’s staff. This arrangement had adversely affected Members’ right to object in a timely fashion to the data transfer from ORL and to the further collection of their personal data by CIGNA during the direct marketing process. In effect, Members of the Program were deceived. It was found that this “secondment” arrangement had ceased as from early July 2010.

Recommendation

- (17) ORL should not allow the Business Partners to represent themselves as ORL in making marketing approaches to ORL’s Members.

Transfer of personal data outside Hong Kong

5.32 At the public hearing, the Chief Executive Officer of OHL (also a director of ORL) confirmed that ORL did not intend that Members’ personal data be transferred outside Hong Kong. However, there is no contractual provision prohibiting such transfer in its agreements with the Business Partners.

Recommendation

- (18) Where a data user does not allow its transferees of data to further transfer the data outside Hong Kong, the data user should incorporate the prohibition in the agreement with the transferees.

Concluding Remarks

5.33 Sale of personal data by ORL for profits was not an isolated incident in Hong Kong. The practice has been adopted by business operators in other industries in conjunction with direct marketing activities. At the time of finalizing this Report, the Commissioner is still investigating into possible contravention of the DPPs under the Ordinance by four banks and three telecommunications operators in relation to the transfer of customers' personal data to third party business partners.

5.34 While ORL has ceased the unauthorized sale of personal data, the public has professed a violent distaste for its past conduct. There has been public demand for refund to Members by ORL the proceeds gained from the Program. Also, claims for compensation by some Members have been lodged with the Small Claims Tribunal under section 66 of the Ordinance. Further, there have been calls for criminalizing the sale of personal data by data users.

5.35 While the Commissioner has found contraventions of DPP1(1), DPP1(3) and DPP3 by OHL and ORL, there are severe restrictions as to what punitive actions the Commissioner can undertake as a follow up under the Ordinance. Contravention of a DPP by itself is not an offence. Instead, the Commissioner may remedy the breach by issuing an enforcement notice under section 50 of the Ordinance to direct the data user to take specified remedial steps within a specified period. The enforcement notice may only be served if the contravention is continuing or likely to be continued or repeated. Only if the data user contravenes the enforcement notice will it commit an offence under section 64(7) of the Ordinance, and is liable on conviction to a fine of \$50,000 and imprisonment for two years, and in the case of a continuing offence, to a daily penalty of \$1,000.

5.36 From a broader perspective, ORL's business practice has highlighted the inadequacies of the present provisions under the Ordinance and the rising public expectations to protect personal data privacy. In particular, tighter regulation of the data user's collection and use of personal data in conjunction

with direct marketing activities is called for. New thinking on the part of the stakeholders and greater community involvement in advocating personal data privacy rights are required.

Recommendation

(19) The Government will put forth a set of legislative proposals on amendments to the Ordinance later in 2010. The ensuing public discussion should aim to resolve, among other things, the following:-

(a) the choice between the “opt-in” and “opt-out” regimes in the collection and use of personal data for directing marketing purposes;

(The Commissioner is in favour of measures and controls moving in the direction of “Opt-in”.)

(b) whether and how the controls and penalties should be increased to ensure that data users will act according to the authorization given by data subjects;

(The Commissioner is in favour of greater controls and heavier penalties.)

(c) whether and how new legislative safeguards should be introduced to regulate sale of personal data for direct marketing purposes;

(The Commissioner is in favour of new legislative provisions to regulate such sale activities.)

(20) To further enhance personal data privacy protection, the Government is urged to reconsider the recommendations previously made by the Commissioner in response to the 2009 Consultative Document on Review of the Ordinance, which included:-

(a) strengthening the enforcement power of the Commissioner under the Ordinance; and

(b) providing legal assistance to aggrieved data subjects.

5.37 On the part of the Commissioner, pending the enactment of new legislative proposals, he will issue a guidance note on the collection and use of personal data in direct marketing. This will provide practical guidelines to assist practitioners to comply with the requirements of the Ordinance. It will also draw data users' attention to the recommended practices for personal data privacy protection. Further, the Commissioner will step up his efforts to organize publicity and public education programmes to promote understanding of personal data privacy protection by both data users and data subjects. In particular, workshops will be organized for direct marketers to facilitate their better understanding of the new guidance note.

八達通日貴登記表格 Octopus Rewards Registration Form

我的資料 My Information

(請以英文正楷填寫 Please fill in with BLOCK LETTERS)

(*請必須填寫 Required Fields)

Form with fields for Octopus Number, English Name, Chinese Name, ID Document Number, Gender, Birth Date, Email Address, Contact Number, Home Address, and District/Area.

我的其他資料 My Other Information

(以下資料將有助於我們的專員為你提供最佳服務及優惠 This will help us and Our Partners to make carefully selected offers that will be of interest and value to you)

Form with fields for Language Profound, Marital Status, Education Level, Occupation, Monthly Personal Income, Monthly Household Income, and Interests.

Form for Applicant Signature and Date, including a signature line and date field.

Form for Merchant use only, including fields for Merchant no., Retail code, and Date.

6.1 In order for you to be a member of the Programme, it is necessary for you to provide us with data to assist us in providing you with benefits. 6.2 If you are unable or unwilling to provide such correct data, we may be unable to provide you with our services. 6.3 You agree that all the personal information and data you provide to us will be used for the purposes of the Programme...

**Summary of contractual arrangements between OCL / ORL and six
Business Partners**

Transfer to AIA

- 1 On 3 July 2002, OCL entered into an agreement with AIU and AIA in relation to a marketing program of insurance products provided by AIU. Under the agreement, OCL was required to provide AIA with telemarketing list of certain holders of Personalized Octopus Cards based on information such as their age, number of transactions in the previous week.
- 2 The telemarketing list contained full name, mailing address, telemarketing test cell numbers (indicators of when the cardholders were acquired and numbers of transactions in the previous week), Hong Kong Identity Card number, reference number, mobile number and/or contact phone number, and date of birth of cardholders.
- 3 AIU shall pay an introduction fee to OCL in respect of its capacity as an introducer. The introduction fee was calculated based on gross premium collected on all successfully up-sold products by AIU, and such fee will continuously be payable to OCL as long as the up-sold policies remain in force.
- 4 According to the agreement, the marketing program commenced from 15 July 2002 to 15 September 2002.
- 5 OHL advised that 35,000 customers, of whom their names, mailing addresses, Hong Kong Identity Card numbers, telephone numbers and date of birth had been transferred to AIU / AIA.
- 6 OHL further advised that OCL had ceased the cooperation with AIU / AIA since 15 September 2002, and no other companies under it had entered

into any agreement with AIU / AIA involving transfer of Cardholders' and Members' personal data.

Transfer to CIGNA

- 7 During the period from 2002 to 2006, OCL had from time to time entered into agreements (“**the Agreements**”) with Cigna Worldwide Insurance Company (“**CWW**”), whereby OCL would provide personal data (including names, addresses, contact telephone numbers, data of birth and credit card numbers) of a specified number of Personalized Octopus Cardholders to CWW, who would on behalf of OCL make telemarketing calls to the Cardholders. OCL would be entitled to introduction fee, commission and/or bonuses.
- 8 The contractual relationship continued from 2006 to 2009 with OCT assuming the rights and obligations of OCL, and CIGNA assuming the rights and obligations of CWW under the Agreements.
- 9 Under the agreement between ORL and CIGNA dated 1 March 2009, ORL was under an obligation to provide CIGNA with a customer list of at least 750,000 customer count in each contract year. If ORL cannot provide CIGNA with the specified customer counts in any contract year, the annual minimum revenue guarantee paid to ORL by CIGNA shall be reduced. In consideration of the performance of ORL's obligations, including its obligation to provide the customer list, ORL was entitled to commission, performance bonus, persistency bonus, annual fee, customer relations management service fee, the annual minimum revenue guarantee and forward-paid marketing partnership incentive.
- 10 OHL confirmed that ORL had suspended all marketing activities with CIGNA and both of them are actively working on a formal cessation of agreement with CIGNA.

Transfer to Cimigo

- 11 From 2007 to 2008, OCT and ORL respectively entered into three and one agreement with Cimigo whereby OCT / ORL would select from the customer list of ORL and provide customer database to Cimigo, who would then select targeted candidate for OCT / ORL to contact and invite them to participate in surveys to be conducted by Cimigo. OCT / ORL would be entitled to a charge or a proportion of gross revenue generated from the sale of aggregated customer behavioural data to clients of Cimigo. OHL confirmed that respondents of the survey would also receive Reward Dollars.
- 12 OHL confirmed that, apart from OCT and ORL, no other companies under it had entered into any agreement with Cimigo. OCT and ORL have ceased cooperation with Cimigo on 21 March 2008 and 31 December 2008 respectively.
- 13 Under the agreement between ORL and Cimigo, ORL may demand Cimigo to return, destroy or delete the personal data disclosed to Cimigo.

Transfer to CPP

- 14 From 2004 to 2006, OCL maintained a contractual relationship with CPP, whereby OCL agreed to provide CPP with a call list containing personal data (including names, addresses, contact phone numbers, date of birth) of Cardholders from time to time for CPP to market the card protection insurance plan to Cardholders. OCL would be entitled to commission for the initial subscription and renewal of the insurance plan. This contractual relationship continued in 2006 with OCT assuming the rights and obligations of OCL under the agreement.
- 15 CPP entered into an agreement with ORL on 21 June 2010 under which ORL was entitled to various fees such as Issue Administration Fee, Annual Fee and set-up fee. According to the representative of CPP, promotional materials of CPP products and services were sent by ORL to

Members by emails. In the email, there was an electronic button labeled “*CLICK & EARN > Reward\$5*” under which there was this further statement: “*And let CPP representative introduce this card protection service to you!*” ORL would then compile and send to CPP a call list of those Members who have clicked this electronic button. CPP confirmed that personal data of around 7,224 Members had been transferred by ORL to CPP since June 2010. CPP would delete Members’ personal data (apart from the names of the Members which would be kept for six months in case of customer enquiries) in three months.

Transfer to MIL

- 16 Under the agreement between ORL and MIL dated 1 July 2007, ORL agreed to provide MIL with a call list containing at least 20,000 times of contact access to Members with their personal data such as their names, phone numbers and addresses. ORL shall charge MIL at the rate of HK\$1 per time of contact access based on the call list. Additionally, ORL was entitled to commission calculated based on the successful telesales hit rate, and a set-up fee.
- 17 Under their agreement, MIL shall ensure that telemarketers would forthwith return to ORL all data or to erase/destroy such data after making of the marketing calls to the Cardholders in accordance any reasonable instructions of ORL.

Transfer to TNS

- 18 On 7 May 2008, ORL entered into an agreement with TNS whereby they would cooperate in research initiatives. Under the agreement, ORL would select from its customer list and provide a customer database to TNS, who would then select targeted candidate for ORL to contact and invite them to participate in survey to be conducted by TNS. In consideration of ORL’s provision of the customer database, TNS would pay a fee to ORL. The agreement should expire on 31 December 2008.

- 19 Under the agreement between ORL and TNS, ORL may demand TNS to return, destroy or delete the personal data disclosed to TNS.