

Cookieless Era & Internet Privacy

Personal Data Privacy in the Digital Marketing World

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The information provided in this PowerPoint is for general reference only. It does not provide an exhaustive guide to the application of the Personal Data (Privacy) Ordinance ("the Ordinance"). The Privacy Commissioner for Personal Data ("the Commissioner") makes no express or implied warranties of accuracy or fitness for a particular purpose or use with respect to the information set out in this PowerPoint. The contents provided will not affect the exercise of the functions and powers conferred to the Commissioner under the Ordinance.

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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

Definition of “Personal 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



Six Data Protection Principles

1  收集目的及方式
COLLECTION PURPOSE & MEANS

4  保安措施
SECURITY

2  準確性、儲存及保留
ACCURACY & RETENTION

5  透明度
OPENNESS

3  使用
USE

6  查閱及更正
DATA ACCESS & CORRECTION

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What is “Direct Marketing Means”?



Addressed to specific persons by name



Calls to specific persons



NOT including unsolicited electronic messages and face-to-face promotion

Regulatory Regime of Direct Marketing

Intends to use personal data or provide personal data to another person for use in direct marketing :

- Provide data subjects with “**prescribed information**” and response channel through which the data subject **may elect to give consent**
- Notification should be **easily understandable**

Data User Notification



Data Subject Consent

Provision of Personal Data :

- Should be given **explicitly** and **voluntarily**
- “consent” includes an indication of “no objection”

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“Consent” includes an “indication of no objection”

Example of indicating no objection *generally*:

We intend to use your name, telephone number and address for direct marketing credit card and insurance products/services but we cannot so use your personal data without your consent.

Please sign at the end of this statement to indicate your agreement to such use. Should you find such use of your personal data not acceptable, please indicate your objection before signing by ticking the box below.

- The customer named objects to the proposed use of his/her personal data in direct marketing.

**Return the signed form but did not check the box
indicating objection = consent**

Signature of the customer

Name: xxx

Date: yyyy/mm/dd

Direct Marketing Requirements

Provision	Requirement
Section 35C	<p>Take specified action before using personal data in direct marketing:</p> <ul style="list-style-type: none">• Inform the data subject that the data user intends to so use the personal data, and may not so use the data unless the data user has received the data subject's consent• Provide the data subject with, in relation to the intended use, the kinds of personal data to be used and the classes of marketing subjects in relation to which the data is used• Provide the data subject with a channel through which the data subject may communicate his consent to the intended use
Section 35E	<p>Must not use personal data in direct marketing unless:</p> <ul style="list-style-type: none">• Receive the data subject's consent to the intended use of personal data• If the consent is given orally, the data user has sent a written confirmation within 14 days confirming (a) the date of receipt; (b) the permitted kinds of personal data; and (c) the permitted class of marketing subjects• The use is consistent with the data subject's consent
Section 35F	<p>When using a data subject's personal data in direct marketing for the first time, inform the data subject that the data user must, without charge, cease the use if the data subject so requires</p>
Section 35G	<p>A data subject may require data user to cease to use personal data in direct marketing</p>

Direct Marketing Requirements

Provision	Requirement
Section 35J	<p>Take specified action before providing personal data to another person for use by that person in direct marketing</p> <ul style="list-style-type: none">• Inform the data subject in writing that the data user intends to so provide the data, and may not so provide the data unless the data user has received the data subject's written consent• Provide the data subject with, in relation to the intended provision, written information on (i) if the data is to be provide for gain, that the data is to be so provided; (ii) the kinds of personal data to be provided; (iii) the classes of persons to which the data is to be provided; and (iv) the classes of marketing subjects in relation to which the data is to be used• Provide the data subject with a channel through which the data subject may communicate his consent to the intended provision in writing
Section 35K	<p>Must not provide personal data to another person for use by that person in direct marketing unless:</p> <ul style="list-style-type: none">• Receive the data subject's written consent to the intended provision of personal data• If the data is provide for gain, the intention to so provide was specified in the information under section 35J(2)(b)(i)• The provision is consistent with the data subject's consent
Section 35L	<p>A data subject may require data user to cease to provide personal data for use in direct marketing</p>

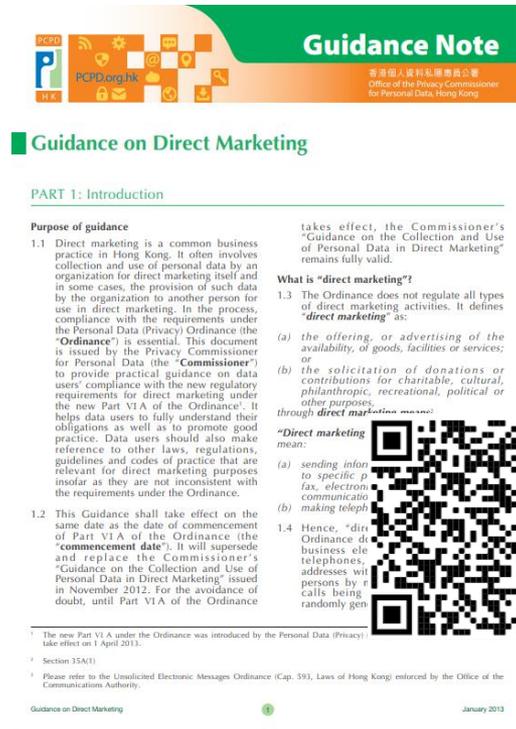
Penalties for Non-Compliance

	Maximum Fine (HK\$)	Maximum Imprisonment
Non-Compliance	500,000	3 years
Non-Compliance if the personal data is provided to third party for its use in direct marketing in exchange for gain	1,000,000	5 years



Guidance to Data Users

- **Guidance on Direct Marketing:** explaining the requirements under the regime and providing practical guidance to data users.
- **Professional Workshop:** to familiarise organisations with the new provisions and compliance measures.



The image shows the cover of a 'Guidance Note' from the Office of the Privacy Commissioner for Personal Data, Hong Kong. The title is 'Guidance on Direct Marketing'. It is divided into 'PART 1: Introduction'. The text discusses the 'Purpose of guidance' and 'Direct marketing' definitions. A QR code is present on the right side. At the bottom, there are footnotes and a date 'January 2013'.

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Guidance Note
香港個人資料私隱專員公署
Office of the Privacy Commissioner
for Personal Data, Hong Kong

Guidance on Direct Marketing

PART 1: Introduction

Purpose of guidance

1.1 Direct marketing is a common business practice in Hong Kong. It often involves collection and use of personal data by an organization for direct marketing itself and in some cases, the provision of such data by the organization to another person for use in direct marketing. In the process, compliance with the requirements under the Personal Data (Privacy) Ordinance (the "Ordinance") is essential. This document is issued by the Privacy Commissioner for Personal Data (the "Commissioner") to provide practical guidance on data users' compliance with the new regulatory requirements for direct marketing under the new Part VIA of the Ordinance¹. It helps data users to fully understand their obligations as well as to promote good practice. Data users should also make reference to other laws, regulations, guidelines and codes of practice that are relevant for direct marketing purposes insofar as they are not inconsistent with the requirements under the Ordinance.

1.2 This Guidance shall take effect on the same date as the date of commencement of Part VIA of the Ordinance (the "commencement date"). It will supersede and replace the Commissioner's "Guidance on the Collection and Use of Personal Data in Direct Marketing" issued in November 2012. For the avoidance of doubt, until Part VIA of the Ordinance takes effect, the Commissioner's "Guidance on the Collection and Use of Personal Data in Direct Marketing" remains fully valid.

What is "direct marketing"?

1.3 The Ordinance does not regulate all types of direct marketing activities. It defines "direct marketing" as:

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

through direct marketing means.

"Direct marketing" means:

- (a) sending information to specific persons by fax, electronic communication or other means;
- (b) making telephone calls to specific persons.

1.4 Hence, "direct marketing" includes direct business to business electronic mail, direct business to business telephones, addresses with personal data, addresses with personal data being calls being randomly generated.

¹ The new Part VIA under the Ordinance was introduced by the Personal Data (Privacy) Ordinance (Cap. 419) and took effect on 1 April 2013.

² Section 35A(1).

³ Please refer to the Unsolicited Electronic Messages Ordinance (Cap. 593), Laws of Hong Kong enforced by the Office of the Communications Authority.

Guidance on Direct Marketing 1 January 2013

Direct Marketing – Reminder

- Consent cannot be inferred from the data subject's non-response. In other words, silence does not constitute consent (Provide a check-box for customers to indicate agreement or no objection to the use of personal data for promotion of products and services)
- Data users are reminded NOT to design a service application form in such a way that renders it impracticable for its customers to refuse the use of their personal data for direct marketing purposes (i.e. avoid bundled consent)

Direct Marketing – Reminder

- Data users should have standing procedures for its staff to follow in regard to accessing and updating the Opt-Out List and complying with the data subjects' opt-out requirements
- Data users should take steps to avoid sending direct marketing materials to opted- out customers by automatic means

Thank you!



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Protect, Respect Personal Data Privacy

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