



Outsourcing the Processing of Personal Data to Data Processors

Introduction

The trend of outsourcing and entrusting personal data processing work by data users to their agents is increasingly common. Personal data leakage incidents sometimes occur due to insufficient steps being taken by the data processors to protect the personal data entrusted to them. This may cause substantial and irrecoverable damage to the affected data subjects. The Personal Data (Privacy) Ordinance requires a data user to take all reasonably practicable steps to safeguard the security of personal data held by it and where personal data is entrusted to a data processor, a data user is responsible for any act done by the data processor.

The Personal Data (Privacy) (Amendment) Ordinance 2012 provides enhanced protection in this respect by introducing, with effect from 1 October 2012, additional obligations on data users to use contractual or other means to monitor their data processors' compliance with data protection requirements. This information leaflet provides information on the data users' new obligations and the recommended means of compliance with the requirements.

The meaning of "data processor"

The statutory obligations of data users arise when they engage data processors to process personal data on their behalf, whether within or outside Hong Kong. The term "data processor" is defined to mean "*a person who (a) processes personal data on behalf of another person; and (b) does not process the data for any of the person's own purposes*".

With the wide meaning of the term, the scope of coverage of data processor is not limited to providers of IT processing. It also includes other contractors engaged to process personal data on behalf of the data user. For example, where an organization engages a business services company to administer its employee payroll function, the business services company will be processing information about the organization's employees on its behalf, and hence is a data processor. Where an organization engages a marketing company to carry out customer opinion survey, the marketing company will be processing customers' information on behalf of the organization, and hence is also a data processor. Other examples of data processors include service providers engaged to input personal data to computer systems and contractors engaged to shred confidential documents which contain personal data.

Obligations of data users

If a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user's behalf, the data user must adopt contractual or other means to prevent any personal data transferred to the data processor from being kept longer than is necessary for processing of the data (**DPP 2(3)**).

If a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user's behalf, the data user must adopt contractual or other means to prevent unauthorized or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing (**DPP4(2)**).