



Hong Kong's Personal Data law now mostly in force

Hong Kong's Personal Data (Privacy) Ordinance (PL&B Dec. '95 p.2, Jan. '96 p.20), was adopted in August 1995 and entered into force on 20th December 1996. The law covers both manual and automated data and applies to both the public and private sectors.

The two exceptions are the provisions on transborder data flows and data matching. The Secretary for Home Affairs took the decision to delay the implementation of these two provisions of the law.

The Privacy Commissioner for Personal Data, Stephen Lau, started his duties on August 1st 1996 and bring to his job an understanding of business needs, having previously served as managing director of the Asia office of Electronic Data Systems. In his first months, he has established his office aided by a small but expert staff, including his deputy, Robin McLeish, and Mark Berthold, his legal advisor, both of whom had worked on preparing the new law when serving in Hong Kong's Home Affairs Branch and Law Reform Commission respectively.

Data matching

The ordinance's provisions on data matching will enter into force some time later this year. So far, the Privacy Commissioner has received 12 applications from public sector bodies and one application from a private sector company for his consent to data matching exercises. The Privacy Commissioner issued a fact sheet in February entitled: *Matching Procedure: Some Common Questions*.

Transborder data flows

The provisions on transborder data flows are the subject of a fact sheet issued in the first week of May. The fact sheet is entitled: *Transfer of Personal Data Outside Hong Kong: Some*

Common Questions. It explains the Privacy Commissioner's policy and includes a model contract adapted from the Council of Europe version.

Consumer Credit and Personal Identifiers

The Privacy Commissioner published his first code of practice on consumer credit reference services in April. It is now the subject of a public consultation. The second code of practice, on personal identifiers, is currently being drafted, and is due to be published later this year.

The three investigators employed at the Privacy Commissioners' office have been kept busy handling the 70 complaints and 3,200 enquiries which the office has received so far.

The Privacy Commissioner has published further fact sheets on: complying with the data protection principles; compliance with data access and correction requests; explaining privacy rights; and human resources management.

As Hong Kong moves steadily toward the date of its return to Chinese rule on July 1st this year, the attitude of the Chinese government becomes increasingly important. So far, the only comment from the Chinese government is that it intends to repeal Section 3 (2) of the ordinance which gives it precedence over other laws. The common law rules on statutory interpretation will, however, result in the ordinance continuing to prevail over earlier inconsistent legislation.

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Workshop on Hong Kong's Personal Data (Privacy) Ordinance

Your best way to understand the provisions of Hong Kong's new law and to find out how it is working, in practice, is to attend the *Privacy Laws & Business* workshop taking place on August 21st in London. The speaker will be Mark Berthold, who has been legal advisor to Hong Kong's Privacy Commissioner for Personal Data and who has written a book, *Data Privacy in Hong Kong*, to be published by FT Law & Tax, in July this year. For further information, please contact the *Privacy Laws & Business* office.