

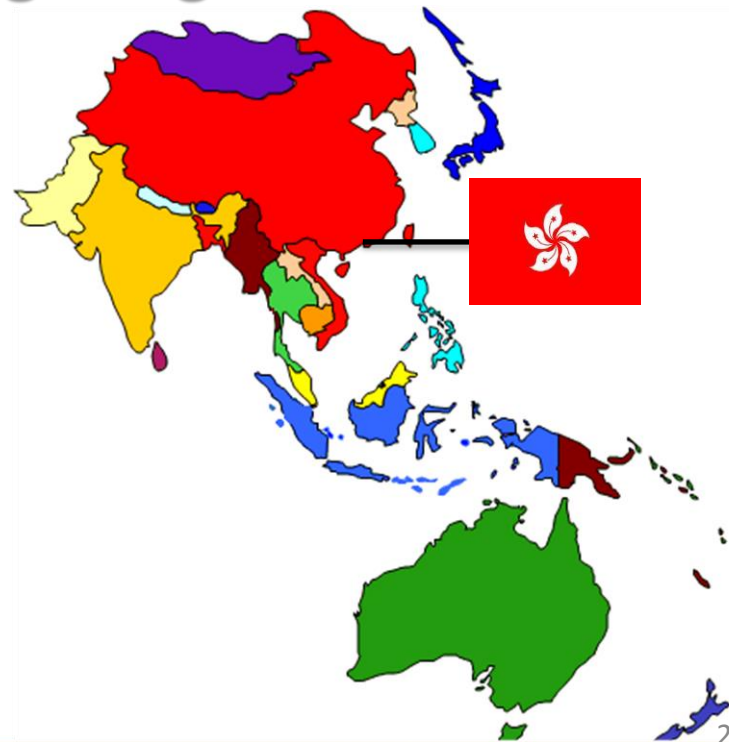
**American Bar Association
67th Antitrust Law Spring Meeting 2019
28 March 2019**

Grooving Privacy Evolution with Law Reform and Data Ethics

**Stephen Kai-yi Wong, Barrister
Privacy Commissioner for Personal Data, Hong Kong, China**

Personal Data (Privacy) Ordinance Cap 486, Laws of Hong Kong

- Enacted in 1995
- First comprehensive privacy law in the region
- Internationally agreed data protection standards, referenced to:
 - 1980 OECD Privacy Guidelines
 - 1995 EU Data Protection Directive



Personal Data (Privacy) Ordinance Cap 486, Laws of Hong Kong

Created the Privacy Commissioner for Personal Data

A statutory authority independent of the government

Regulates both the private and public sectors, including the government
Core functions:

- **Education & Promotion**
- **Enforcement**
- **Policy, Research and Advice on Law Reform**
- **International liaison**

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Hong Kong - Smart City

“Hong Kong Smart City Blueprint”

- **policy objectives to pursue smart city development by making use of innovation and technology**
- **encouraging open data and using data analytics to improve public services**



Challenges of the Digital Revolution

Ubiquitous collection
of data

Unpredictability in
use and transfer

Challenges global data
privacy frameworks
based on 'notice' and
'consent'

Cyber threats, attacks
and resilience

Challenges of the Digital Revolution

The challenge for regulator:

- Facilitate the innovative use of data within the legal and ethical frameworks
- Minimise the privacy risks, creating healthy synergy with economic growth

Regulatory Development in response to Digital Revolution

OECD Guidelines 1980

- Provided an international privacy framework
- 8 fundamental principles – now reflected in global privacy laws
- Updated in 2013 to introduce, amongst others:
 - data breach notification
 - privacy management programme
 - global interoperability

Regulatory Development in response to Digital Revolution

APEC Framework

- First adopted in 2005 by APEC
- Similar to 1980 OECD Principles
- To promote e-commerce in Asia-Pacific region
- Updated in 2015 – to draw upon concepts introduced into the OECD Guidelines 2013

Regulatory Development in response to Digital Revolution

1st Generation

1980 OECD Privacy Principles

– international privacy framework, in response to development in automatic data processing

2nd Generation

1995 EU Data Protection Directive

– model privacy concepts for EU national laws

3rd Generation

2016 GDPR

– 28 EU national privacy laws harmonised into one
– addresses challenges of rapid technological developments & globalisation

GDPR Main Objectives

One set of rules for all companies operating in the EU

People have more **control** over their personal data

Businesses benefit from a **level playing field**

GDPR – Main Objectives

*The GDPR gives consumers more **control** over their data. ... But arguably the biggest change is around **accountability**. ... The GDPR mandates organisations to put into place comprehensive but proportionate **governance** measures.*

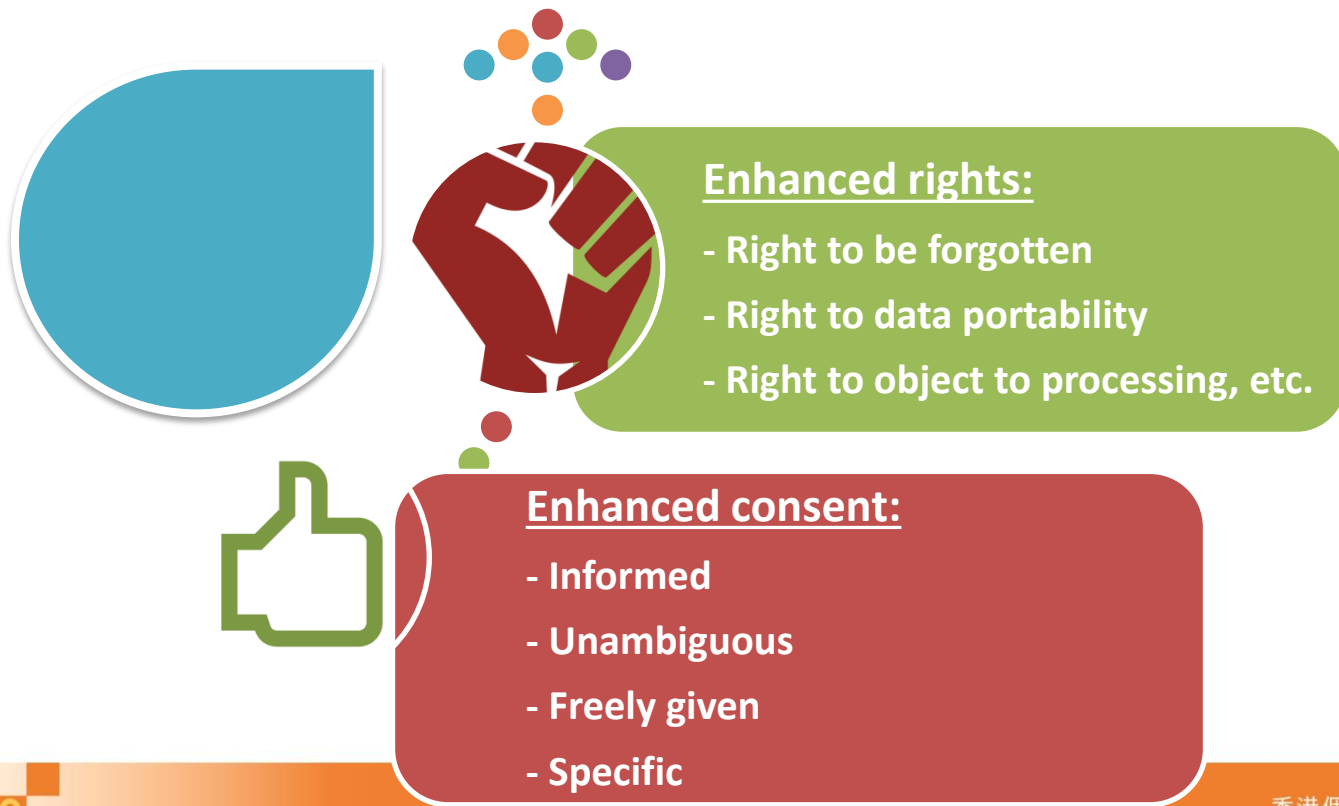
Elizabeth Denham,
Information Commissioner of the UK

Source:

<https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2017/01/gdpr-and-accountability/>

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GDPR - Return of control back to individuals



GDPR

- Accountability

Measures to ensure compliance
[Art. 24]

Data protection by design and by default
[Art. 25]

Data Protection Impact Assessment
[Art. 35]

Data Protection Officer
[Art. 37]

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Recent Regulatory Development in Asia

The mainland of China

- **Slow-starter due to a different traditional culture on privacy**
- **Fast catching up – in view of economic reform and urbanisation in 21st Century**
- **No omnibus privacy law yet**
 - **privacy regulation is scattered over various sets of rules and regulations**

Privacy regulation is scattered over various sets of rules and regulations in the mainland of China

Law on the Protection of Consumer Rights and Interests
[2013 revised]

Cybersecurity Law
[1 June 2017 implemented]

“Measures for Data Cross-Border Transfer Security Assessment”
[2017 Draft]

“Personal Information Security Specification”
[1 May 2018 implemented]

General Rules of the Civil Law
[2017 revised]

“Guidelines for Data Cross-Border Transfer Security Assessment”
[2017 Draft]

Recent Regulatory Development in Asia

The mainland of China

- **The Personal Information Protection Law under Category 1 on legislative agenda of the Standing Committee of the National People's Congress**
- **That means:**
 - **conditions for legislation are mature**
 - **bill will likely be deliberated within the current 5-year term of the Standing Committee**

Recent Regulatory Development in Asia

Macao, China

- **Personal Data Protection Act (effective in 2006)**
 - Modelled on the Portuguese data protection regime, similar to 1995 EU Data Protection Directive
- **Cybersecurity Law (operational in mid-2019), applies to-**
 - public sectors' networks and data systems; and
 - private entities that operate critical infrastructures (e.g. transportation, telecommunication, health, banking, electricity)

Recent Regulatory Development in Asia

Singapore

- Personal Data Protection Act (enacted 2012)
- Data Protection Trust Mark (Jan 2019)

The Philippines

- Data Privacy Act (effective 2016)
- DPO Accountability, Compliance, and Ethics Programme (Dec 2018)

Korea

- One of the strictest data protection law in the world
- New Personal Information Protection Act submitted to National Assembly

Recent Regulatory Development in Asia

Japan

- Act on the Protection of Personal Information (amended 2015)
- EU-Japan mutual adequacy decisions (adopted Jan 2019)

India

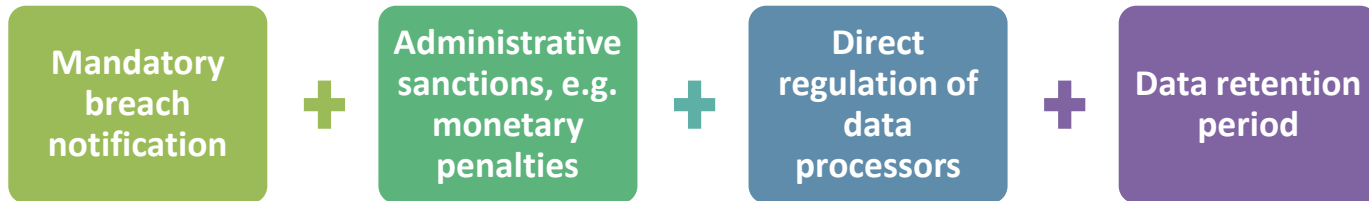
- Supreme Court ruled in favour of the right to privacy, as guaranteed under the Constitution (2017)
- Draft Personal Data Protection Bill (released Jul 2018)

NZ

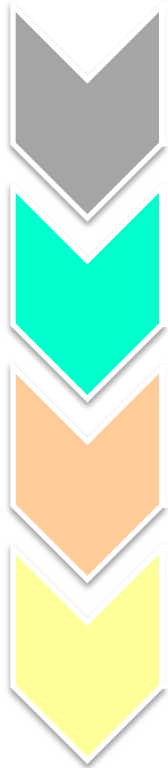
- New Privacy Bill 2018 before Parliament; to replace the current Privacy Act 1993

Review of the Hong Kong Privacy Legislation

- Last reviewed: 2009-2012
- Balancing the protection of privacy against the free flow of information and other freedoms
- Areas of higher priority:



Ethics as a Bridge between Law and Expectation



- Rapid technological development and evolution of business models vs. legislation and regulatory reform
- Public expectation forever increasing
- How to bridge the gap?
- Data Ethics



Data Governance & Accountability: Privacy Management Programme (PMP)



Effective management of personal data



Minimisation of privacy risks



Effective handling of data breach incidents



Demonstrate compliance and accountability

<https://www.pcpd.org.hk/pmp/index.html>



PMP – Main Components



1. Organisational Commitment

1.1 Buy-in from the Top

1.2 Appointment of Data Protection Officer/
Establishment of Data Protection Office

1.3 Establishment of Reporting Mechanisms



2. Programme Controls

2.1 Personal Data Inventory

2.2 Internal Policies on Personal Data Handling

2.3 Risk Assessment Tools

2.4 Training, Education and Promotion

2.5 Handling of Data Breach Incident

2.6 Data Processor Management

2.7 Communication



3. Ongoing Assessment and Revision

3.1 Development of an Oversight and Review Plan

3.2 Assessment and Revision of Programme Controls

From Compliance to Accountability & Data Ethics

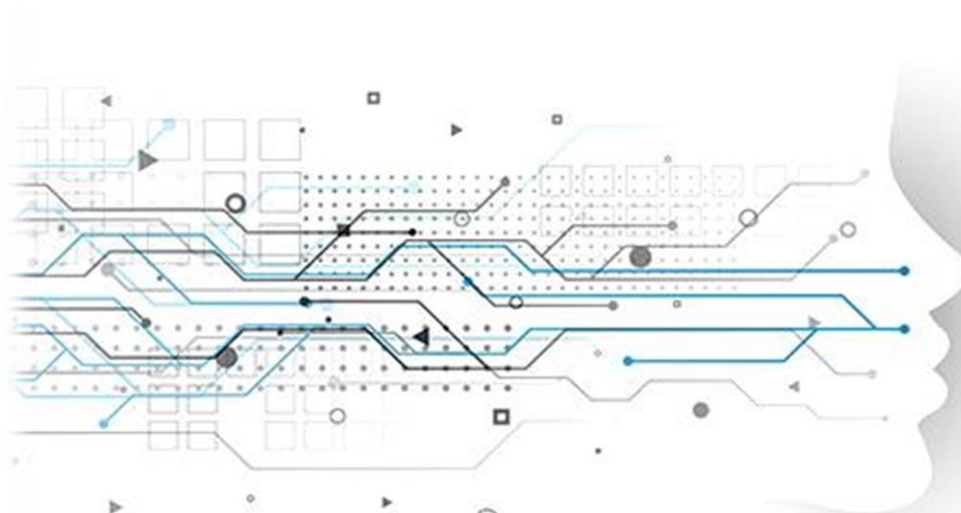
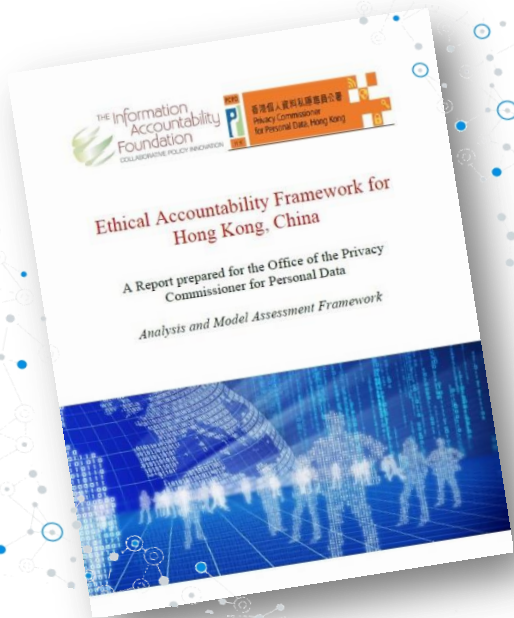
Data Ethics & Trust



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“Ethical Accountability Framework for Hong Kong China”

REPORT OF LEGITIMACY OF DATA PROCESSING PROJECT

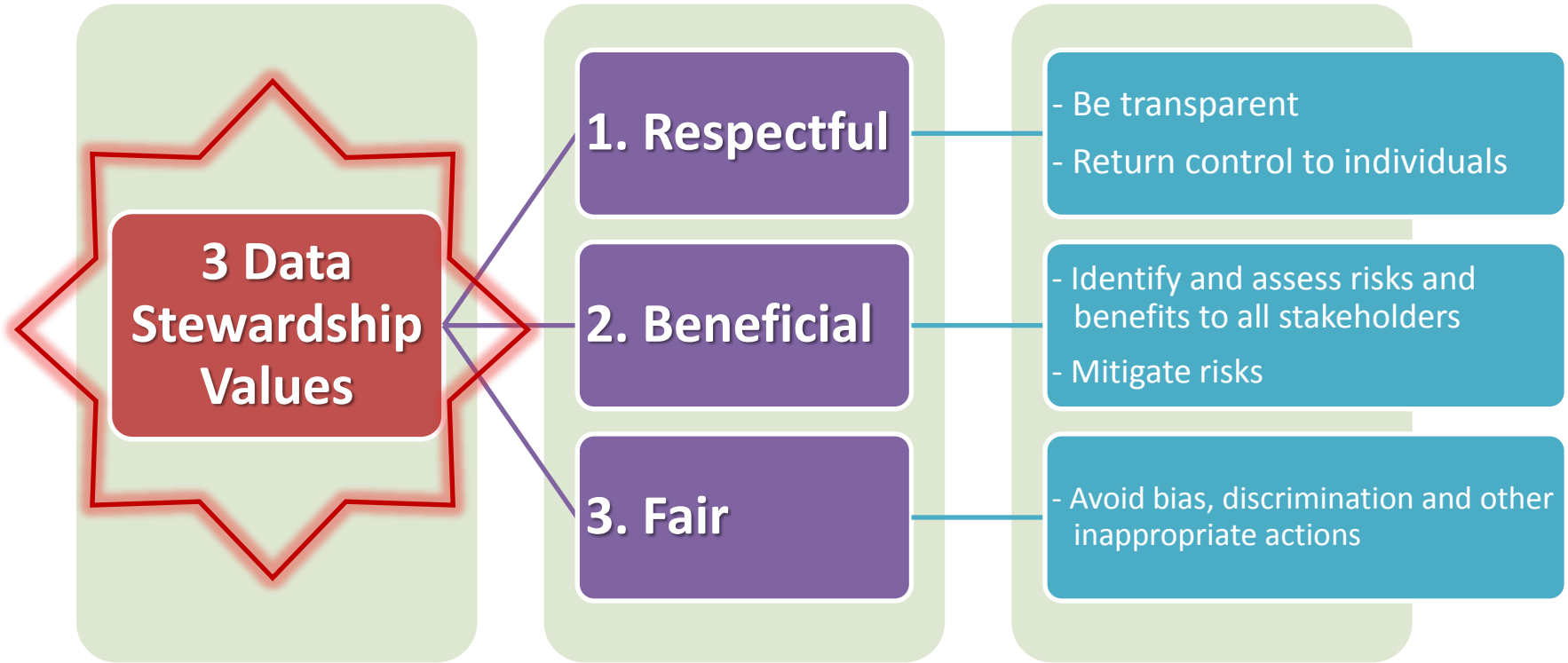


(Published on 24 October 2018)

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Multi-stakeholder Approach: Three Core Values of Data Ethics



Data Ethics - Implementation

Think, plan and execute with multi-stakeholders' interests

Get data management on a cradle-to-grave basis in an institutional system and process

Review the system and process regularly



Data Ethics - Implementation

Step 1: Analyse the business objective and purpose of the data processing activity

Step 2: Assess the nature, source, accuracy and governance of the data

Step 3: Conduct impact assessment, i.e. risks and benefits to the individuals, the society and the organisation itself

Step 4: Balance between expected benefits and the mitigated risks to all stakeholders

Privacy
by
Design



Ethics
by
Design

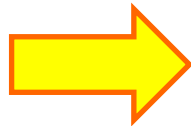
PCPD's Roles – Enforcer + Educator + Facilitator

PCPD's Strategic Focus

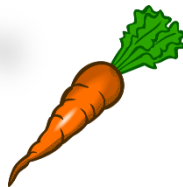
Fair Enforcement



Engaging



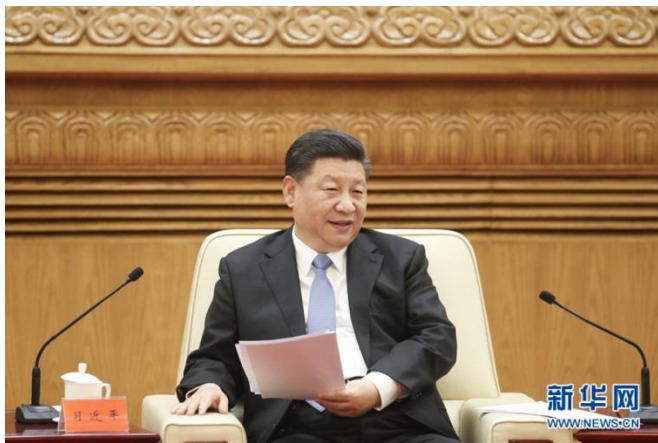
Incentivising



Privacy-friendly Culture

Unique & Irreplaceable Attributes of HK

*“In the country’s reform and opening in the new era, Hong Kong and Macao still possess special, **unique and irreplaceable attributes.**”*



Xi Jinping, President of China

Speech at the meeting with Hong Kong delegation
in the Celebration of the 40th Anniversary
of the Reform and Opening Up of the Country
12 November 2018

Unique & Irreplaceable Attributes of HK

*“Hong Kong ... has **many unique attributes** ... for instance, free and open economy, efficient business environment, advanced professional services sector, well-established infrastructure and facilities, internationally recognised legal system, **free flow of information** and large supply of quality professionals ...”*

Mr ZHANG Dejiang

Chairman of the Standing Committee of the
National People's Congress of the PRC
Keynote Speech,
Belt and Road Summit, 18 May 2016



Unique & Irreplaceable Attributes of HK

Free flow of information



Comprehensive data protection law
*(i.e. the Personal Data (Privacy) Ordinance
(Cap. 486, Laws of Hong Kong))*

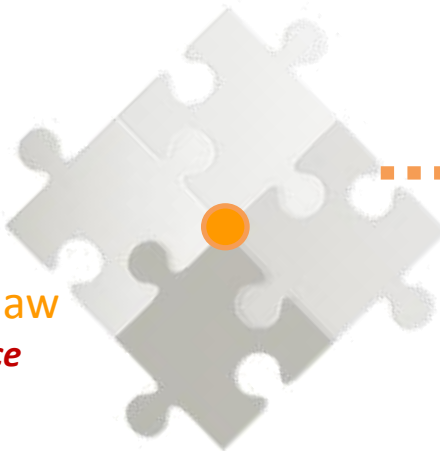


Common law system
and rule of law

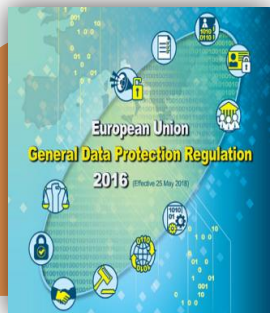
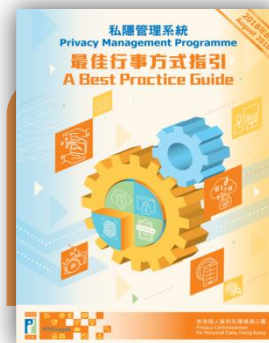
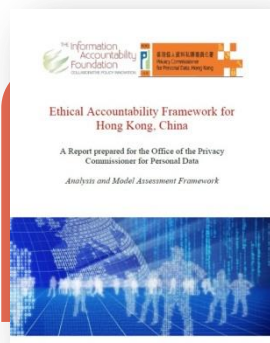
*(Ranked #16 out of 126 jurisdictions
in Rule of Law Index 2019, higher than the USA)*



The only region in China with
English as one of the official
languages



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