

Luohan Academy
Conference on Privacy Protection and Data Governance
18-20 March 2019 | Hangzhou

Hong Kong's Unique and Irreplaceable Attributes – Free Flow of Information and Personal Data Privacy Protection

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Privacy Commissioner for Personal Data, Hong Kong

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Privacy Commissioner
for Personal Data, Hong Kong

Case 1



FELLOW KIDS

FTC Slams TikTok With Record Fine For Spying on Pre-Teens

"This record penalty should be a reminder to all online services and websites that target children."

Dan Robitzski | February 26th 2019



Joe Scarnici/Getty Images

Source: Futurism; Feb 2019

Source: The Verge; Feb 2019

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Reported findings by FTC

Illegally collected personal information from children (i.e. no parental consent for children under 13)

Failed to notify parents about the app's collection and use of personal information from users under 13

User accounts were public by default (hence children's profile bio, username, picture, and videos could be seen by other users)

Implications
of **Tik Tok**
case under
**HK's Personal
Data
(Privacy)
Ordinance**

Unfair collection of personal data [*DPP 1(2)*]

Inadequate data security [*DPP 4*]

Case 2

Qunar.com and China Eastern Airlines ordered by court to apologise after leaking a customer's personal information to fraudster



A customer bought a ticket from China Eastern via Qunar.com

The customer received a call from a fraudster, alleging that his flight was cancelled

The customer sued China Eastern and Qunar for leaking his information, and demanded for damages and apology. Both companies denied any responsibility.

First Intermediate Court of Beijing held:

- wrong to require the plaintiff to prove the source of the personal information obtained by the fraudster
- on balance of probabilities, China Eastern and Qunar were responsible
- China Eastern and Qunar had to apologise
- No damages awarded to the customer as he could not prove any injury

Key requirements under Hong Kong's Personal Data Privacy Ordinance, Cap. 486, Laws of Hong Kong (PDPO)

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6 保障資料原則 Data Protection Principles

1 收集目的及方式 Collection Purpose & Means



資料使用者須以合法和公平的方式，收集他人的個人資料，其目的應直接與其職能或活動有關。

須以切實可行的方法告知資料當事人收集其個人資料的目的，以及資料可能會被轉移給哪類人士。

收集的資料是有實際需要的，而不超乎速度。

Personal data must be collected in a lawful and fair way, for a purpose directly related to a function/activity of the data user.

All practicable steps shall be taken to notify the data subjects of the purpose of data collection, and the classes of persons to whom the data may be transferred.

Data collected should be necessary but not excessive.

2 準確性、儲存及保留 Accuracy & Retention



資料使用者須採取切實可行的步驟以確保持有的個人資料準確無誤，而資料的保留時間不應超過達成原來目的實際所需。

Practicable steps shall be taken to ensure personal data is accurate and not kept longer than is necessary to fulfil the purpose for which it is used.

3 使用 Use



個人資料只限用於收集時述明的目的或直接相關的目的，除非得到資料當事人自願和明確的同意。

Personal data is used for the purpose for which the data is collected or for a directly related purpose, unless voluntary and explicit consent is obtained from the data subject.

4 保安措施 Security



資料使用者須採取切實可行的步驟，保障個人資料不會未經授權或意外地被查閱、處理、刪除、喪失或使用。

A data user needs to take practical steps to safeguard personal data from unauthorised or accidental access, processing, erasure, loss or use.

5 透明度 Openness



資料使用者須採取切實可行的步驟來公開其處理個人資料的政策和行事方式，並交代其持有的個人資料類別和用途。

A data user must take practicable steps to make personal data policies and practices known to the public regarding the types of personal data it holds and how the data is used.

6 查閱及更正 Data Access & Correction



資料當事人有權要求查閱其個人資料；若發現有關個人資料不準確，有權要求更正。

A data subject must be given access to his personal data and to make corrections where the data is inaccurate.

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Direct Marketing Requirements

- **Direct marketing activities** under the Ordinance include such activities made to **specific persons** by mail, fax, email and phone
- Face-to-face marketing is not covered

Provides personal data

Data User Notification

Data Subject Consent



Intends to use or provide personal data to others for direct marketing

Provide “prescribed information” and response channel for data subjects to elect whether to give consent
Notification must be easily understandable

Consent should be given explicitly and voluntarily
“Consent” includes an indication of “no objection”

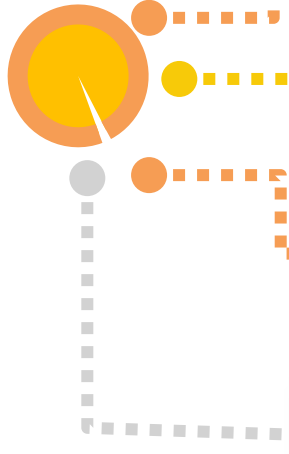


Direct Marketing Requirements

- Data user must comply with the data subject's **opt-out request** without charge [section 35G]
- **Criminal sanctions** apply if data user fails to comply with requirements of notification, consent and opt-out requests



**Privacy
Risks of
Fintech**



Collection and use of personal data without notice or meaningful consent of the users

Use of personal data in unfair or discriminatory ways

Lack of effective means to erase or rectify obsolete or inaccurate personal data

Data security

Obscurity of the identities of data users and data processors

Vigilance for Users of Fintech

1

Carefully read the privacy policies

3

Critically assess requests for personal data and review privacy settings

2

Operate the application softwares of Fintech under a safe environment

4

Monitor account activities regularly

Recommended Good Practices for Providers/Operators of Fintech

Privacy Impact Assessment and adopt Privacy by Design

Transparency

Clear and genuine options to users

Monitor data processors

Security of data

Minimum personal data collection and retention

Accuracy of data and reliability of algorithms

Reality (and danger) of the digital economy**:

- Enterprises collect *enormous amount of data* from individuals
- Majority of the data is *controlled by a small group* of enterprises
- *Ownership* of data is not clear in laws



**Chen Zhimin, former Vice-Minister, Ministry of Public Security

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No matter...

Who should own your personal data?



... trust is indispensable.

**Our customers' trust
means everything to us.
We spent decades
working to earn that
TRUST.**

Tim Cook, 2015



***Our data is being
weaponised against us.***

Tim Cook, 2018



Trust is the new gold.

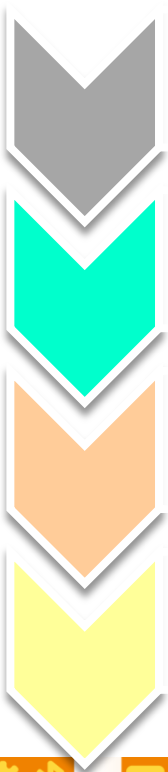
Andrea Jelinek
Chair of European Data Protection Board
2018



Data Ethics & Trust



Ethics as a Bridge between Law and Expectation



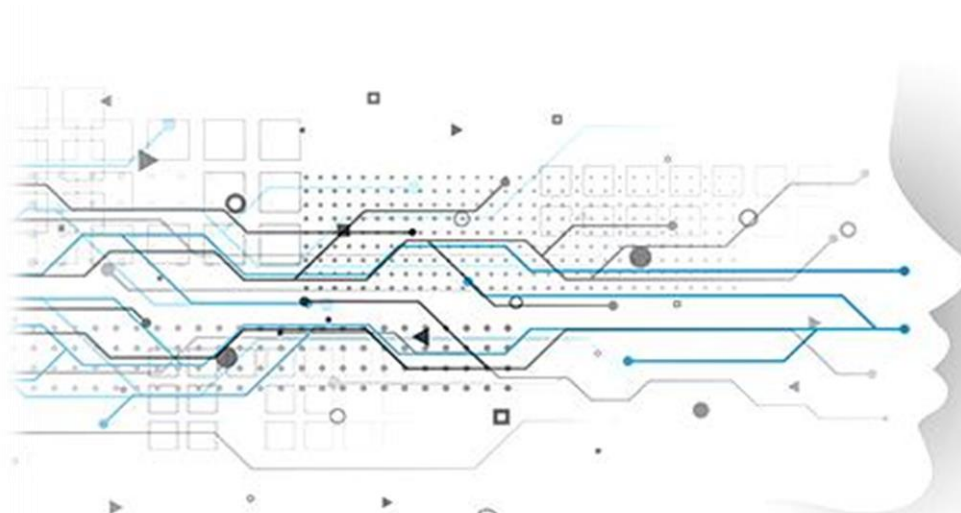
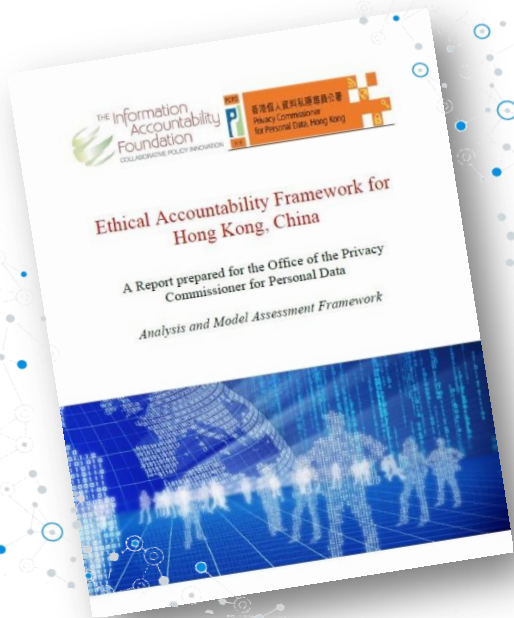
- Rapid technological development and evolution of business models vs. legislation and regulatory reform
- Public expectation forever increasing
- How to bridge the gap?
- Data Ethics



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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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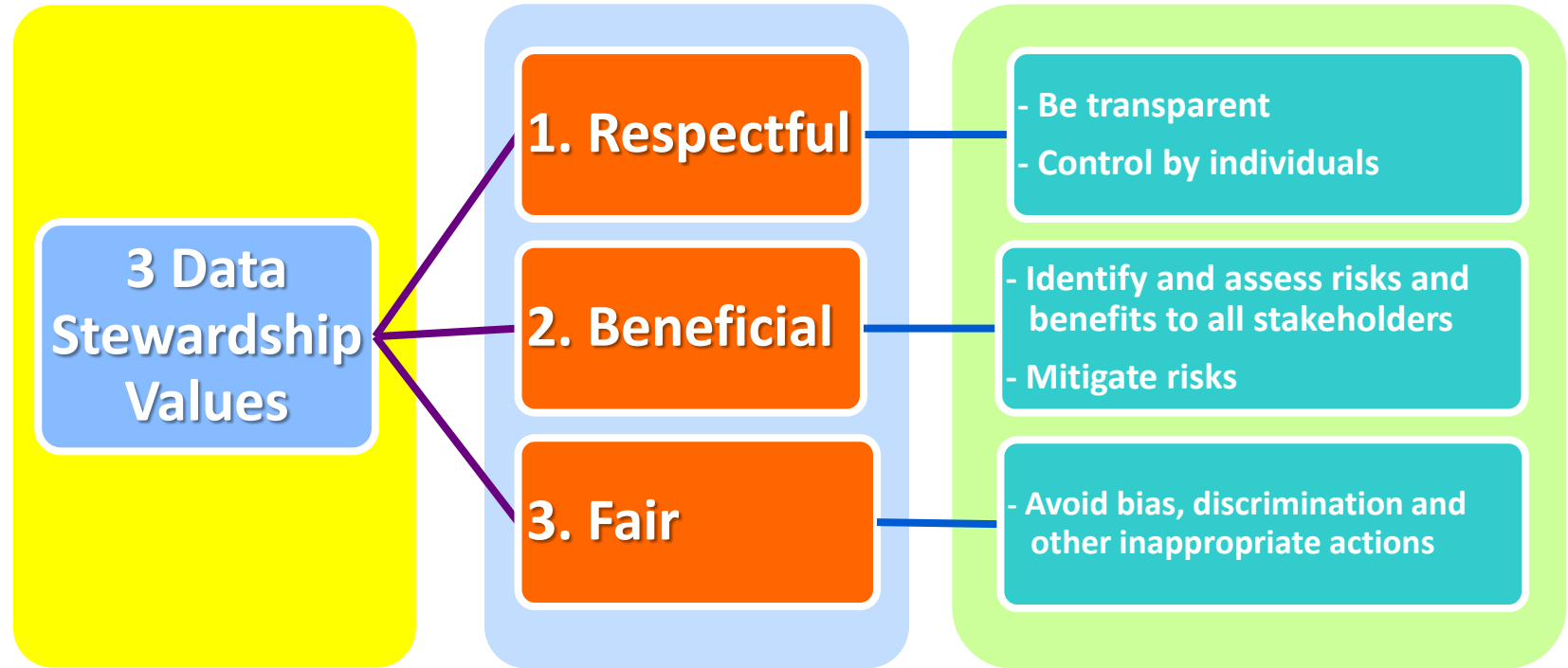


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Three Core Values of Data Ethics – Multi-stakeholder Approach



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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

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Data Ethics - Implementation

Privacy
by
Design



Ethics
by
Design

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

Examples of Privacy by Design and by Default



Under iOS 12.2, access to location data of iPhone or iPad by website operators is disabled by default

- To allow websites to their access location data, users have to switch on the function themselves, providing users with stronger control

Source: Ars Technica; Feb 2019

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Examples of Ethics by Design

For personalised online advertising and marketing**:

- make it clear to the consumers if a recommendation of goods/services is a personalised advertisement; and
- provide consumers with information about other similar but non-personalised goods/services.



** Reference: draft revision to the Personal Information Security Specification of China (Jan-2019)

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

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



3. Ongoing Assessment and Revision

3.1 Development of an Oversight and Review Plan

3.2 Assessment and Revision of Programme Controls



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

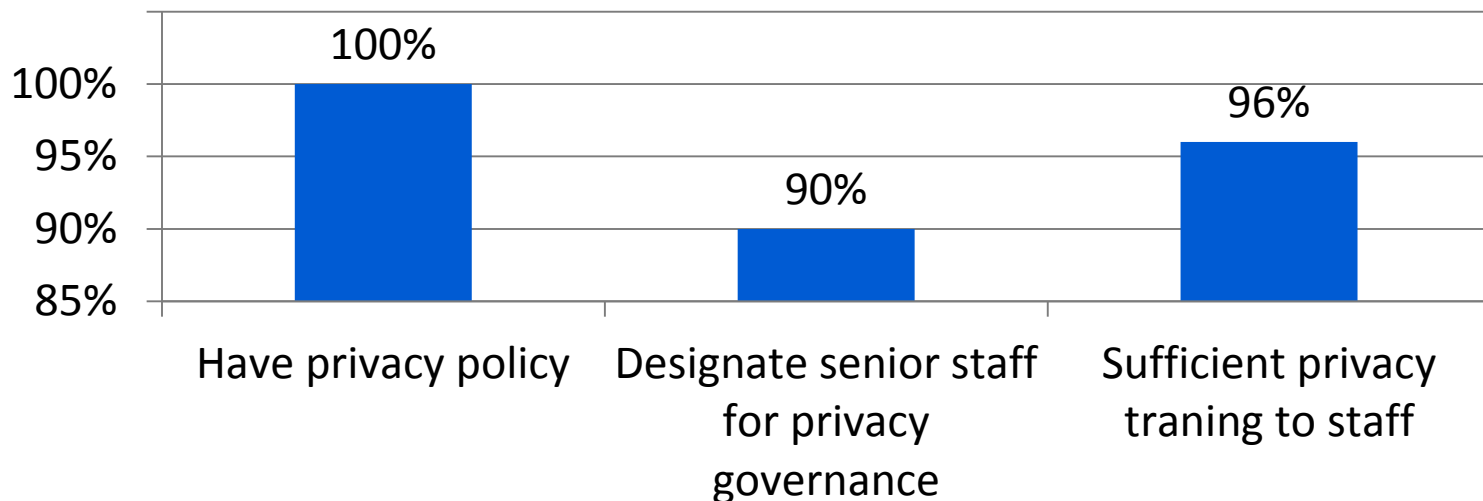
2.5 Handling of Data Breach Incident

2.6 Data Processor Management

2.7 Communication

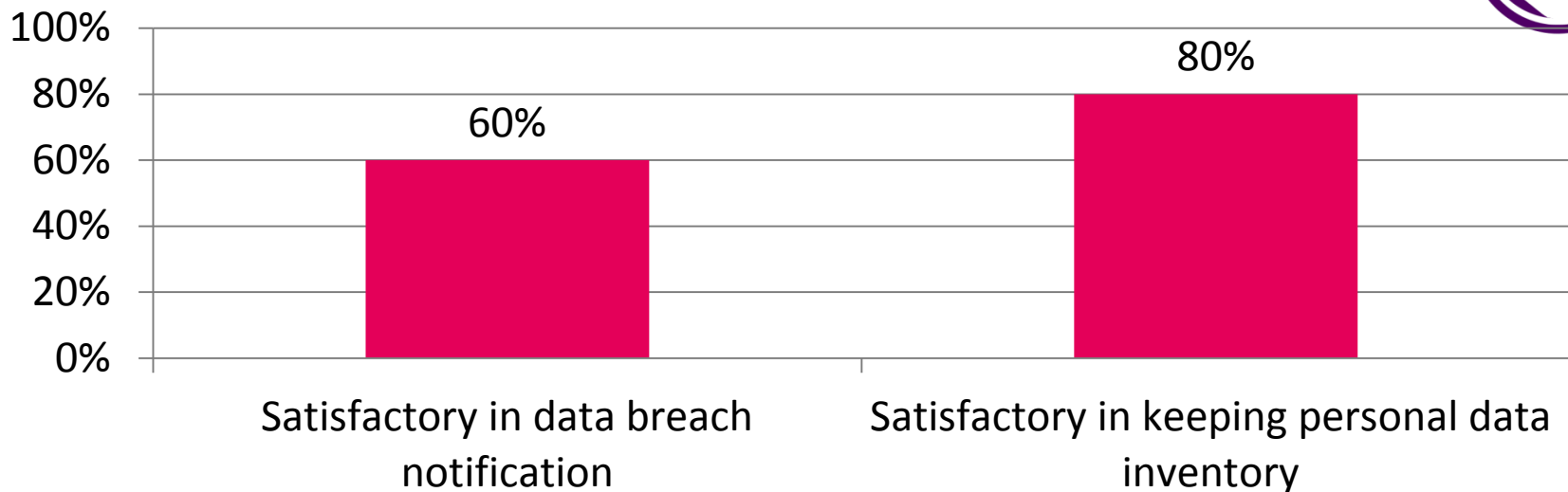
PCPD's Study on Implementation of Privacy Management Programme by Data Users (2018)

Findings (1)



PCPD's Study on Implementation of Privacy Management Programme by Data Users (2018)

Findings (2)



PCPD's Study on Implementation of Privacy Management Programme by Data Users (2018)

PCPD's recommendations

- Provide adequate data protection training to staff
- Conduct regular audits on compliance with privacy policies
- Devise written procedures for handling data breach
- Maintain a comprehensive personal data inventory
- Maintain records of data flow

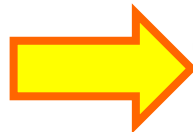
PCPD's Roles – Enforcer + Educator + Facilitator

PCPD's Strategic Focus

Fair Enforcement



Engaging



Incentivising



Privacy-friendly Culture

A Balancing Exercise

- Individuals' Right
- Country's Interest
- Data Protection

- ICT Development
- Economic & Trade Development
- Free Flow of Information
- Use of Data



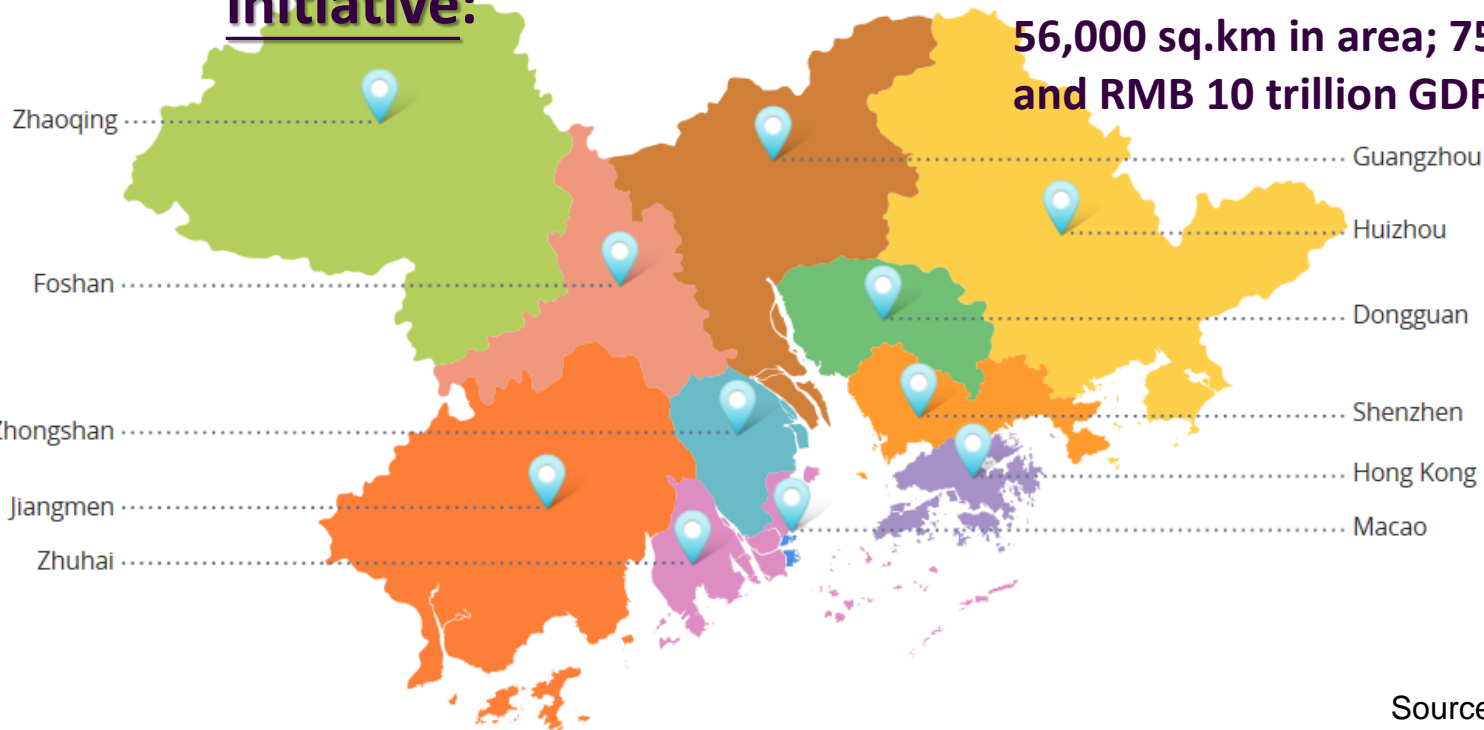
Belt and Road initiative:

- More than 60 countries and regions
- Over 62 % of the world's population
- Over 34 % of the world's merchandise trade
- Around 31 % the world's GDP

Source: Hong Kong Trade Development Council

GD-HK-MO Greater Bay Area initiative:

A city cluster extending across Hong Kong, Macau and 9 Pearl River Delta cities; 56,000 sq.km in area; 75 million population and RMB 10 trillion GDP



Source: bayarea.gov.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

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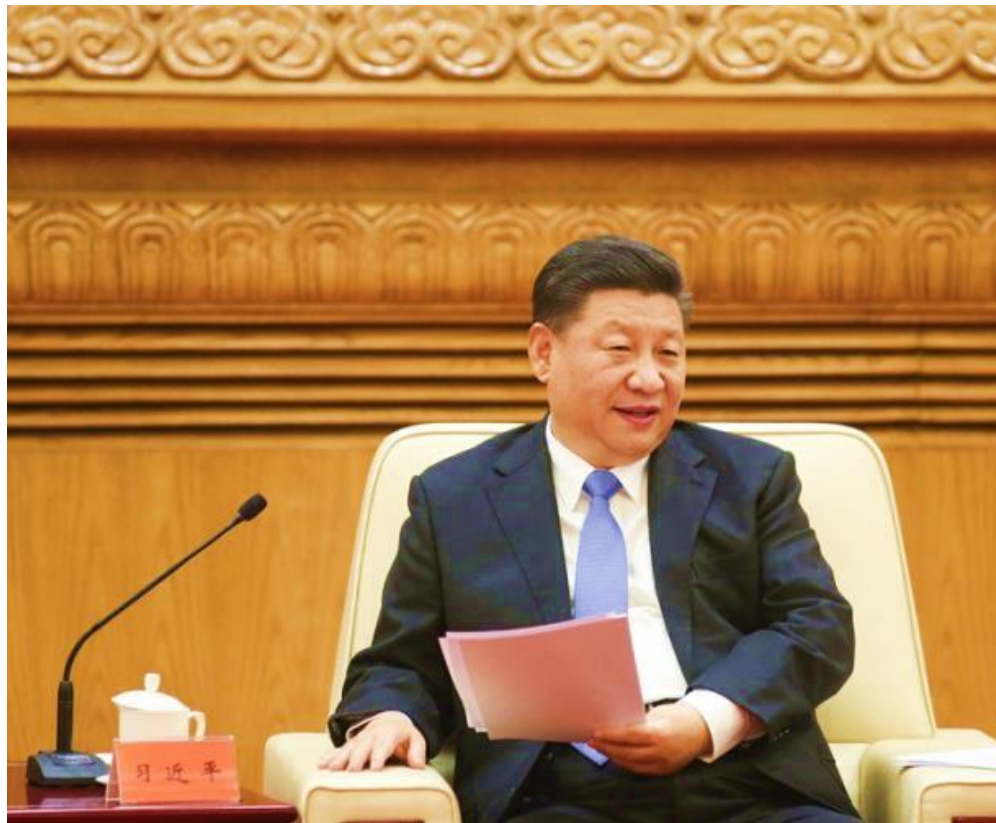
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“
*In the country’s reform and opening in the new era, Hong Kong and Macao still possess special, **unique and irreplaceable** attributes.*
”

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

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Hong Kong's Unique & Irreplaceable Attributes

Free flow of information



Common law system
and rule of law

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

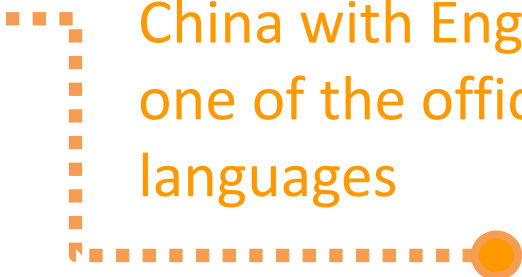


Comprehensive data
protection law

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



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



Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area

《粵港澳大灣區發展規劃綱要》



International
financial and
trade centres

Hong Kong's
Roles

International
legal and
dispute
resolution
services

Innovation
and
technology
industries

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Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area

《粵港澳大灣區發展規劃綱要》

Data-related, regional collaborations

Facilitate cross-boundary and regional flow of people, goods, capital and information

Jointly develop a Greater Bay Area big data centre

Formulate plan to enhance management on cross-boundary use of medical data and bio-samples

Explore the establishment of common standards, open up data ports, develop interconnected public application platforms

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“Hong Kong has unique functions in the Greater Bay Area. ... Support Hong Kong to become an international innovation centre. ... Hong Kong should apply its advantage in professional services in the development of the Greater Bay Area.”

Han Zheng

Vice Premier of the State Council; March 2019



Source: xinhuanet.com; March 2019

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Personal information protection law is on the legislative agenda for the current term of the Standing Committee of the National People's Congress. Relevant authority has been researching into and drafting the law.

Zhang Yesui, Spokesperson for the National People's Congress
March 2019

Source: npc.gov.cn; March 2019



“To protect Chinese citizens’ personal information, **reference should be made to Hong Kong’s PCPD** for setting up a data protection authority in mainland to monitor compliance with data protection regulations.”

Johnny Ng

Member of the National Committee of CPPCC
(全國政協委員 吳傑莊); March 2019

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Possible Reform to the Personal Data (Privacy) Ordinance of Hong Kong

Mandatory data breach notifications

Direct regulation on data processors

Power to impose administrative sanctions

Data retention periods

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eBRAM Centre

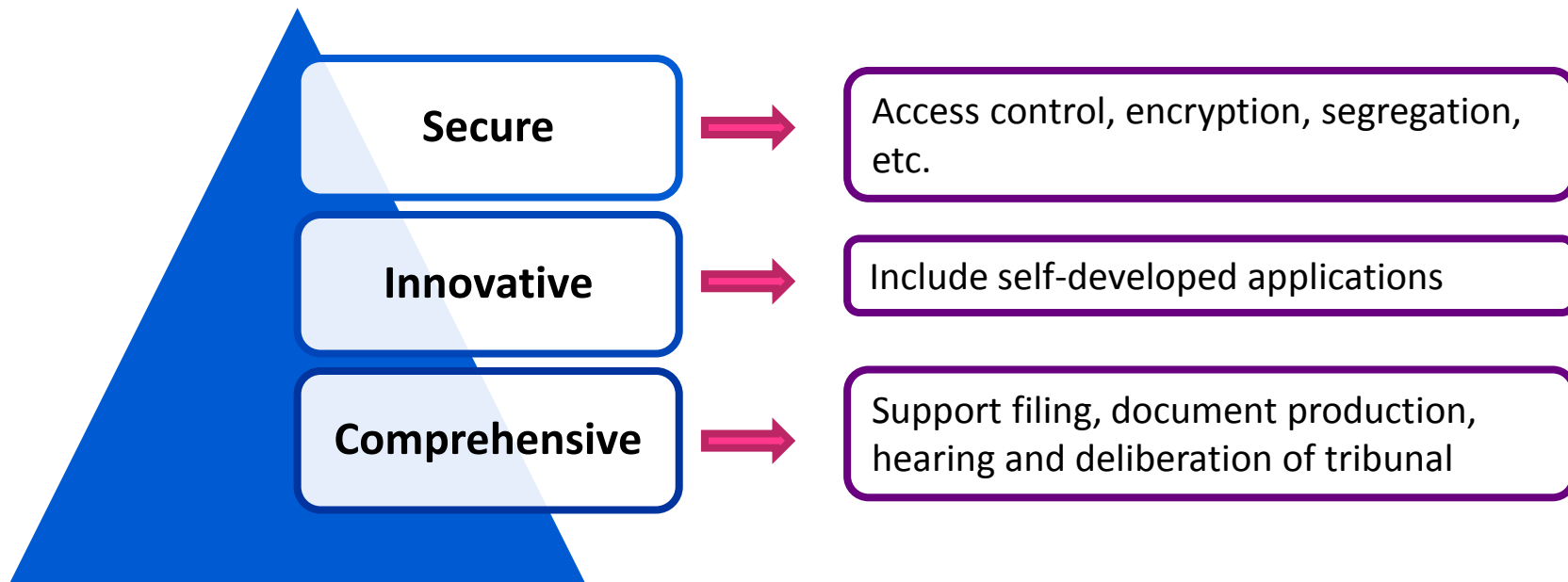
Leverage HK's attributes

Serve as a dispute resolver for the Belt and Road Initiative

Provide an online dispute resolution platform



eBRAM's Online Dispute Resolution Platform



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