Democratic Alliance for
the Betterment and Progress of Hong Kong
21.04.2018

The Integrity of Personal Data: Some Topical Issues & Implications of PDPO for Business

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Privacy Commissioner for Personal Data, Hong Kong


Data Security

香港寬頻泄客戶資料　私隱專員：以全球營業額作罰則是大勢所趨

Source: https://goo.gl/bwGb3r

香港寬頻疑被黑客入侵客戶資料庫，導致客戶個人資料外泄，涉及約38萬條固網及IDD客戶及服務申請者紀錄，當中包括萬條信用卡資料。個人資料在香港寬頻通報前，已主動有違返《個人資料（私隱）

黃繼兒在商台節目提醒，受碼，並聯絡銀行加強保安設費者聯絡銀行更改密碼，以

黃繼兒承認，香港有關私隱歐美一些國家已不斷修訂條港未有類似懲罰機制。

他認為，以全球營業額作罰阻嚇作用不大。他又表示，今次個香港寬頻通報時間算

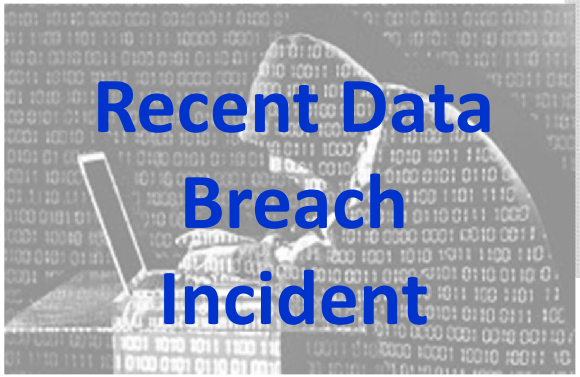
2018年4月18日 星期三

上一篇　下一篇

【今次大鑊了】香港寬頻：疑被黑客入侵 近38萬名客戶資料被盜 (16:43)

讚好 211

Source: https://goo.gl/PiQiyt



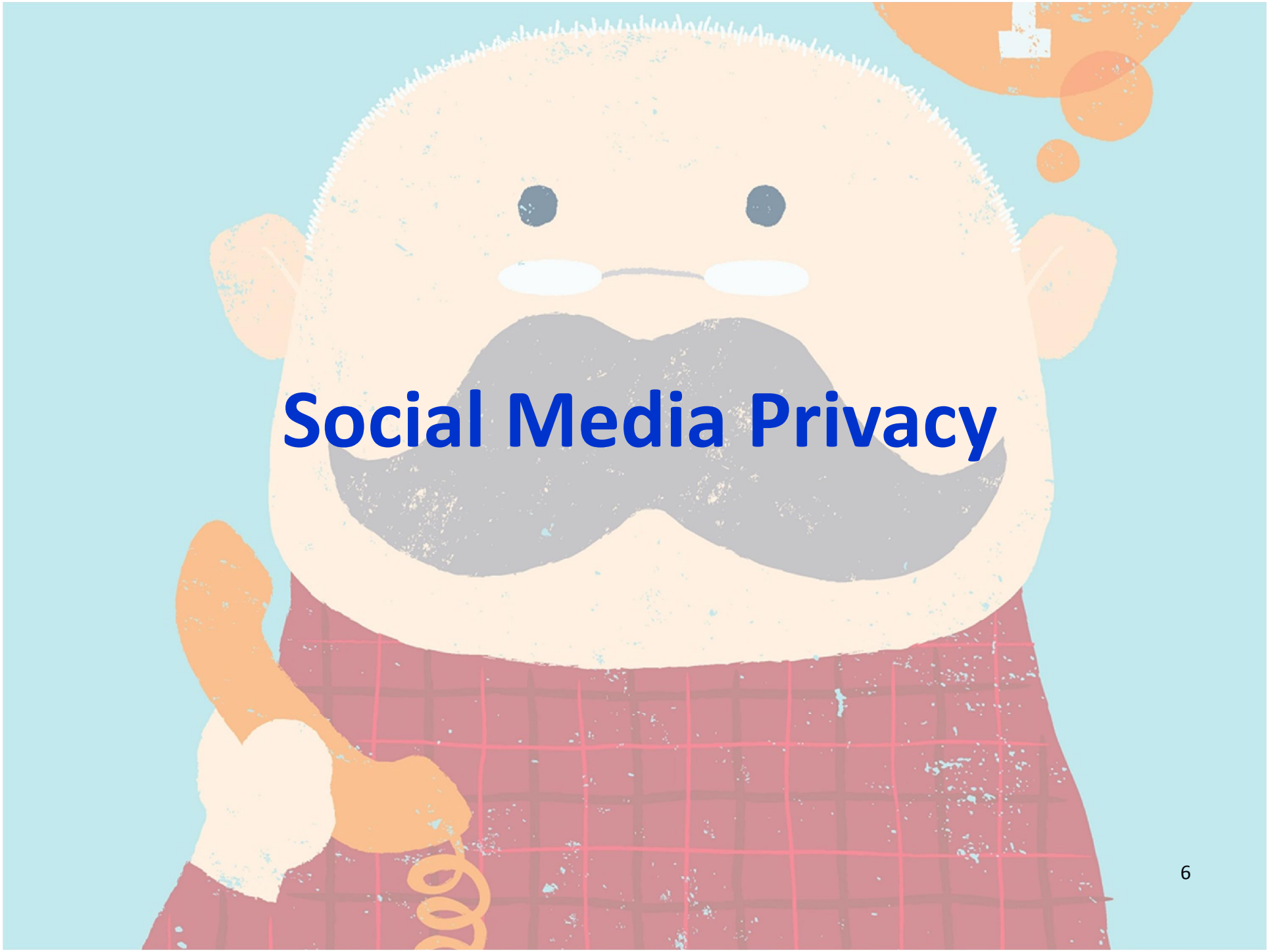
PCPD
HK
PCPD.org.hk
est.1996

Principle 4 – Security of personal data

- Data users shall take **all practicable steps** to **safeguard** personal data against unauthorised or accidental access, processing, erasure, loss or use

Principle 2 – Accuracy and duration of retention of personal data

- DPP2(2): Data users shall take all practicable steps to ensure personal data is not kept longer than is necessary for the fulfillment of the purpose for which the data is or is to be used


Social Media Privacy

Misuse of Personal Data by Social Media

Facebook被揭截取Android用戶通話記錄

2018-03-27

#Hashtags Facebook Android

社交媒體Facebook因捲入英國政治諮詢公司Cambridge Analytic
聞風波，再勾起用戶關注個人私隱。早前有用戶向Facebook取得社
料，竟發現該公司收集了兩年的Android手機通話記錄。

Source: https://goo.gl/kFXwcf

2018年03月18日 17:58 星期日

國際

【國際新聞】Facebook被揭疏忽處理用戶資料 英美立案調查

上一篇 | 下一篇

Facebook被揭疏忽處理用戶資料 英美立案調查

讚好 0 分享

Facebook被揭發有大量用家資料落入大數據公司「劍橋分析」（Cambridge Analytica）手上，涉嫌影響美國大選結果。美國政界要求盡快立法監管社交媒體，美國麻省司法部和英國信息專員辦公室均表示會對此立案調查。

民主黨參議員克羅布查（Amy Klobuchar）批評，fb沒有能力自我監察，fb行政總裁朱克伯格（Mark Zuckerberg）應到國會應訊。參議員華納（Mark Warner）則認為，如不立法監管社交媒體，該市場會缺乏透明度，很容易被用作不法用途。

Source: https://goo.gl/eNLt53

The Switch

U.S. and British lawmakers demand answers from Facebook chief executive Mark Zuckerberg

By Craig Timberg and Tony Romm March 18 Email the author

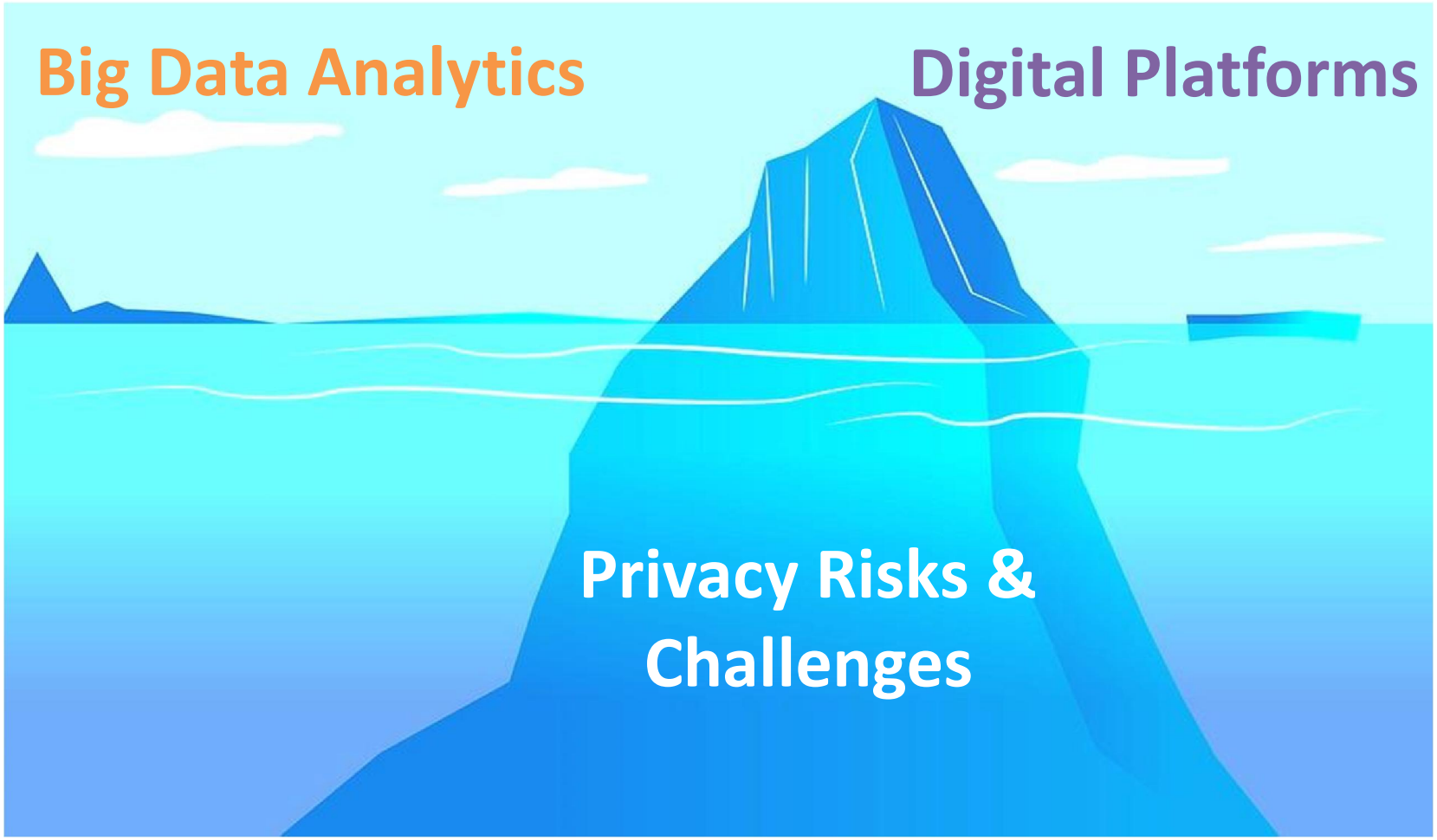
回上頁 | 友善列印

kerberg has kept a low profile as controversy over the political uses of the social media platform has

tates and Britain are calling on Facebook chief executive Mark Zuckerberg to
eferences and other information from tens of millions of users ended up in the
n connected with President Trump's 2016 campaign.

Source: https://goo.gl/ZR3AqJ

Privacy Risks and Challenges



Ubiquitous and Covert Data Collection

Data Minimization

Data Transparency

Adequate Notification

Erodes Individuals' Control Over Data

Unpredictable Analytics

✘ Notice & Consent

✘ Purpose & Use Limitations

Profiling

Re-identification

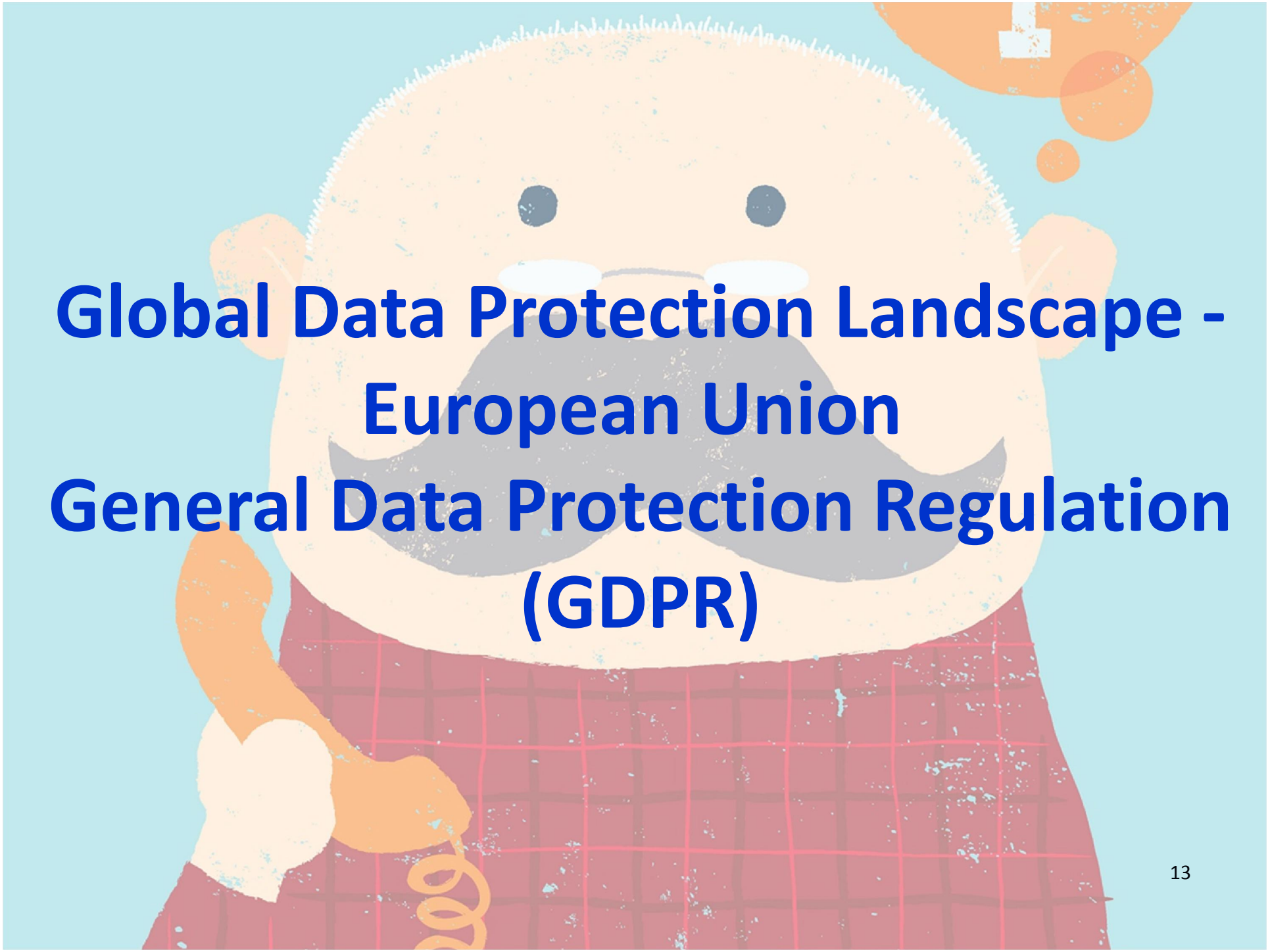
✘ **Distinction between Personal Data & Non-Personal Data**

Inaccurate Inferences and Predictions

✘ Data Accuracy

Filter Bubble

Interference in Elections…



Global Data Protection Landscape - European Union General Data Protection Regulation (GDPR)

PDPO – GDPR Comparative Study

Background

- **Keep abreast of overseas** privacy law developments
- Assess GDPR's **impact on businesses** (in particular multi-national organisations)
- Comparable legal framework fac
  and commercial activities

PDPO – GDPR Comparative Study

Major differences between PDPO and GDPR:

	EU	HK
Application 	Data processors or controllers: • with an establishment in the EU, or • established outside the EU, that offer goods or services to, or monitor the behaviour of individuals in the EU. [Art 3]	Data users (controllers /processors) who, either alone or jointly or in common with other persons, control the collection, holding, processing or use of the personal data in or from Hong Kong. [s.2(1)]

PDPO – GDPR Comparative Study

	EU	HK
Personal Data 	"Personal data" means • any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly. • examples of personal data explicitly identified being extended to include location data and online identifier. [Art 4(1)]	"Personal data" means any data – • relating directly or indirectly to a living individual; • from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and • in a form in which access to or processing of the data is practicable. [s.2(1)]

PDPO – GDPR Comparative Study

	EU	HK
Accountability and Governance 	**Risk-based approach; data controllers are required to:** **• implement technical and organisational measures to ensure compliance [Art 24];** **• adopt data protection by design and by default [Art 25];** **• conduct data protection impact assessment for high-risk processing [Art 35]; and** **• (for certain types of organisations) designate Data Protection Officers. [Art 37]**	**The accountability principle and the related privacy management measures are not explicitly stated. The Privacy Commissioner advocates the adoption of a privacy management programme which manifests the accountability principle. The appointment of data protection officers and the conduct of privacy impact assessment are recommended good practices for achieving accountability.**

PDPO – GDPR Comparative Study

	EU	HK
Sensitive Personal Data 	**Category of sensitive personal data expanded.** **Processing of sensitive personal data is allowed only under specific circumstances. [Art 9]**	**No distinction between sensitive and non-sensitive personal data for all purposes.**

PDPO – GDPR Comparative Study

	EU	HK
Consent 	**Consent must be** **• freely given, specific and informed;** **• an unambiguous indication of a data subject's wishes, by statement or by clear affirmative action, which signifies agreement [Art 4(1)]; and** **• given by a child below 16 (or 13) with parental authorisation.**	**Consent is not a pre-requisite for the collection of personal data, unless the personal data is used for a new purpose.[DPP1&3] For other purposes, where consent is also required, consent means express and voluntary consent.** **No requirement for parental consent.**

PDPO – GDPR Comparative Study

	EU	HK
Breach Notification 	Data controllers are required to notify the authority of a data breach without undue delay (exceptions apply). Data controllers are required to notify affected data subjects if it is likely to result in high risk to the rights and interests of the data subjects, unless exempted. [Arts 33-34]	No mandatory requirement, but notification to the Privacy Commissioner (and data subjects, where appropriate) is recommended in the interest of all stakeholders including data users/controllers and subjects.

PDPO – GDPR Comparative Study

	EU	HK
Data Processors 	**Data processors are additionally obliged to maintain records of processing, ensure security of processing, report data breaches, designate Data Protection Officers, etc. [Arts 30, 32-33, 37]**	**Data processors are not directly regulated. [s.2(12)]** **Data users are required to adopt contractual or other means to ensure data processors' compliance. [DPP2(3) & DPP4(2)]**

PDPO – GDPR Comparative Study

	EU	HK
New and Enhanced Rights for Data Subjects 	• Right to notice on data processing. [Art 13-14] • Right to erasure of personal data ("right to be forgotten"). [Art 17]	• Less extensive notice requirements for data users / controllers (processors). • No right to erasure, but data shall not be retained longer than necessary. [s.26 & DPP 2(2)]

PDPO – GDPR Comparative Study

	EU	HK
New and Enhanced Rights for Data Subjects (con't) 	• Right to restriction of processing and data portability. [Art 18, 20] • Right to object to processing (including profiling). [Art 21]	• No right to restriction of processing and data portability, but data access and correction requests be complied with. [DPP6, Part 5] • No right to object to processing (including profiling), but may opt out from direct marketing activities [ss.35G &35L] and PDPO contains provisions regulating data matching procedure. [ss.30-31]

PDPO – GDPR Comparative Study

	EU	HK
Certification, Seals, and Codes of Conduct 	**Mechanisms are explicitly recognised and established for demonstrating compliance by data controllers and processors. [Art 42]**	**No formal recognition of certification or privacy seals mechanisms for demonstrating compliance. The Privacy Commissioner may approve and issue code of practice after consultation. [s.12]**

PDPO – GDPR Comparative Study

	EU	HK
Cross-jurisdiction Data Transfer	**Certification and adherence to approved codes of conduct are explicitly made one of the legal bases for transfer. [Art 46]**	**Certification and adherence to an approved code of practice are not explicitly made a legal basis.**

PDPO – GDPR Comparative Study

	EU	HK
Sanctions 	Data protection authorities are empowered to impose administrative fines on data controllers and processors. [Art 58] Depending on the nature of the breach, the fine could be up to €20 million or 4% of the total worldwide annual turnover. [Art 83]	The Privacy Commissioner is not empowered to impose administrative fines or penalties. The Privacy Commissioner may serve Enforcement Notices on data users, failure to comply with which may attract penalties after judicial process. [s.50]

“European Union General Data Protection Regulation 2016” Booklet

www.pcpd.org.hk//tc_chi/resources_centre/publications/files/eugdpr_c.pdf

www.pcpd.org.hk//english/resources_centre/publications/files/eugdpr_e.pdf


Person-to-person
Telemarketing Calls

Regulated by PD(P)O?

made to phone numbers randomly generated

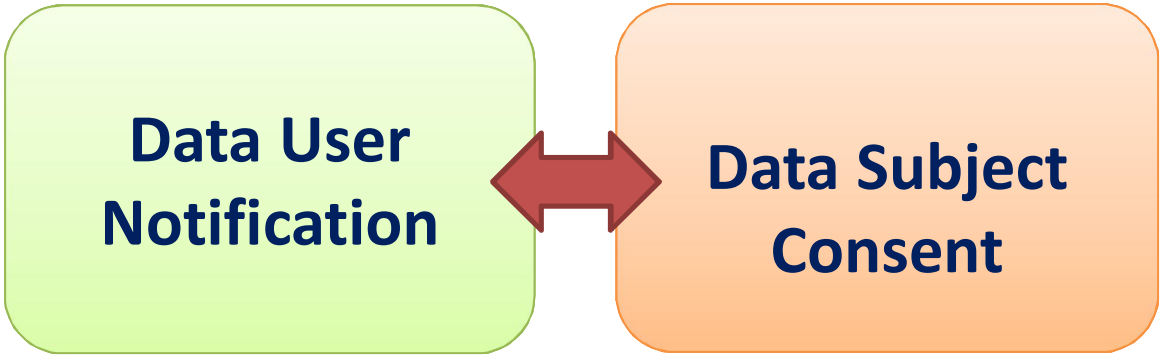
made to specific individuals by using their names and phone numbers

New Direct Marketing Regime

- **Direct marketing activities under the Ordinance include such activities made to specific persons by mail, fax, email and phone**

Direct Marketing Requirements

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



Provides personal data

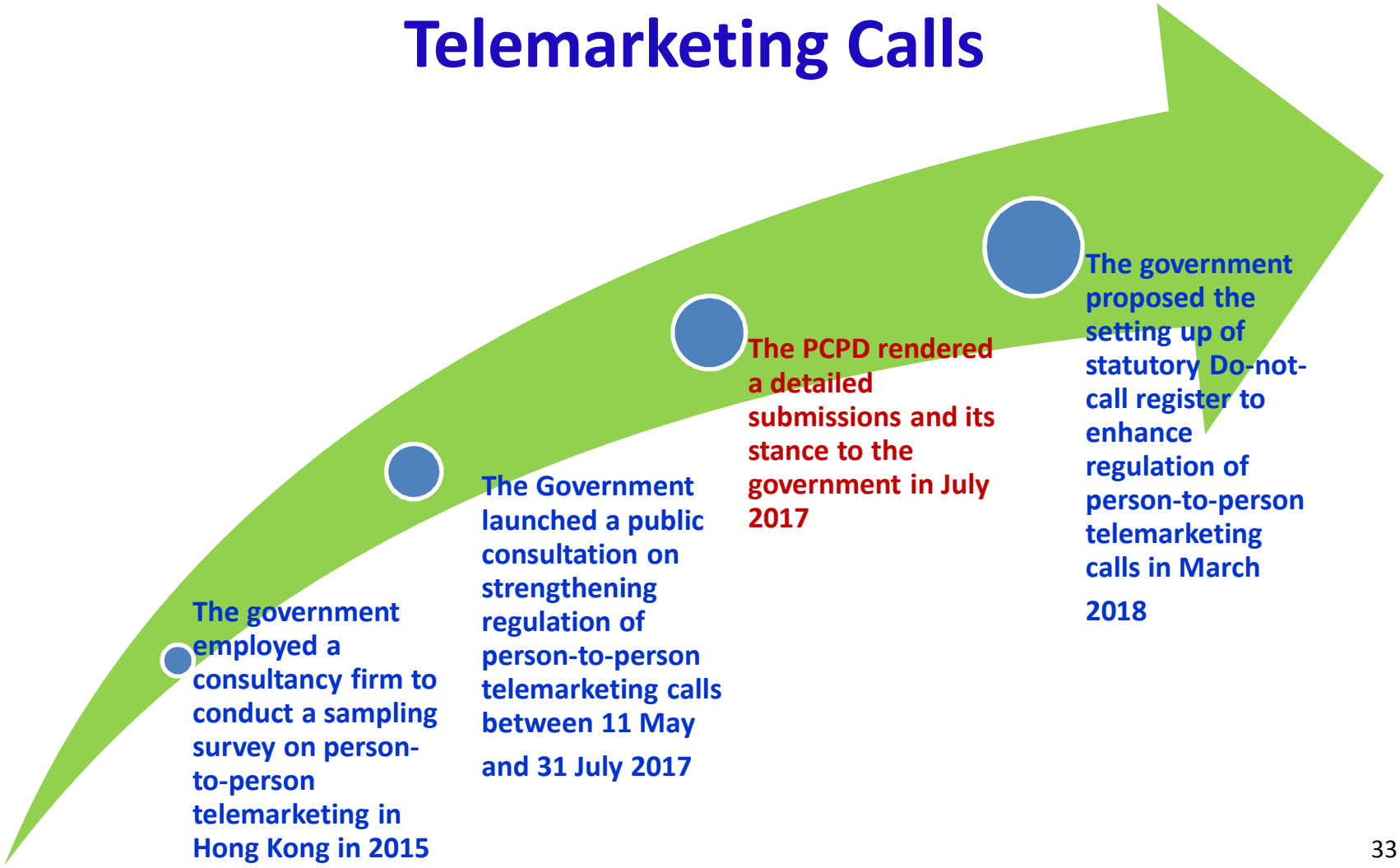
Provide "prescribed information" and response channel for data subjects to elect whether to give consent Notification must be easily understandable	Consent should be given explicitly and voluntarily

Direct Marketing Requirements

- data user must comply with the data subject's opt-out request without charge [section 35G]

- criminal sanctions if data user fails to comply with requirements of notification, consent and opt-out requests

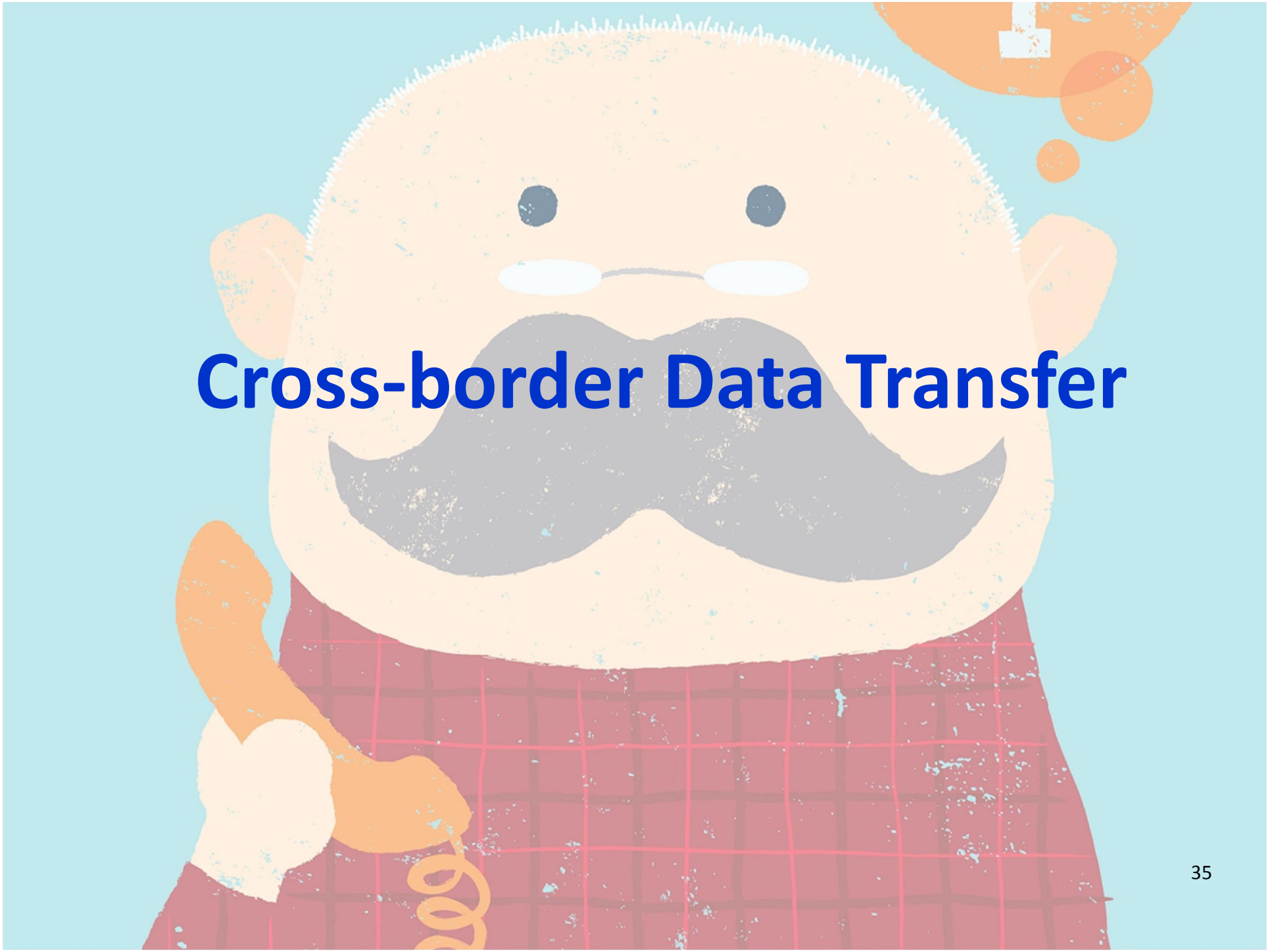
Regulation of Person-to-person Telemarketing Calls



Latest Development of P2P Calls

Set up a statutory Do-not-call register

- **most effective and consumer-friendly option**
- **enhance regulation**
- **to be managed and executed by the Privacy Commissioner**



Cross-border Data Transfer

Cross-border Data Transfer

Section 33 of the PDPO prohibits transfer of personal data outside Hong Kong unless under 6 specified circumstances

Legislative intent:
To ensure personal data transferred outside Hong Kong is afforded with same protection

Cross-border Data Transfer

Meaning of "Transfer"

Transfer from Hong Kong to a place outside Hong Kong

Transfer between 2 other places where the transfer is controlled by a data user in Hong Kong

Cross-border Data Transfer

Data user shall not transfer personal data outside Hong Kong unless one of the conditions are met:-

s.33(2)(a)	• **Fall within one of the White List jurisdictions (i.e. the law in that place is *"substantially similar to or serves the same purposes as"* the PDPO pursuant to PCPD's assessment)**
s.33(2)(b)	• **Data user's own assessment (that the law in that place is "substantially similar to or serves the same purposes as" the PDPO)**
s.33(2)(c)	• **Data subject's written consent to the transfer**

Cross-border Data Transfer

s.33(2)(d)	• Avoidance or mitigation of adverse action against the data subject
s.33(2)(e)	• Exemptions from data protection principle 3 (i.e. use limitation) under Part VIII of the PDPO apply
s.33(2)(f)	• Data user has taken all reasonable precautions and exercised all due diligence such that personal data transferred will not be handled in a manner that contravenes the PDPO ("Due Diligence Requirement")

Tips for Cross Border Data Transfer

Review existing data transfer strategy

Control unintended or unnecessary cross-border data flow

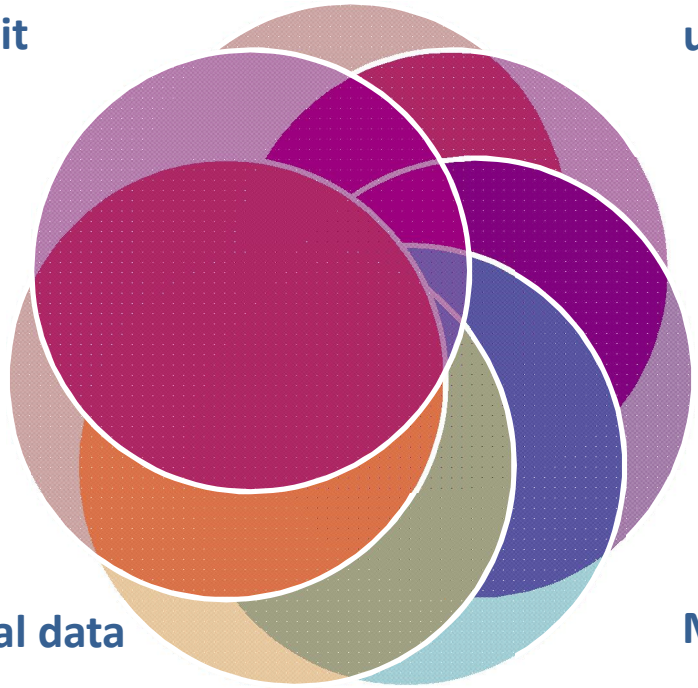
Check the White List (when it comes into effect)

May adopt multiple measures to give more protection

Keep inventory of personal data

Be transparent

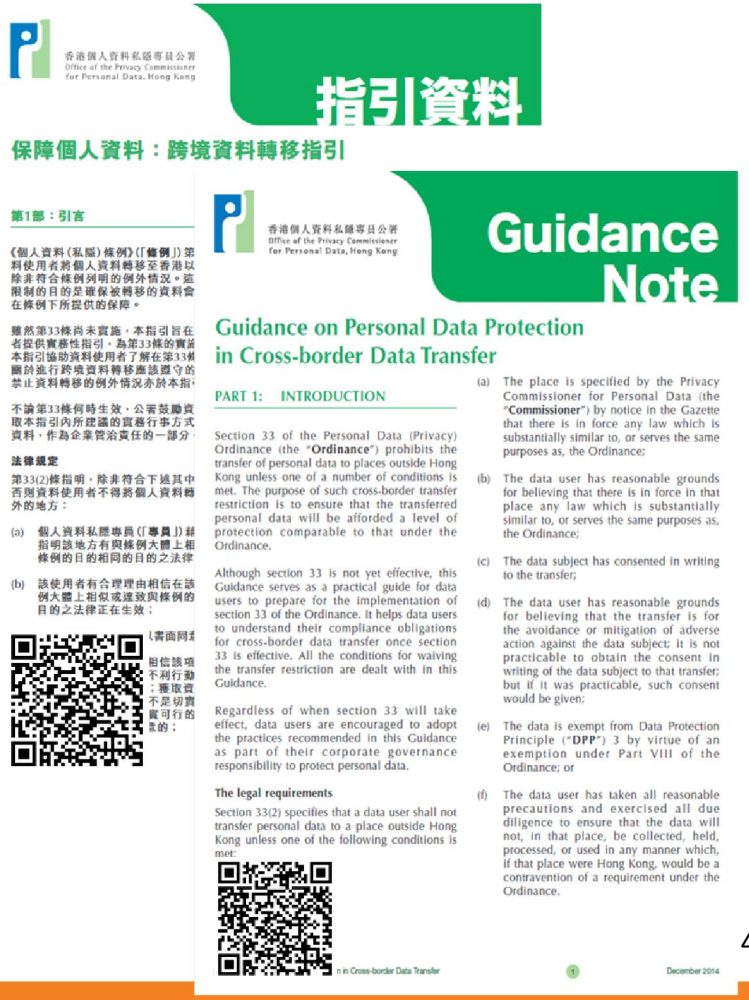
Conduct regular audit and inspection



Guidance on Personal Data Protection in Cross-border Data Transfer

Although section 33 is not yet effective, the Guidance serves as a practical guide for data users to:

- **understand compliance obligations;**
- **adopt the practices recommended as part of their corporate governance responsibility to protect personal data;**
- **consider adapting and/or including "Recommended Model Clauses" in a data transfer agreement**



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

指引資料

保障個人資料：跨境資料轉移指引

第1部：引言

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

Guidance Note

Guidance on Personal Data Protection in Cross-border Data Transfer

PART 1: INTRODUCTION

Section 33 of the Personal Data (Privacy) Ordinance (the "**Ordinance**") prohibits the transfer of personal data to places outside Hong Kong unless one of a number of conditions is met. The purpose of such cross-border transfer restriction is to ensure that the transferred personal data will be afforded a level of protection comparable to that under the Ordinance.

Although section 33 is not yet effective, this Guidance serves as a practical guide for data users to prepare for the implementation of section 33 of the Ordinance. It helps data users to understand their compliance obligations for cross-border data transfer once section 33 is effective. All the conditions for waiving the transfer restriction are dealt with in this Guidance.

Regardless of when section 33 will take effect, data users are encouraged to adopt the practices recommended in this Guidance as part of their corporate governance responsibility to protect personal data.

The legal requirements

Section 33(2) specifies that a data user shall not transfer personal data to a place outside Hong Kong unless one of the following conditions is met:

(a) The place is specified by the Privacy Commissioner for Personal Data (the "**Commissioner**") by notice in the Gazette that there is in force any law which is substantially similar to, or serves the same purposes as, the Ordinance;

(b) The data user has reasonable grounds for believing that there is in force in that place any law which is substantially similar to, or serves the same purposes as, the Ordinance;

(c) The data subject has consented in writing to the transfer;

(d) The data user has reasonable grounds for believing that the transfer is for the avoidance or mitigation of adverse action against the data subject; it is not practicable to obtain the consent in writing of the data subject to that transfer; but if it was practicable, such consent would be given;

(e) The data is exempt from Data Protection Principle ("**DPP**") 3 by virtue of an exemption under Part VIII of the Ordinance; or

(f) The data user has taken all reasonable precautions and exercised all due diligence to ensure that the data will not, in that place, be collected, held, processed, or used in any manner which, if that place were Hong Kong, would be a contravention of a requirement under the Ordinance.

n in Cross-border Data Transfer 1 December 2014

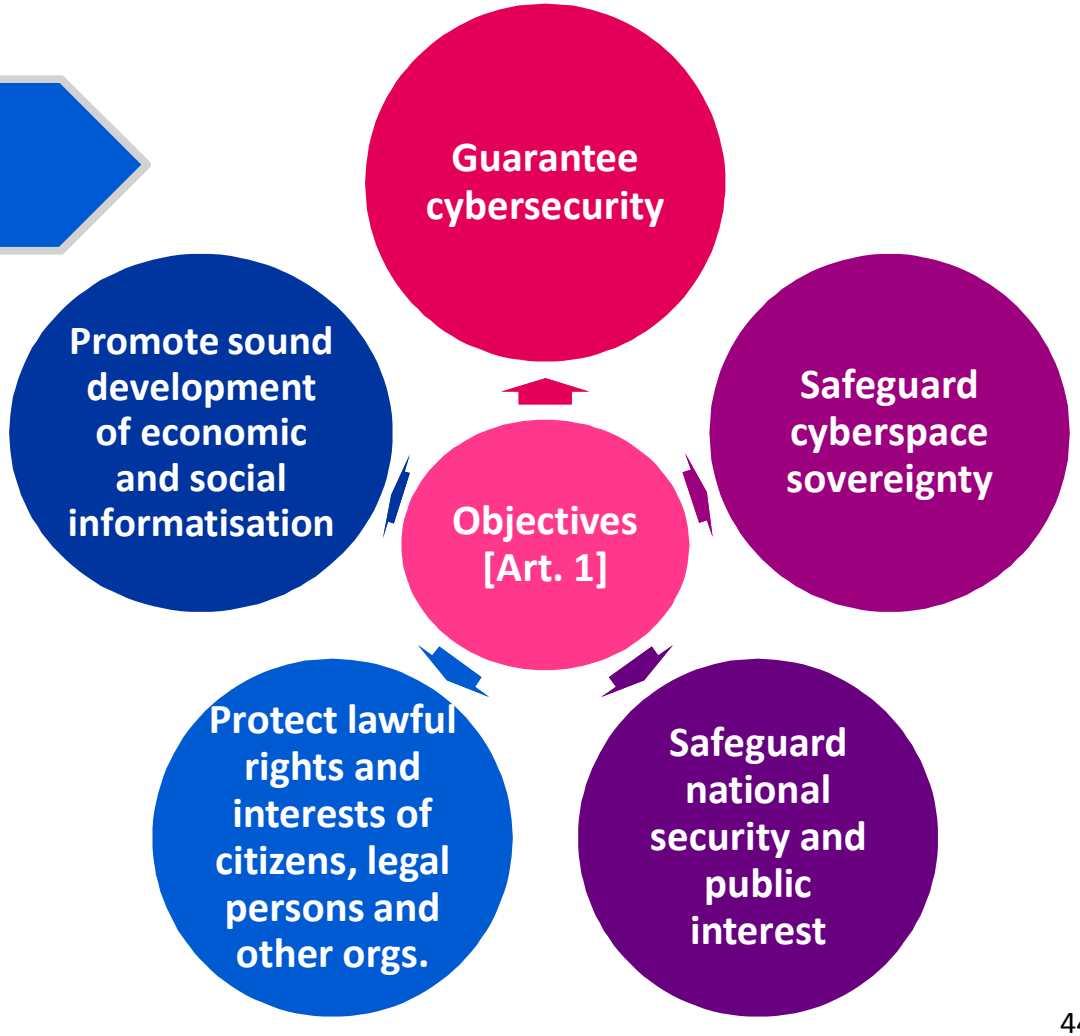
Global Data Protection Landscape - Mainland's Cybersecurity Law

Mainland's Data Protection Regime

- No omnibus data protection law in the mainland of China currently
- Personal data privacy protection governed by sectoral law
- Hong Kong businesses with interests in the mainland of China should closely monitor recent developments to prepare for compliance

Mainland's Cybersecurity Law

- Effective on 1 June 2017
- Not apply in Hong Kong



Mainland's Cybersecurity Law

Scope of Application:

- **Apply to the construction, operation, maintenance and use of networks, and the supervision and administration of cybersecurity within China [Art. 2]**
- **Regulate network operators, i.e. owners and administrators of networks, and network service providers [Art. 76(3)]**
  - **Not limited to technology companies, e.g. a financial institution which uses computer network in its operation is also a 'network operator'**
- **Protect personal information**

How the Cybersecurity Law May Affect Hong Kong Businesses?

- Processing of personal data by a Hong Kong-based business is regulated by Hong Kong's Personal Data (Privacy) Ordinance, but <u>not</u> Mainland's Cybersecurity Law

Unless

Then

- The processing also involves construction, operation, maintenance or use of networks in the mainland of China

- Both the Personal Data (Privacy) Ordinance and the Cybersecurity Law <u>may</u> apply to the processing activities

Comparison between Cybersecurity Law and PDPO

Collection & Use

Cybersecurity Law	HK PDPO
Art. 41 (collection & use) • Follow the principles of lawfulness, propriety and necessity • Obtain consent from data subjects • Do not collect personal information irrelevant to services provided • Disclose related policy and practice • Clearly indicate the purposes, means and scope of collection and use • Do not collect or use personal information in violation of agreements with the data subjects **Art. 42** (disclosure) • Personal information shall not be disclosed to third parties without the data subject's consent	**DPP1** (collection) • No consent requirement • Collect data in a lawful and fair way, for a purpose directly related to a function or activity of the data user • Data collected shall be necessary but not excessive • Notify data subjects about the purpose of collection, the classes of persons to whom the data may be transferred, and the contact person **DPP3** (use, including disclosure) • Shall not use personal data for new purposes, unless with prescribed consent of data subjects

Comparison between Cybersecurity Law and PDPO

Security & Data Breach Notification

Cybersecurity Law	HK PDPO
Art. 42 (security & notification) • Adopt technical measures and other measures to ensure security of personal information, and prevent information leakage, damage and loss • In case of information leakage, damage or loss, take remedial actions immediately, and notify data subjects and the supervisory authority	DPP4 (security) • Take all practicable steps to protect personal data against unauthorised or accidental access, processing, erasure, loss or use • No requirement for data breach notification

Comparison between Cybersecurity Law and PDPO

Cross-border Data Transfer

Cybersecurity Law	HK PDPO
Art. 37 (data localisation) • Personal information and important data collected and produced by operators of critical information infrastructure during their operations in China shall be stored locally • If cross-border transfer is needed for business reasons, security assessment should be conducted pursuant to the measures stipulated by the Cyberspace Administration of China (CAC) and the relevant department of the State Council	S. 33 (prohibition against transfer) • Personal data shall not be transferred to places outside Hong Kong, unless under specified circumstances, e.g.: ▪ transfer to White List regions ▪ consent by data subjects in writing ▪ reasonable precautions taken and due diligence exercised by the data user • S.33 is not yet in force

What is Critical Information Infrastructure under Cybersecurity Law?

Examples of Critical Information Infrastructure (CII) under Cybersecurity Law:

- **Public communications and information services**
- **Energy**
- **Transportation**
- **Water conservancy**
- **Finance**
- **Public services**
- **E-government affairs**
- **Other infrastructure which will cause serious damage to state security and public interests, in case of destruction, dysfunction or data leakage [Art. 31]**

Comparison between Cybersecurity Law and PDPO

Sanctions

Cybersecurity Law	HK PDPO
Arts. 64 & 66 • Possible **administrative sanctions** for a breach: ▪ Corrective action ▪ Warning ▪ Confiscation of illegal income ▪ Fine between 1 and 10 times of illegal income (if no illegal income, fine < RMB 1 million) ▪ Fine between RMB 10,000 and 100,000 on directly responsible person ▪ Suspension or cease of business operation for rectification, or closedown of website, or revoking of business permit or license	• PCPD has no power to impose administrative sanction **Ss. 50 & 50A** • The Privacy Commissioner may issue an enforcement notice, ordering remedial actions by a data user • Non-compliance with an enforcement notice may (upon conviction by a court) subject to a fine of HK$50,000 and imprisonment for 2 years

How to Nurture an Organisational Cultural of Respecting Personal Data Privacy

Privacy Management Programme

From Compliance to *Accountability*

What is PMP?

Paradigm Shift

Compliance Approach	Accountability Approach
• passive	active
• reactive	proactive
• remedial	preventive
• problem-based	based on customer expectation
• handled by compliance team	directed by top-management
• minimum legal requirement	reputation building
• bottom-up	top-down

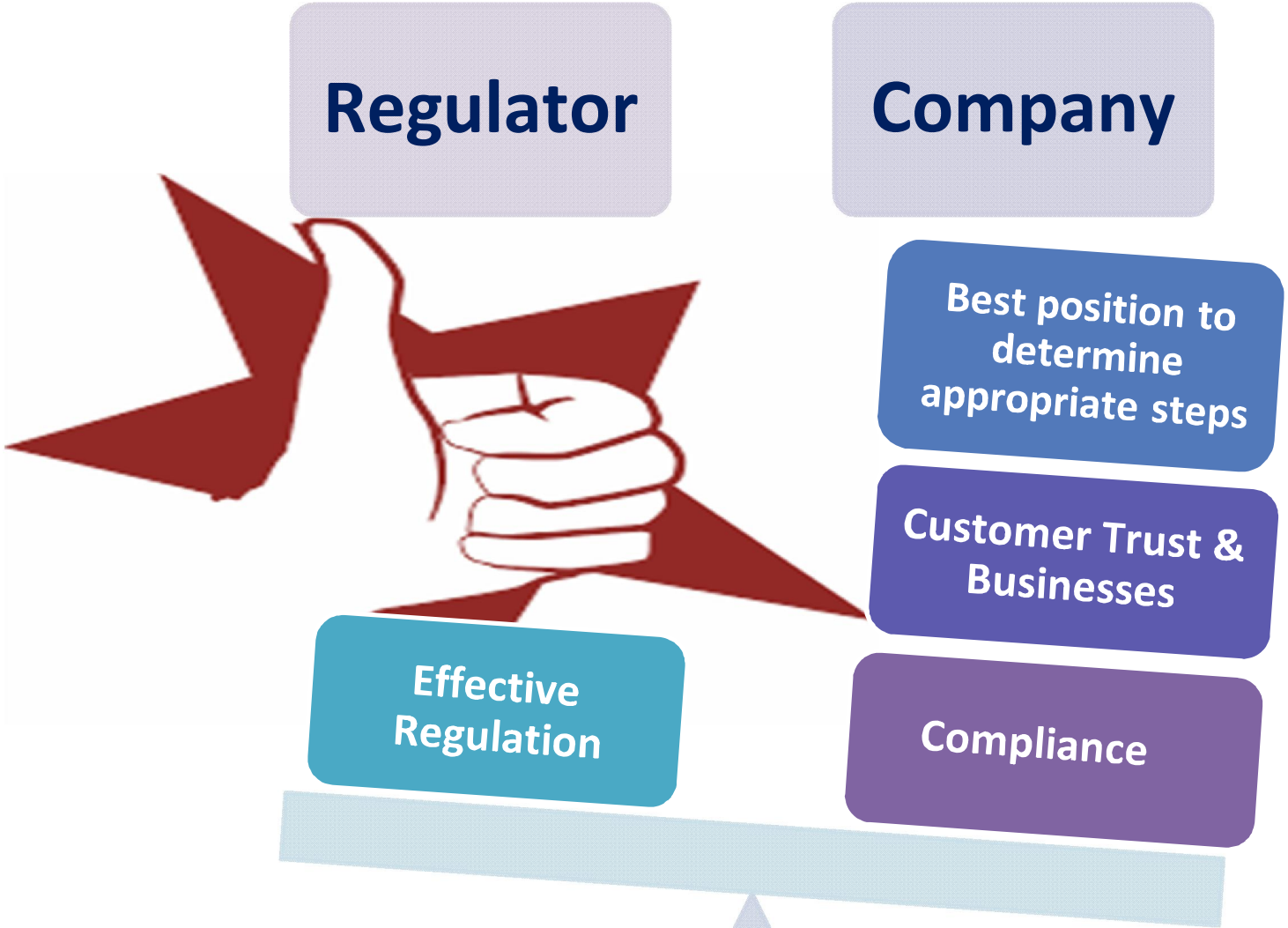
Participation in the PMP

Pledging Organisations

- ✓76 bureaux and departments of Hong Kong Government
- ✓25 Insurance companies
- ✓9 Telecommunication companies
- ✓5 Organisations from other sectors


Ethics & Accountability

Why Accountability?



Mechanics of Accountability

Voluntary/Self-Regulatory

or

Mandatory

Accountability?

Education → Incentivise

Data Ethics and Trust

- No Surprise to Consumers
- No Harm to Consumers


Case Sharing

Direct Marketing – Conviction Case 1

- **First Conviction Case – Case background**
  - A customer of a telecommunications company made his opt-out request to the Company via email and mail
  - The Company acknowledged receipt of the complainant's opt-out request in writing
  - A staff member of the Company left a voice message through the customer's mobile phone number, informing him the termination of his service contract and at the same time promoting their services to him
- **Outcome**
  - The Company was fined HK$30,000

Direct Marketing – Conviction Case 2

- **personal data in the online Government Telephone Directory for direct marketing**

Claims made under Section 66 of the PDPO (DCCJ 3793/2016)

- Section 66 of the PDPO provides that an individual who suffers damage by reason of a contravention of a requirement under the PDPO by a data user may be entitled to compensation from that data user for that damage. The Privacy Commissioner may, pursuant to section 66B of the PDPO, grant legal assistance to the aggrieved individual who intends to institute proceedings to seek compensation.

- Brief Facts of the Case
  - The Plaintiff lodged her complaint with PCPD against an organisation for disclosure of case materials of a criminal charge laid against her
  - The Plaintiff appealed to the Administrative Appeals Board against PCPD's decision not to proceed with her complaint, but her appeal was dismissed
  - The Plaintiff commenced an action in the District Court to claim damages for contravention of DPP3 and DPP4
  - The Defendants applied to the District Court for striking out the Plaintiff's claims

Claims made under Section 66 of the PDPO (Con't) (DCCJ 3793/2016)

- **Gist of Court's Ruling**
  - **The Board has jurisdiction over the subject matter, and its decision is conclusive and final**
  - **The issues determined by the Board are identical to those presented to the District Court. The parties are also the same**
  - **Balancing against the oppression that would be caused to the Defendants in the present proceedings, the District Court ordered the Plaintiff's claims be struck out on the ground that the common law principle of "res judicata" applied**

- **Significance**
  - **Implications on PCPD's handling of legal assistance cases**
  - **Should the Board find the defendant to have contravened any requirement of the PDPO, the defendant will not be allowed to challenge the question of liability in his civil claim for damages**


ngiyabonga
danke
謝謝
teşekkür ederim
спасибо
dank je
tapadh leat
thank you
gracias
bedankt
hvala
mauruuru
mochchakkeram
dziękuję
go raibh maith agat
sagolun
sukriya
kop khun krap
obrigado
arigatô
takk
dakujem
grazie
мерси
terima kasih
감사합니다
ευχαριστώ
merci

歐洲聯盟
《通用數據保障條例 2016》
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