

**Global Privacy Enforcement Network
3rd GPEN Enforcement Practitioners' Workshop
Seminar-cum-Dinner
16 May 2019**

**Development of Data Protection Landscape
with Law Reform and Data Ethics
in Asia and Hong Kong**

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Privacy Commissioner for Personal Data, Hong Kong, China**

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**





Hong Kong Initiatives

Wi-Fi Connected City



eID



FinTech



Intelligent Transport System and Traffic Management

Big Data Analytics



Smart Tourism

Smart Lampposts

Open Data



Digital Payment

Source: ITB & OGCIO: Hong Kong Smart City Blueprint



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

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

*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/>

7

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 laws 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

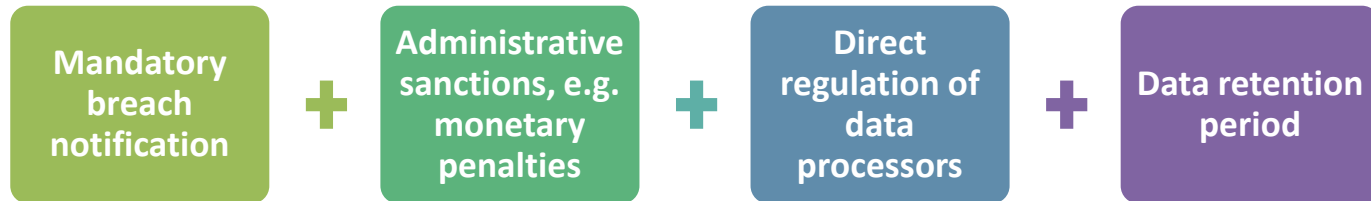
- Supreme Court ruled in favour of the right to privacy, as guaranteed under the Constitution (2017)
- Draft Personal Data Protection Bill (released Jul 2018)

NZ

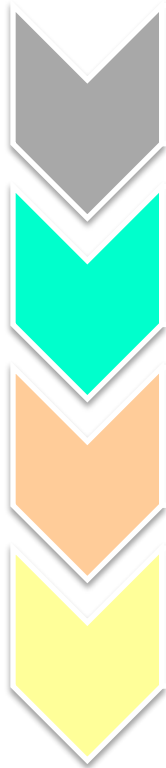
- New Privacy Bill 2018 before Parliament; to replace the current Privacy Act 1993

Review of the Hong Kong Privacy Legislation

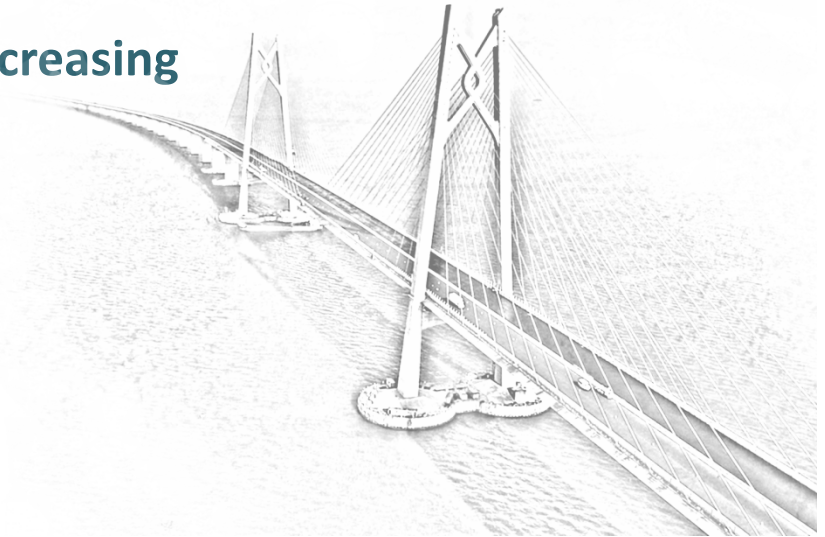
- Last reviewed: 2009-2012
- Balancing the protection of privacy against the free flow of information and other freedoms
- Areas of higher priority:



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

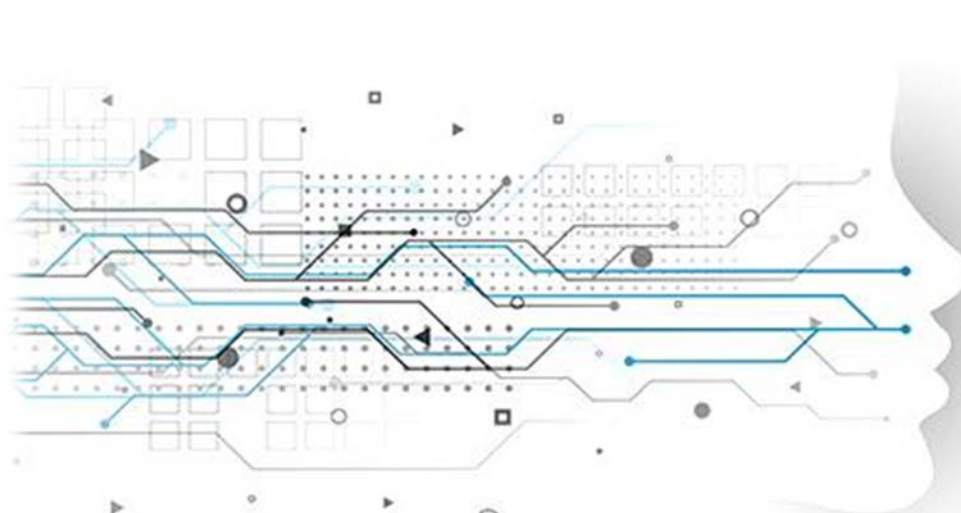
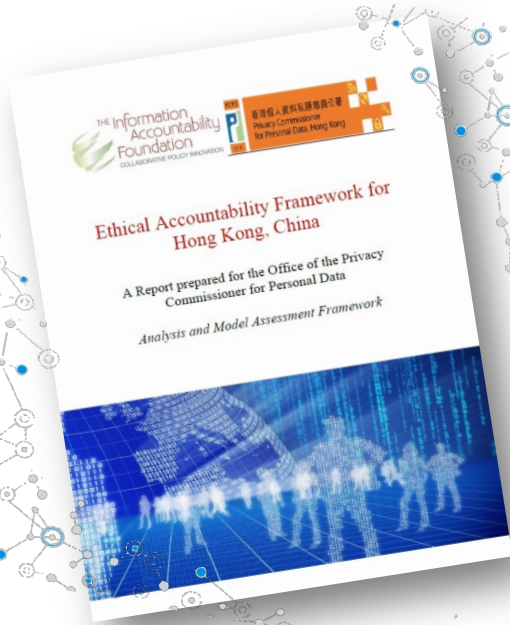
From Compliance to Accountability & Data Ethics

Data Ethics & Trust



“Ethical Accountability Framework for Hong Kong China”

REPORT OF LEGITIMACY OF DATA PROCESSING PROJECT

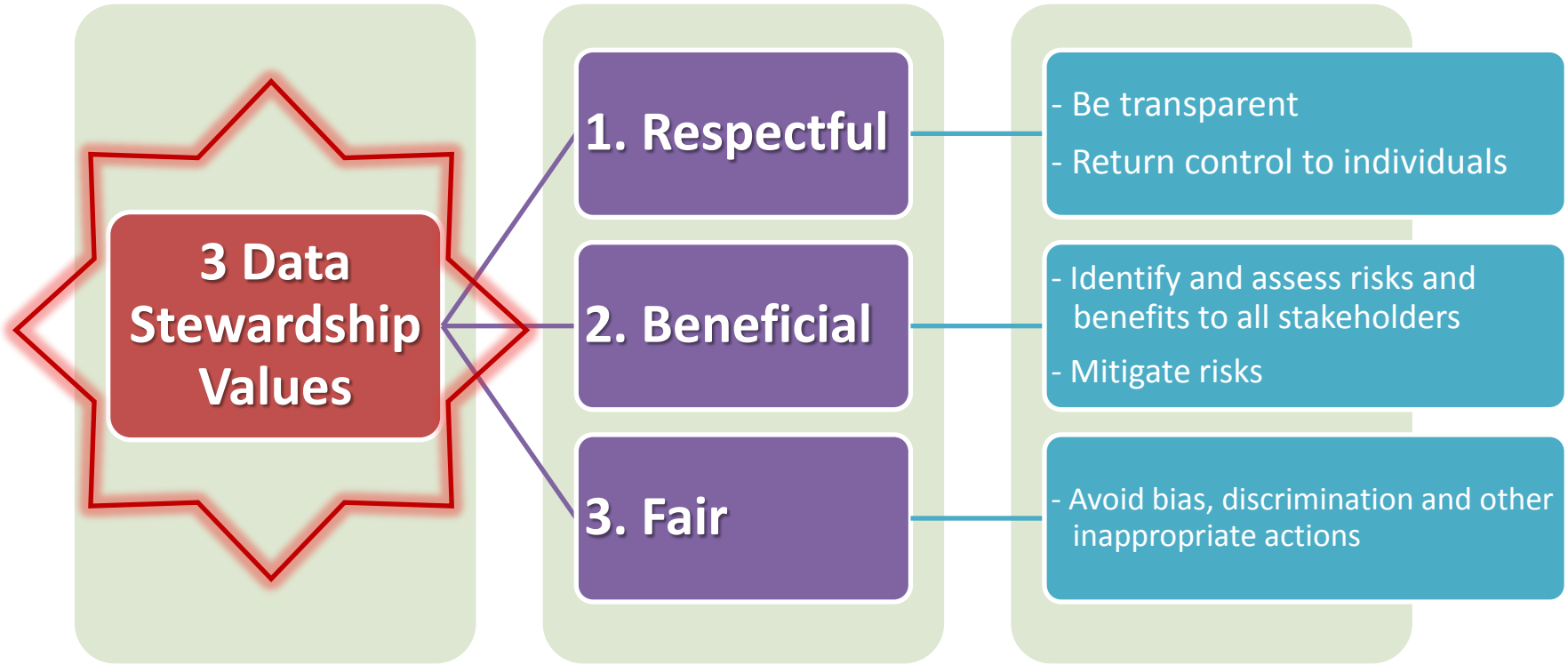


(Published on 24 October 2018)

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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

Data Ethics - Advocacy

- As a member of ICDPPC, PCPD Hong Kong (together with 12 international DPAs), issued the “Declaration on Ethics and Data Protection in Artificial Intelligence” in Brussels, Belgium in October 2018
- PCPD, as one of the co-chairs of a Permanent Working Group on AI under ICDPPC, promotes the Declaration that addresses the challenges of AI development

Helping Businesses to Practise Data Ethics

PCPD
H.K.

PCPD.org.hk

Information Leaflet

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

Data Ethics for Small and Medium Enterprises

Preamble

In a data-driven economy, small and medium enterprises ("SMEs"), including tech start-ups, increasingly use personal data of customers as an asset in operating and advancing their businesses. The rapid development in information and communications technology, particularly advanced data processing activities (including big data analytics and artificial intelligence), present business opportunities but at the same time challenges privacy and data protection.

It is not in dispute that personal data belongs to the data subjects. SMEs that derive benefits from personal data should ditch the mindset of conducting their operations to merely meet the minimum regulatory requirements only. They should instead be held to a higher ethical standard that meets stakeholders' expectations alongside the requirements of laws and regulations. Data ethics can therefore bridge the gap between legal requirements and stakeholders' expectations.

In fact, ethical use of personal data makes good business sense. **Respectful, beneficial and fair** use of customers' personal data can improve business reputation and enhance stakeholders' confidence. This leaflet aims to help SMEs understand the means to implement data ethics. When SMEs develop an assessment process to ensure that personal data is processed ethically, individuals will have greater confidence in their data being protected. In turn, customers' trust will grow and become a competitive edge of the SMEs. Under the trend of service and

product personalisation and mobilisation in the future smart society, enterprises will benefit by grasping and implementing data ethics.

Three Core Values of Data Ethics

SMEs are encouraged to handle personal data pursuant to three core values, namely being **Respectful, Beneficial and Fair**.

Respectful¹

- SMEs should be accountable for conducting advanced data processing activities
- SMEs should consider the expectations of the individuals to whom the data relate and/or impacted by the data use
- SMEs should consider all parties that have interests in the data
- Decisions made about an individual and the relevant decision-making process should be explainable and reasonable
- Individuals should be able to make inquiries, obtain explanation and appeal against decisions on the advanced data processing activities that impact them

1 The Respectful value is consistent with Data Protection Principles (DPPs) 1, 3, 5 and 6 in Schedule 1 to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong).

Data Ethics for Small and Medium Enterprises 1 April 2019



(Issued on 9 May 2019)

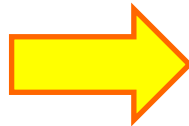
PCPD's Roles – Enforcer + Educator + Facilitator

PCPD's Strategic Focus

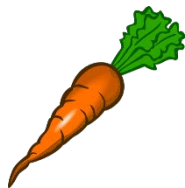
Fair Enforcement



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

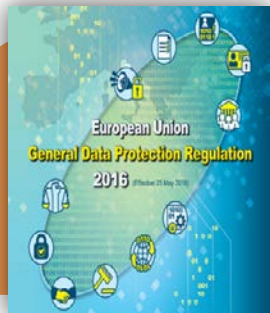
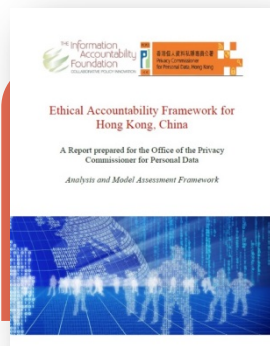
*(Ranked #16 out of 126 jurisdictions
in Rule of Law Index 2019, higher than the USA)*



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



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