

# Personal Information Protection Law: Cross-border Transfer of Personal Information



## Personal Information Protection Law (“PIPL”) – Article 38

- 1) Passing the **security assessment** organized by the national cyberspace department in accordance with Article 40 of the PIPL;
- 2) obtaining **personal information protection certification** from the relevant specialized institution according to the provisions issued by the national cyberspace department;
- 3) concluding a contract stipulating both parties' rights and obligations with the overseas recipient in accordance with the **standard contract** formulated by the national cyberspace department;
- 4) meeting other conditions set forth by laws and administrative regulations and by the national cyberspace department.



## Other Necessary Conditions set out in the PIPL

- Notification (Article 39)
- Separate consent (Article 39)
- Personal information protection impact assessment (Article 55(4))
- Ensuring that the personal information processing activities of the overseas recipient meet the personal information protection standards set forth in the PIPL (Article 38)

# Points to Note for Cross-border Transfers of Personal Data from Hong Kong

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16 May 2023



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# Legal Requirements under the PDPO

The protection should follow the personal data

## DPP 1 (Collection of Personal Data)

All practicable steps shall be taken to ensure that, *inter alia*, the data subject is explicitly informed of the **purpose** for which the data is to be used and the **potential transferees** of the personal data concerned

## DPP 3 (Use of Personal Data)

The data subject's **prescribed consent** would be required if the transfer is **for a new purpose**, unless it falls within the exemptions under Part 8 of the PDPO



# Legal Requirements under the PDPO



## Engagement of data processors to process personal data outside Hong Kong

The data user must adopt **contractual or other means** to

- ✓ prevent any personal data transferred to the data processor from being kept longer than is necessary for the processing of the data (**DPP2(3)**)
- ✓ prevent unauthorised or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing (**DPP4(2)**)

**This applies whether the data processor is within or outside Hong Kong.**

# Guidance on Recommended Model Contractual Clauses for Cross-border Transfer of Personal Data

To cater for two different scenarios in cross-border transfers of personal data:

(A) From one data user to another data user

(B) From a data user to a data processor

May be incorporated into general commercial agreements on transfers of personal data:

(I) From a Hong Kong entity to another entity outside Hong Kong

(II) Between two entities both of which are outside Hong Kong when the transfer is controlled by a Hong Kong data user



## Guidance on Recommended Model Contractual Clauses for Cross-border Transfer of Personal Data

### PART 1: INTRODUCTION

Given the increasing digitalisation in the handling of personal data and globalisation of business operations in recent years, local enterprises, especially the small and medium-sized ones, may experience practical difficulties in crafting appropriate contractual terms for effecting cross-border transfers of personal data while ensuring that the data concerned be given equivalent protection to the degree provided under the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO). Meanwhile, with the proliferation and advancement of information and communication technology including the big data, cloud computing and data analytics, the challenges and complexities involved in cross-border data transfers are set to mount.

The Office of the Privacy Commissioner for Personal Data has prepared two sets of Recommended Model Contractual Clauses (RMCs) to cater for two different scenarios in cross-border data transfers, namely (i) from one data user to another data user; and (ii) from a data user to a data processor. The RMCs set out the general terms and conditions which are applicable to the transfer of personal data from a Hong Kong entity to another entity outside Hong Kong; or between two entities both of which are outside Hong Kong when the transfer is controlled by a Hong Kong data user, with a view to facilitating the parties to cross-border transfers of personal data to take into account the relevant requirements of the PDPO, including the Data Protection Principles (DPPs) under Schedule 1 thereof.

The RMCs are prepared as free-standing clauses, which may be incorporated into more general commercial agreements between data transferors and data transferees. This Guidance provides detailed elaborations as to the substantive effect of the RMCs, and how adherence to the same ensures that adequate protection be given to the personal data as provided under the PDPO as if the data concerned were not transferred outside Hong Kong.

Notwithstanding that section 33 of the PDPO, which imposes restrictions on cross-border transfers of data, is not yet in operation, this Guidance recommends to data users, especially the small and medium-sized enterprises, the best practices to be adopted as part of their data governance responsibility to protect and respect the personal data privacy of data subjects.

This Guidance supplements the Guidance on Personal Data Protection in Cross-border Data Transfer, including the Recommended Model Clauses in the Schedule annexed thereto, issued by this Office in December 2014<sup>1</sup>.

#### The legal requirements

Data Protection Principle 3 of the PDPO, which is directed against the misuse of personal data, specifies that personal data shall not, without the data subject's prescribed consent, be used for a new purpose. "New purpose" means in essence any purpose other than the one for which the personal data was originally

<sup>1</sup> The Guidance on Personal Data Protection in Cross-border Data Transfer is available at [https://www.pcpd.org.hk/english/resources\\_centre/publications/files/QN\\_crossborder\\_e.pdf](https://www.pcpd.org.hk/english/resources_centre/publications/files/QN_crossborder_e.pdf).

# Guidance on Recommended Model Contractual Clauses for Cross-border Transfer of Personal Data



- The adoption of the RMCs serves to illustrate that the data user has taken all reasonable precautions and exercised all due diligence to ensure that the data will not, in the jurisdiction of the transferee, be handled in any manner which, if that took place in Hong Kong, would be a contravention of a requirement under the PDPO
- To ensure that adequate protection be given to the personal data as provided for under the PDPO, as if the data concerned were not transferred outside Hong Kong

# Recommended Model Contractual Clauses for Cross-border Transfer of Personal Data



Available for access

<b>Contractual obligations of the Data Transferee</b>	<b>Data User to Data User RMCs</b>	<b>Data User to Data Processor RMCs</b>
Purpose Limitation	Clause 4.1	Clause 3.1
Data be Adequate but Not Excessive	Clause 4.2	Clause 3.2
Data Security	Clause 4.3	Clause 3.3
Retention and Erasure of Data	Clauses 4.4 & 4.5	Clauses 3.4 & 3.5
Accuracy	Clauses 4.6 & 4.7	Clauses 3.6 & 3.7
Transparency	Clause 4.8	-
Onward Transfer/ Sub-processing	Clauses 4.9 – 4.11	Clauses 3.8 – 3.10
Data Access and Correction Requests	Clause 5	-
Direct Marketing	Clause 6	-



## Data Privacy Law

The Personal Data (Privacy) Ordinance

Six Data Protection Principles

Codes of Practice/ Guidelines

The Personal Data (Privacy) Amendment Ordinance 2021

Amendments 2012

Duty Lawyer Services

Other Publications

EU General Data Protection Regulation

Personal Information Protection Law of the Mainland

Electronic Health Record Sharing System

## Mainland's Personal Information Protection Law

### Highlights of the Mainland's Personal Information Protection Law

#### Introduction

The Personal Information Protection Law (PIPL), the first piece of legislation in the Mainland dedicated to the protection of personal information, was passed by the Standing Committee of the National People's Congress on 20 August 2021 and was effective since 1 November 2021.

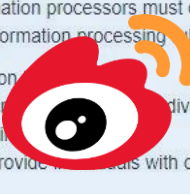
The PIPL regulates the processing of personal information and protects an individual's rights and interests in relation to personal information. It stipulates that the processing of personal information must abide by the principles of legality, justice, integrity, minimum necessity, openness and transparency, and the purposes of processing shall be explicit and reasonable.

Individuals have the right to access, copy, correct and request erasure of their personal information from personal information processors (similar to data users under the Personal Data (Privacy) Ordinance of Hong Kong). Individuals can also request personal information processors to provide them with the means of transferring their personal information to other processors.

When processing personal information of a minor under the age of 14, personal information processors must obtain the consent of the guardian, and must also obtain the consent of the minor. Personal information processors must also obtain the consent of the individual before processing personal information for purposes such as targeted advertising, recommendation of services, and other similar purposes. The PIPL prohibits unreasonable collection, use, disclosure, transfer, and other processing of personal information. It also prohibits unreasonable trade practices, such as unreasonable price discrimination, and unreasonable marketing practices. In addition, personal information processors must provide individuals with options that do not target at their personal characteristics or convenient means to opt-out.

If personal information is transferred to a personal information processor outside of the Mainland, the personal information processor must obtain the consent of the individual and meet specific requirements. The PIPL also requires personal information processors to pass the information to the relevant authorities, or to the relevant authorities, or to the relevant authorities, or to the relevant authorities.

追蹤公署社交平台



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# 問答環節

Questions & Answers



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