

# Data Privacy: Impact of EU General Data Protection Regulation & EU Directive 2016/680 on Hong Kong & Asia



IBA 20<sup>th</sup> Transnational Crime Conference - Lisbon, Portugal  
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# EU GDPR – is Asia ready?

## 🍀 Asia Pacific – Early Adopters / Reluctant Enforcers / Latecomers

Country	Legislation / Year	Remarks
Australia	Privacy Act 1988 (amended in 2014)	New enforcement powers after 2014
New Zealand	Privacy Act 1993	In “White List” of EU
Hong Kong	Personal Data (Privacy) Ordinance 1996 (amended in 2012)	Lack of enforcement between 1996 and 2010!
Singapore	Personal Data Protection Act 2013	Key data protection obligations operative in mid-2014
Malaysia	Personal Data Protection Act 2010	Came into force in Nov 2013
China	Fragmented & sectoral regulations 2012 – 2013 – Decisions & Guidelines on protection of information	No unified privacy code

# Hong Kong Data Privacy Regime

- ◆ **Personal Data (Privacy) Ordinance (“PDPO”)** enacted over 20 years ago (1996)
- ◆ Active enforcement only after 2010
- ◆ Not on the **EU “White List”** – sufficient data protection legislation to receive EU outbound data without further compliance procedures
- ◆ **Section 33 PDPO (cross-border data transfer)** – functional equivalent of EU White List– not yet operative after 20+ years!

# HK Privacy Commissioner's recent stance:

- No immediate need to adapt the laws to EU GDPR
- No immediate plan to enforce section 33 (cross-border data transfer)
- Takes pride in HK's *“competitive advantage as the centre of free flow of information in the region”*
- No apparent intention to appear on EU “White List”!

# EU GDPR – impact on HK & Asia

- ◆ **Extra-territoriality** of EU GDPR
- ◆ Extend application to **Non-EU Data Users**, so long as processing activities relate to:
  - (i) Offering of goods & services to EU Data Subjects or
  - (ii) Monitoring of behavior of EU Data Subjects  
(e.g. cookies, user profiling, tracking of “preferences, behaviours and attitudes”)
- ◆ Location of **Data Processing** + Location of **Data Subjects**

# EU GDPR – Impact on HK & Asia

## ◆ Affected stakeholders in Asia:

- ✓ E-commerce (Alibaba / Taobao);
- ✓ Search Engines (Baidu / Sohu);
- ✓ Internet / Cloud Service Providers;
- ✓ Entities that offer goods & services to EU customers or track their behaviour (e.g. hotel / flight ticket booking websites – Zuji.com)

# EU GDPR – Impact on HK & Asia

## ◆ Concerns:

1. **GDPR requires limited nexus to EU**
2. **Low awareness of EU GDPR** (Deadline: May 2018!!!)
  - v.s U.S. Foreign Corrupt Practices Act (FCPA)
  - v.s. U.K. Bribery Act 2010 ‘
3. **Effectiveness of enforcement mechanism outside EU?**
  - Heavy reliance on local Asian authorities

## ◆ Predictions:

- ✓ “Inadvertent” / “ignorant” breaches are anticipated from non-EU entities without sound knowledge in EU affairs
- ✓ Enforcement for breaches – remain to be seen

# EU Directive 2016/680

- ◆ **EU Directive 2016/680 – Article 35:** strict conditions for data transfer to a third country or an international organization:
  - ✓ transfer must be necessary for the purpose;
  - ✓ data must be transferred to a controller in a third country or international organization;
  - ✓ appropriate safeguards by the country;
  - ✓ consideration of factors e.g. seriousness of the offence.

# HK's response to EU Directive 2016/680

- ◆ No immediate plan to amend Privacy Laws & Criminal Laws to adapt to EU Directive 2016/280
- ◆ Section 58 PDPO exemption – general exemption from data privacy obligations for crime prevention / law enforcement purposes



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