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# The Impact of GDPR on Hong Kong Companies

1 June 2021



# Agenda

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- GDPR – a (very) brief overview
- Impact of GDPR in Hong Kong
  - direct application of GDPR
  - transfers of EU personal data to Hong Kong
  - influence of GDPR on Hong Kong and APAC region laws
- Practical compliance solutions

# GDPR – a (very) brief overview

# GDPR: a (very) brief overview

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## Documentation obligations

Record of processing activities  
Contracts on order processing  
International data transfers

Protection of  
rights of persons concerned

Notification/ communication obligations in the event of  
data breaches

Policies

## Information obligation

## Ensuring the lawfulness of data processing

Consents  
Deletion concepts  
Data protection impact  
assessment



Data protection officer

## Roles and processes

## Data protection principles

Appropriation  
Data minimization  
Data accuracy  
Privacy by design

Technical and organizational  
measures

## Establishing data security

# GDPR: supervision and enforcement

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- Massive fines
  - up to 20 million euro or
  - up to 4% of the total worldwide annual turnover,  
whichever is higher

# Impact of GDPR in Hong Kong

# Impact of GDPR on Hong Kong

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- There are three key ways in which GDPR impacts Hong Kong businesses:
  1. the GDPR applies directly to the Hong Kong business
  2. the Hong Kong business receives international transfers of personal data from the EU
  3. the growing influence of GDPR on Hong Kong and APAC region data protection laws

# Direct application of GDPR



# GDPR: geographical reach

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The applicability of the GDPR to your business can be based on:

1. establishment of the business in the EU through “stable arrangements”; and
2. extra-territorial application by:
  - offering of goods or services to data subjects in the EU
  - monitoring data subjects’ behaviour in the EU

# Applicability of the GDPR in Hong Kong

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- GDPR applies to:
  - EU subsidiaries (controllers or processors) of a HK company
  - HK based web-sites targeting EU business
- GDPR does not apply to:
  - a HK business selling to EU citizens in Hong Kong
- GDPR may or may not apply:
  - e-commerce platforms and digital content businesses accessible in the EU
  - a HK data processor processing personal data in HK on behalf of an EU controller (GDPR should apply to the processing, but not the processor)



# Transfers of personal data from the EU to Hong Kong

# EU data transfers

- Consent
- Adequacy
- Binding Corporate Rules
- Standard contractual clauses
  - Adopted by EC
  - Adopted by DPAs
- Approved codes of conduct
- Certification mechanism
- Authorised contracts



# The impact of Schrems II

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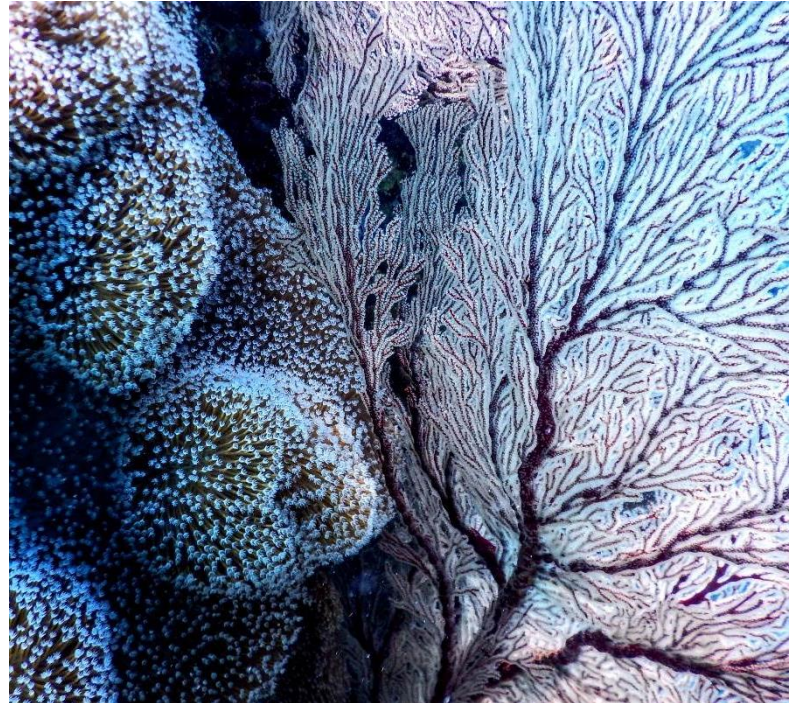
- July 2020 decision of the Court of Justice of the European Union
- *Schrems II* upheld the validity of the EU SCCs, but requires companies to conduct case-by-case analyses to determine whether foreign protections concerning government access to data meet EU standards
- Law enforcement access is key concern



# The new EU SCCs

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- EC published draft EU SCCs in November 2020
  - Modular approach depending on controller/processor status
  - Post-*Schrems II*, focus is on what supplementary measures are needed to be applied to transfers to address risks that EU standards may not be met
  - Transfer Impact Assessment, safeguards against law enforcement access requests



# Influence of GDPR on Hong Kong and APAC region laws

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- The PDPO reflects the "European-model" of data protection regulation based on the 1980 OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data – the same underlying policy basis as GDPR
- The PDPO has only been updated once (in 2013) and is widely considered to be due for a refresh



# Current proposals for PDPO reform

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- In January, 2020, the Constitutional and Mainland Affairs Bureau proposed six amendments to the PDPO:

Proposed Amendment	GDPR?
Mandatory data breach notification	✓
Data retention policy	✓
Revenue-based fines	✓
Scope of “personal data” includes identifiable data subjects	✓
Regulation of data processors	✓
Doxxing-related amendments	

# Influence of GDPR on APAC region laws

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- Recent reforms of existing data protection laws and new data protection laws in APAC are clearly tracking GDPR as the reference standard
- For example, Australia, Japan, Singapore and New Zealand have all updated long-standing data protection laws with “GDPR innovations”, such as mandatory data breach notification obligations
- Jurisdictions introducing new data protection laws, such as China, India and Thailand, are drawing from GDPR “whole cloth”

# Practical compliance solutions

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- A roadmap to compliance:
  1. Gather the data:
    - What data are we processing?
    - Where are we collecting data, where are we transferring, where are we processing?
    - For what purposes are we processing?
    - Which group entities are doing what?
    - To whom are we transferring personal data and for what purposes?
  2. Identify material jurisdictions and the key relevant regulatory constraints (both in terms of data protection and industry regulation)
  3. Prioritize the compliance exercise and identify paths of least resistance

# Practical compliance solutions

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- Some practical tips:
  - Develop a framework for compliance: the key overall influence of GDPR is the trend towards **organizational accountability** through a well thought out organization-wide policy and compliance program
  - Prioritize compliance efforts based on risk
  - “Over-compliance” through leveling up to GDPR standards may seem like the simplest solution for APAC, but is “compliance in fact” actually achievable? And at what cost?
  - There is now enough common ground in APAC laws to define a reasonable, achievable standard of compliance, allowing for localization where needed – the “reasonable high water mark”
  - Creative solutions through changes to contracting structures and “controller” identities can help limit direct exposure to GDPR

# Q&A



# Speaker details

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