



香港工業總會

Federation of Hong Kong Industries

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Industry News 業界新聞

10 September 2015

Deadline of response extended to 15 Sep 2015**Business Impact Assessment on the Proposed Implementation of Section 33 of the Personal Data (Privacy) Ordinance**

With reference to our previous memorandum (Ref: 2015-173), we informed that the Constitutional and Mainland Affairs Bureau of the HKSAR Government has appointed Deloitte Consulting (Hong Kong) Limited to undertake a *Business Impact Assessment* of the Proposed Implementation of Section 33 of the Personal Data (Privacy) Ordinance. Section 33 is the only provision in the Ordinance that has not been executed since the Ordinance was enacted in 1995.

Bringing section 33 of the Ordinance into force will impose more stringent regulation and would have significant implications on trans-border data transfer activities of various business sectors. The Government has indicated that it needs to have a thorough understanding of the pervasiveness of trans-border data flows, as well as the processes involved in the transfer of personal data and the issues pertaining to its protection that organizations may encounter when engaging in offshore outsourcing and requires preparation on multiple fronts.

Section 33 of the Personal Data (Privacy) Ordinance prohibits the transfer of personal data to places outside of Hong Kong unless one of a number of conditions is met.

The objective of the Study is to assess the likely impact of the proposed implementation of Section 33 on different business sectors in Hong Kong with a view to ensuring that viable means for data users to fulfil the requirements of the provision are available and the commencement of the provision will not stifle legitimate business operations.

We strongly urge member companies, especially those with daily operations involving transfers of personal data to places outside Hong Kong to participate in the study. The deadline for submitting the survey has been extended to 15 September 2015. Please complete the attached questionnaire and return it to the FHKI by 15 September 2015 (Tuesday) via fax (Fax No: 2721 3494) or email (Jeffreys.tsang@fhki.org.hk).

Information collected will be kept strictly confidential, only consolidated data and information gathered from the survey will be provided to the Government. For enquiries, please contact Jeffreys Tsang at 2732 3197.

Encl.: Questionnaire



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2015年9月10日

問卷的截止日期延至2015年9月15日**擬議實施《個人資料（私隱）條例》第33條的營商環境影響評估**

工總8月20日發出的備忘錄(2015/173)提及特區政府政制及內地事務局已委任德勤諮詢服務(香港)有限公司進行一項關於擬議實施《個人資料(私隱)條例》第33條的營商環境影響評估。自1995年該條例制訂以來，第33條是條例中唯一一條尚未實施的條文。

實施第33條，將施以比現時嚴厲的規管，並會對商界的跨境資料移轉活動有重大影響。政府曾表示必須透徹了解越境資料傳輸的普遍程度、移轉個人資料所涉及的程序，以及有關機構在作出離岸外判時可能遇到的個人資料保障問題，需要多方面的準備；因此第33條尚未開始實施。

《個人資料（私隱）條例》第33條禁止資料使用者將個人資料轉移至香港以外的地方，除非符合條文列明的其中一項條件。

此研究目的是為了評估實施第33條對香港不同行業的可能影響，並確保資料使用者有可行的方法依從條文規定，以免條文生效後對合理正當的業務運作造成阻礙。

我們熱切呼籲會員企業參與是次問卷調查，特別是日常運作會涉及把個人資料轉移至香港以外地方的企業。當局已把回覆問卷的截止日期延至2015年9月15日，因此懇請會員在2015年9月15日或之前，填妥夾附的問卷以傳真(傳真號碼：2721 3494)或電郵(jeffreys.tsang@fhki.org.hk)把問卷交回工總。

是次問卷搜集所得資料將會絕對保密，只會向政府提供調查的綜合數據作參考，並不會引述任何個人或機構的個別意見。如有查詢，請聯絡曾志聰(電話：2732 3197)。

附件：問卷

PART A – Organisation Profile

1) Administrative questions

- i) Name of organisation: _____
- ii) Address*: _____
- iii) Telephone: _____
- iv) Name of contact person: _____
- v) Position*: _____
- vi) Email: _____

* – Optional fields

2) Which of the following option best describes the industry sector your organisation operates in?

- | | |
|---|---|
| <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Accommodation and food services |
| <input type="checkbox"/> Mining and quarrying | <input type="checkbox"/> Information and communications |
| <input type="checkbox"/> Electricity, gas, water supply and waste management | <input type="checkbox"/> Financing and insurance |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Real estate |
| <input type="checkbox"/> Trade and wholesale | <input type="checkbox"/> Professional and business services |
| <input type="checkbox"/> Retail | <input type="checkbox"/> Social and personal services |
| <input type="checkbox"/> Transportation, storage, postal and courier services | |

3) How many employees does your organisation have in Hong Kong?

- | | |
|---|--|
| <input type="checkbox"/> 1 to 10 employees | <input type="checkbox"/> 50 to 99 employees |
| <input type="checkbox"/> 11 to 49 employees | <input type="checkbox"/> 100 employees and above |

4) Which of the following option best describes your organisation type?

- A local company incorporated in Hong Kong
- A branch office / a representative office / a subsidiary of an overseas company
- Others (Please specify: _____)

PART B – Business Practices

Under the Personal Data (Privacy) Ordinance, "**Personal data**" is defined to mean any data:

- (a) relating directly or indirectly to a living individual;
- (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and
- (c) in a form in which access to or processing of the data is practicable.

Examples of personal data protected by the Ordinance include names, phone numbers, addresses, identity card numbers, photos, medical records and employment records.

- 5) Based on the above definition, does your organisation transfer personal data to places outside Hong Kong via courier, post, email and/or other electronic means through the following way(s)?
- i) Sharing personal data with trade partners, contractors, data processors or related overseas companies (e.g. sister companies)
 - Yes
 - No

 - ii) Transferring personal data between two jurisdictions other than Hong Kong where the transfer remains under your organisation's control
 - Yes
 - No

 - iii) Accessing personal data (collected by your organisation) from overseas locations, irrespective of where the personal data are physically stored
 - Yes
 - No

 - iv) Others (ways adopted which are not stated above)
 - Yes (Please specify: _____)
 - No

(Please proceed to Question 7 in Part C if you answered "No" to all of the above.)

6) If you answered "Yes" to any parts of Q5:

i) Please list at least the **top three** most important countries, from business perspective (e.g. source of largest revenue generated, strategic geographical presence, etc.) and/or from operational perspective (e.g. essential geographical operations support centre), to which your organisation transfers personal data.

1. _____
2. _____
3. _____

Other countries of importance to which your organisation transfers personal data (if applicable):

ii) Are clients/customers of your organisation currently being notified of the transfer outside Hong Kong before it takes place?

Yes (please select all applicable option(s) from below)

- Verbally informing clients/customers of the transfer
- Notifying clients/customers via a written statement without seeking their explicit consent
- Seeking explicit consent from clients/customers via a written agreement on the transfer
- Others. (Please specify: _____)

No

iii) What is/are the purpose(s) of the transfer or access of personal data outside Hong Kong? (Please select all applicable option(s))

- Business operation, e.g. circulate personal data of tour group members between travel agencies in different countries, handling credit card information, personal information on insurance policy and bank account details of customers among branches in different offices
- Staff/Client support services, e.g. make air ticket and/or hotel reservations on behalf of staff/customers
- Research and development, e.g. contract overseas companies for market research using personal data gathered in Hong Kong
- Sales and marketing, e.g. commission overseas companies for direct marketing activities
- Human resource management, e.g. recruitment process performed by overseas office (including application of work permit, background check, preparation of staff personal data profile)
- IT management and support, e.g. data backup to an overseas (centralised) data centre, user account administration from an offshore support centre
- Finance and accounting, e.g. administration of payroll and expenses reimbursement by overseas office
- Legal and regulatory reasons, e.g. filing of personal information of local senior management to overseas regulators for audit purposes
- Others (Please specify: _____)

iv) Has your organisation taken any measures to govern how personal data is being handled by transferees?

Yes

a) What is/are the measure(s) taken? (Please select all applicable option(s))

- Putting in place an enforceable contract, e.g. stating explicit clauses on the agreed uses and liability of misuse of personal data
- Adopting non-contractual monitoring mechanism, e.g. monitoring transferees' practices through audits and/or security measures available
- Others. (Please specify: _____)

b) Why is this/are these measure(s) taken? (Please select all applicable option(s))

- To comply with regulations in other jurisdictions
- To adhere to standards set by parent company
- To meet the standards adopted by key trading partners
- To instil confidence in clients/customers
- Others (Please specify: _____)

No

PART C – Data Management Practice

7) Does your organisation engage any external service provider(s) for the storage of personal data?

- Yes
- No

8) Does your organisation have a complete view of where (in terms of country or location) the personal data is stored either by your in-house IT function or external service provider(s)?

- Yes
- No (Please skip to Q10)

9) If you answered "Yes" to Q8 above, are ALL personal data including their backup stored in Hong Kong only?

- Yes
- No

PART D – Others

10) Can we contact you to clarify your responses to this survey?

- Yes
- No

11) Do you have any other comments regarding this survey and/or the proposed implementation of Section 33?

-----End of Survey-----

第一部份 - 機構資料

1) 行政問題

- i) 機構名稱: _____
- ii) 通訊地址*: _____
- iii) 聯絡電話: _____
- iv) 聯絡人姓名: _____
- v) 職位*: _____
- vi) 電郵地址: _____

* - 非必須填寫

2) 以下哪一個選項最適合形容貴機構所屬的行業領域?

- | | |
|---|----------------------------------|
| <input type="checkbox"/> 製造業 | <input type="checkbox"/> 住宿及膳食服務 |
| <input type="checkbox"/> 採礦及採石業 | <input type="checkbox"/> 資訊及通訊 |
| <input type="checkbox"/> 電力、燃氣供應、水務及廢棄物管理 | <input type="checkbox"/> 金融及保險業 |
| <input type="checkbox"/> 建造業 | <input type="checkbox"/> 地產業 |
| <input type="checkbox"/> 進出口貿易及批發 | <input type="checkbox"/> 專業及商用服務 |
| <input type="checkbox"/> 零售業 | <input type="checkbox"/> 社會及個人服務 |
| <input type="checkbox"/> 運輸、倉庫、郵政及速遞服務 | |

3) 請問貴機構在香港有多少名僱員?

- | | |
|--------------------------------------|--------------------------------------|
| <input type="checkbox"/> 1 至 10 名僱員 | <input type="checkbox"/> 50 至 99 名僱員 |
| <input type="checkbox"/> 11 至 49 名僱員 | <input type="checkbox"/> 100 名僱員或以上 |

4) 以下哪一個選項最適合形容貴機構的類別?

- 在香港成立為法團的本地公司
- 海外公司的分公司，代表處或附屬公司
- 其他 (請列明: _____)

第二部份 - 業務慣例

在《個人資料（私隱）條例》中，「個人資料」指符合以下說明的任何資料：

- (a) 直接或間接與一名在世的個人(資料當事人)有關的；
- (b) 從該資料直接或間接地確定有關的個人的身分是切實可行的；及
- (c) 該資料的存在形式令予以查閱及處理均是切實可行的。

個人的姓名、電話號碼、地址、身份證號碼、相片、病歷和受僱紀錄等都是條例保護的個人資料。

5) 根據上述的定義，貴機構是否有通過以下渠道把個人資料送遞、郵遞或以其他電子方式轉移至香港境外？

i) 把個人資料與貿易夥伴，承包商，資料處理者或其他海外的相關公司(如姊妹公司)共用

- 是
- 否

ii) 把個人資料在香港以外的兩個司法區之間轉移，但有關轉移是由貴機構所控制

- 是
- 否

iii) 在香港以外的地方存取個人資料，不論個人資料實質的儲存地域

- 是
- 否

iv) 其他(上述渠道以外的方法)

- 是(請列明: _____)
- 否

(如以上答案皆為“否”，請直接前往第三部份第7題繼續作答。)

6) 如第 5 題的任何答案為“是”：

i) 請列出至少三個對貴機構而言最重要的個人資料轉移的目的地（國家或地區）（可從業務角度，如最主要收入來源，策略位置等及/或從營運角度，如重要區域營運支援中心等）。

1. _____
2. _____
3. _____

如有其他重要的個人資料轉移的目的地（國家或地區），請列明：

ii) 現時，貴機構在轉移個人資料前是否會預先通知相關客戶/顧客？

是（請選擇以下所有適用的選項）

- 口頭告知客戶/顧客
- 書面通知客戶/顧客，不包括徵求明確同意
- 通過書面協議，徵求客戶/顧客的明確同意
- 其他（請列明：_____）

否

iii) 請列明把個人資料轉移至香港境外或在香港境外存取資料的目的？（請選擇所有適用的選項）

- 業務運作（例如：把旅行團成員的個人資料在不同國家的旅行社之間傳送，讓分佈於世界各地的分公司處理顧客的信用卡、保險及個人賬戶資料）
- 為顧客及/或僱員提供的支援服務（例如：代顧客或僱員購買機票及/或預訂酒店）
- 研究與發展（例如：把在香港收集所得的個人資料交予受委託的海外公司用作市場調查）
- 銷售及市場推廣（例如：把個人資料交予受委託的海外公司以用於發出直銷電話）
- 人力資源管理（例如：把個人資料給予海外辦事處用作招聘用途，包括申請工作許可證，背景調查，準備僱員個人資料檔案）
- 資訊科技管理和支援（例如：把資料備份儲存於海外的中央數據中心，聘用離岸支援中心管理用戶賬戶）

- 財務和會計（例如：把個人資料給予海外辦事處用作辦理薪金及支出退還事宜）
- 法律和監管（例如：向海外監管機構申報本地高級管理人員的個人資料以作審核用途）
- 其他（請列明：_____）

iv) 貴機構就管理個人資料處理方面是否會向資料接收者採取任何措施？

- 是
 - a) 貴機構就管理個人資料處理方面向資料接收者採取了甚麼具體措施？（請選擇以下所有適用的選項）
 - 擬定可執行合約（例如：列明有關商業用途及濫用個人資料賠償責任的具體條文）
 - 採取非合約的監督機制（例如：通過審核及/或保安措施監督資料接收者的慣例）
 - 其他（請列明：_____）
 - b) 為甚麼向資料接收者採取以上措施？（請選擇所有適用的選項）
 - 為了依從其他司法區的法律規定
 - 為了遵從母公司所設定的標準
 - 為了符合主要貿易夥伴所採用的標準
 - 為了增加客戶/顧客的信心
 - 其他（請列明：_____）
- 否

第三部份 - 資料管理慣例

7) 貴機構是否有聘用外界服務提供者儲存個人資料？

- 是
- 否

8) 貴機構是否清楚知道內部資訊科技部門或其他外界服務提供者儲存個人資料所在的位置(指實質國家和地區)？

- 是
- 否（請跳至第 10 題）

9) 若第 8 題的答案為“是”，是否所有個人資料包括其備份檔案只儲存在香港境內？

- 是
- 否

第四部份 - 其他

10) 如有需要，能否聯絡閣下以便確認問卷內容及答覆？

- 是
- 否

11) 如閣下就第 33 條實施和/或本問卷有任何意見，請在下列填寫。

--- 問卷結束 ---