



香港工業總會

Federation of Hong Kong Industries

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Industry News 業界新聞

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Business Impact Assessment on the Proposed Implementation of Section 33 of the Personal Data (Privacy) Ordinance

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.

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 take about eight minutes to complete the 20-question on-line survey **by 10 September 2015**:

English: https://zh.surveymonkey.com/s/cmabbia2015_en

Chinese: https://zh.surveymonkey.com/s/cmabbia2015_cn

Information collected will be kept strictly confidential, only consolidated data and information gathered from the survey will be provided to the Government.

The six conditions listed by Section 33 are:

- (a) The place is specified by the Privacy Commissioner for Personal Data by notice in the Gazette that there is in force any law which is substantially similar to, or serves the same purposes as, the Ordinance;
- (b) The data user has reasonable grounds for believing that there is in force in that place any law which is substantially similar to, or serves the same purposes as, the Ordinance;
- (c) The data subject has consented in writing to the transfer;
- (d) The data user has reasonable grounds for believing that the transfer is for the avoidance or mitigation of adverse action against the data subject; it is not practicable to obtain the consent in writing of the data subject to that transfer; but



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- if it was practicable, such consent would be given;
- (e) The data is exempt from Data Protection Principle (DPP) 3 by virtue of an exemption under Part VIII of the Ordinance; or
 - (f) The data user has taken all reasonable precautions and exercised all due diligence to ensure that the data will not, in that place, be collected, held, processed or used in any manner which, if that place were Hong Kong, would be a contravention of a requirement under the Ordinance.

Should you have any questions about this Business Impact Assessment, please contact Ms Grace Sonmezsoy on 2238 7740 (email: gsonmezsoy@deloitte.com.hk) or Ms Peggy Yip on 2238 7223 (email: peyip@deloitte.com.hk) of the consulting team.



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2015年8月20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

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。

《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。

我們大力呼籲會員企業與是次問卷調查，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。請會員在**2015年9月10日或之前**，填妥網上問卷（預計可用約八分鐘左右的時間回答20條問題）：

中文：https://zh.surveymonkey.com/s/cmabbia2015_cn

英文：https://zh.surveymonkey.com/s/cmabbia2015_en

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。

第33條的法律規定列出的六項條件為：

- (a) 個人資料私隱專員藉憲報公告，指明該地方有「與條例大體上相似或達致與條例的目的相同的目的」之法律正在生效；
- (b) 該使用者有合理理由相信在該地方有「與條例大體上相似或達致與條例的目的相同的目的」之法律正在生效；
- (c) 有關的資料當事人已以書面同意該項轉移；
- (d) 該使用者有合理理由相信該項轉移是為避免針對資料當事人的不利行動或減輕該等行動的影響而作出的；獲取資料當事人對該項轉移的書面同意不是切實可行的；及如獲取書面同意是切實可行的，資料當事人將會給予上述同意；
- (e) 該資料憑藉條例第VIII部下的豁免而不受保障資料第3原則所管限；或
- (f) 凡假使該資料在香港以某方式收集、持有、處理或使用，便會屬違反條例下的規定，該使用者已採取所有合理的預防措施及已作出所有應作出的努力，以確保該資料不會在該地方以該方式收集、持有、處理或使用。

對研究有任何查詢，請聯絡關小姐（電話：2238-7740，電郵：gsonmezsoy@deloitte.com.hk）或葉小姐（電話：2238-7223，電郵：peyip@deloitte.com.hk）。
