

# Lexis® Practical Guidance Data Protection Scenario: TRANSFER OF DATA OUTSIDE OF HONG KONG

The company you work for would like to transfer data outside Hong Kong, and they are concerned about the data privacy issues, and any potential impact on their reputation, should there be any mishandling of the related data. They do not want to be involved in any legal proceedings if they fail to comply with the relevant regulations. You need to quickly check the procedure and/or legal position of transferring data outside Hong Kong. Lexis Practical Guidance Data Protection provides a number of ways to find the information that you need quickly and easily.

# 1

Lexis Practical Guidance Data Protection > View topics > Data usage > Data processing and transfer

Lexis® Practical Guidance HONG KONG DATA PROTECTION CHANGE

View topics ▾ Search 9 selected practice areas Options Go ▶

- Key developments
  - Legislation tracker
  - News and analysis
- Background to the data protection regime
  - Data protection principles in Hong...
- Data processing cycle
  - Requirements of collecting data
  - Data accuracy and retention
  - Data access and correction
  - Data openness
  - Biometric data
- Data usage
  - Data processing and transfer**
  - Direct marketing
  - Confidentiality
- Data breaches
  - Preventing data breaches
  - Responding to data breaches
- Compliance guidance
  - PCPD
  - Financial industries
  - Privacy management programme
- Surveillance and monitoring communications
  - Surveillance and monitoring comm...
- Cybersecurity
  - E-commerce
  - Computer misuse and hacking
  - Cyberthreats to intellectual property...
  - Cybersecurity in cloud computing
  - Data protection, data security and b...
  - Encryption and digital signatures
  - Interception of communications
  - Software
- Employee data and monitoring ×
  - Employee data and monitoring
- Data protection in supply of service
  - Outsourcing
- International laws
  - International laws
  - EU data protection
  - US data protection
  - UK data protection
  - Asia data protection
- Non-Governmental Organisation
  - NGOs and the data protection cons...

The **Data processing and transfer** landing page provides you with links to Practice Notes, Precedents, Checklists and Flowcharts, Rules and Guidance.

There is a specific Practice Note on your client's particular issue: **International transfer of data outside and into Hong Kong**.

# 2

**International transfer of data outside and into Hong Kong**  
This Practice Note considers international transfer of data outside and into Hong Kong.  
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# 3

The Practice Note includes a table that shows worldwide data protection law depending on the data place of origin and data destination. Relevant legislation is highlighted and hyperlinked, both within the document itself and the references icons.

Data place of origin	Data destination	Most relevant legal considerations
Hong Kong	European Union	<a href="#">PDPO, s 33</a> (even if not in force), <a href="#">PDPO, s 60B</a> (to the extent that there is a HK court order) and <a href="#">Data Privacy Principles (DPP) 3 and 4</a> .
Hong Kong	United States	In interim, apply standard equivalent in stringency to previous safe Harbour rules to the extent they are needed in order to meet requirements of DPP 3 and 4. Position may change shortly as other jurisdictions (such as Israel and Switzerland) have since declared they will no longer follow safe harbour given the shortcomings of the procedure as outlined in the <i>Shrems</i> case (below). Until that time, Hong Kong enjoys a lower standard.
European Union	Hong Kong	Privacy Shield procedure (2016) would be advisable to be followed or equivalent protection standards.
United States	Hong Kong	Hong Kong Data Privacy laws, DPP of PDPO

## Transfer of data into Hong Kong

We have largely discussed the situation of transfer of data out of Hong Kong. To the extent that data is transferred into Hong Kong from a jurisdiction which has less stringent data privacy laws, the scope of the PDPO will still apply to that data as soon as it enters Hong Kong, and the above principles must be applied.

As discussed earlier we must also consider the European position, in the situation that data is transferred into Hong Kong from the European Union directly or even if it comes from a third country such as the United States but originated in the European Union. This is a more stringent standard than the current Hong Kong law and is now discussed in great detail.

There is a general prohibition in Directive (EC) 95/46, ([Data Protection Directive](#)) on data controllers transferring personal data to any territory outside the European Economic Area (EEA) unless an 'adequate' level of privacy protection is ensured for the data transferred.



In order to assist the user, related documents are highlighted and quick links provided, as well as related Practice Notes.

# 4

### International transfer of data outside and into Hong Kong

Produced in partnership with [Dmitri M.A. Hubbard of Asia-Pacific Xerox Consulting and Analytics](#)

Hong Kong data privacy law sits in an interim position in terms of both enforcement and strictness of provisions, between European Union (EU) style data privacy regimes (which have very high levels of restriction) and the more liberal US data protection regime. Accordingly, when data from Hong Kong is transferred, the object of and destination for the transfer is a key part of the planning process.

Hong Kong law is governed by the Personal Data (Privacy) Ordinance (Cap 486) (PDPO). PDPO, s 33 entitles 'Prohibition against transfer of personal data to place outside Hong Kong except in specified circumstances'. However, this provision has not been brought into operation although implementation has been discussed many times since the late 1990s. It presents a best practice approach to data handling which originates from Hong Kong.

The below is a high level table which, while not covering every eventuality, considers the most relevant law that is likely to be most important in different data transfer scenarios.

Data place of origin	Data destination	Most relevant legal considerations
Hong Kong	European Union	<a href="#">PDPO, s 33</a> (even if not in force), <a href="#">PDPO, s 60B</a> (to the extent that there is a HK court order) and <a href="#">Data Privacy Principles (DPP) 3 and 4</a> .
Hong Kong	United States	In interim, apply standard equivalent in stringency to previous safe Harbour rules to the extent they are needed in order to meet requirements of DPP 3 and 4. Position may change shortly as other jurisdictions (such as Israel and Switzerland) have since declared they will no longer follow

Practice notes

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Found in: [Hong Kong Data Protection](#)

**Related documents**

Practice Notes 7

- » [Authority of data sharing](#)
- » [Data protection – applicability and scope](#)
- » [International transfer of data outside and into Hong Kong](#)
- » [Transfer of data in European Union and the United Kingdom](#)
- » [Exceptions to the data export restriction in the European Union and United Kingdom](#)
- » [Binding Corporate Rules](#)
- » [The Privacy Shield \(Safe Harbour invalidation\)](#)

# 5

There is also a specific Precedent for transferring data within the company to its subsidiary group - ***Intra-group data processing policy of parent company and its subsidiary group companies***. This can also be accessed from the ***Direct Marketing*** landing page.

## Intra-group data processing policy of parent company and its subsidiary group companies

This is a precedent intra-group data processing policy.

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Precedents contain ***drafting notes*** which give you guidance on how to draft the document, commercial considerations to look out for etc. and contain links to relevant legislation and related documents.

The screenshot shows a web page for the precedent "Intra-group data processing policy of parent company and its subsidiary group companies". The page includes a breadcrumb trail: Home > Hong Kong Data Protection > Data usage: Data processing and transfer > Intra-group data processing policy of parent company and its subsidiary group c... The document title is "Intra-group data processing policy of parent company and its subsidiary group companies" and it is attributed to "Produced in partnership with Gallant Y.T. Ho & Co". The document is divided into sections: "1 Summary" and "2 Scope". The "Summary" section contains introductory text and numbered points: "1.1 do so only in accordance with the relevant data user's instructions" and "1.2 ensure that relevant data is subject to appropriate security". The "Scope" section states: "This policy applies to all staff [in the UK] [and [insert other countries as appropriate]]. Each member of staff within the scope of this policy is required to be familiar with this policy and comply with its terms." On the right side, there is a "Drafting notes" sidebar with a close button (X). The sidebar contains the title "Intra-group data processing policy of parent company and its subsidiary group companies (drafting notes)" and two paragraphs of text. The first paragraph states: "This intra-group data processing policy is intended for use in a scenario where different group companies process and store relevant data on each others' behalf and is to be implemented as a single intra-group processing policy by which each relevant group company would agree to be bound. It is intended to address the requirements of the data protection principles (DPPs), in particular DPP 2 (3) and DPP 4(2)." The second paragraph states: "Under the two DPPs, where a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user's behalf, the data user must adapt contractual or other means to..."

**THIS IS NOT THE ONLY WAY TO FIND THE RELEVANT INFORMATION.** From the homepage, you could use key search words to find the same material: ***transfer of data***.

The screenshot shows a search results page for the query "transfer of data". The page has a "Refine results" sidebar on the left with a "Clear all" button and a list of practice areas: Hong Kong Commercial (112), Hong Kong Corporate (63), Hong Kong Data Protection (117), Hong Kong Dispute Resolution (35), Hong Kong Employment (104), Hong Kong Financial Services (33), Hong Kong Tax (14), Hong Kong Wills, Probate an... (13), and a "View more" link (1). The main "Search results" section shows "(408 results)" and a "Subscribed practice areas" filter. The results are numbered 1 to 4. Result 1 is "Transfer of data in European Union and the United Kingdom" with a "Practice notes" icon and a description: "This Practice Note considers the transfer of data in the European Union and the United Kingdom." Result 2 is "International transfer of data outside and into Hong Kong" with a "Practice notes" icon and a description: "This Practice Note considers international transfer of data outside and into Hong Kong." Result 3 is "The Privacy Shield (Safe Harbour invalidation)" with a "Practice notes" icon and a description: "This Practice Note considers the EU-US Privacy Shield for transfer of personal data." Result 4 is "Binding Corporate Rules" with a "Practice notes" icon and a description: "This Practice Note considers Binding Corporate Rules, which are means by which organisations can transfer..."

# 6



# 7

The search result can be narrowed down to be more specific and accurate by entering the country name. For example if you were interested specifically in data transfer to the PRC: [transfer data China](#)

**Refine results** [Clear all](#)  
Select one or more practice areas and/or one or more document types to refine your search.

**Practice areas (1)** [Clear](#)

- Hong Kong Commercial (37)
- Hong Kong Corporate (23)
- Hong Kong Data Protection (11)**
- Hong Kong Dispute Resolution (9)
- Hong Kong Employment (10)
- Hong Kong Financial Services (8)
- Hong Kong Tax (3)
- Hong Kong Wills, Probate an... (1)
- [View more](#) (1)

**Search results** [Subscribed practice areas](#)  
(11 results)

- Data privacy under the laws of the People's Republic of China (PRC)**
  - Practice notes**  
This Practice Note addresses the **data** privacy issues under the PRC law, including transferring personal **data** to **MAINTAINED** • Hong Kong Data Protection
- International laws – overview**
  - Overviews**  
... laws – overviewInternational laws It is important to recognise that **data** are inevitably held across borders. Since it **MAINTAINED** • Hong Kong Data Protection
- Data protection audit questionnaire**
  - Precedents**  
This Precedent **data** privacy audit questionnaire is for use as part of a **data** privacy compliance project seeking to **MAINTAINED** • Hong Kong Data Protection
- Getting the Deal Through – Singapore**
  - Practice notes**  
A guide to **data** protection and privacy in Singapore, published by Getting the Deal Through.

The correct Practice Note comes up at the top as the result.

Customers are able to narrow their results using the “Document types” box on the left hand side of the page as well as the “Practice areas” box seen above:

**Document types (5)** [Clear](#)

- Cases & decisions (39)**
- Checklists, diagrams & flowcharts (9)
- Legislation & guidance (6)
- News (22)
- Overviews (24)
- Practice notes (178)
- Precedents, drafting notes &... (124)
- Unclassified (6)

**Search results**

- Transfer of undertaking**
  - Practice notes**  
This Practice Note deals with the mechanics of a **transfer of** employment and the **transfer** documentation in the **MAINTAINED** • Found in Hong Kong Employment
- Mayer Brown JSM: How much is that data in the window? Individual convicted for trans...**
  - News**  
On 30 December 2015, an individual was convicted for breaching the direct marketing provisions under the Hong **ARCHIVE** -02.02.2016 • HKPG - Corporate News Analysis Found in **Hong Kong Corporate, Hong Kong Financial Services**
- Copyright (Data) assignment**
  - Precedents**  
This precedent is a copyright assignment to facilitate **transfer of** copyright subsisting in original **data** in the form of

# Lexis® Practical Guidance Data Protection Scenario: DIRECT MARKETING

You are in-house counsel in a Hong Kong company. You have an enquiry regarding direct marketing from the marketing team. The team is seeking your legal advice on whether there is a prohibition on the use of email notifications (eDMs). The “New Guidance on Direct Marketing” issued by the Office of the Privacy Commissioner for Personal Data is lengthy and you do not have time to read everything. You also need to draft a consent notification for the marketing team. Lexis Practical Guidance Data Protection provides a number of ways to find the information that you need quickly and easily.

# 1

Lexis Practical Guidance Data Protection > View topics > Data usage > Direct marketing

Lexis® Practical Guidance HONG KONG DATA PROTECTION

View topics ▾ Search 9 selected practice areas Options Go

<b>Key developments</b> Legislation tracker News and analysis	<b>Data usage</b> Data processing and transfer <b>Direct marketing</b> Confidentiality	<b>Surveillance and monitoring communications</b> Surveillance and monitoring comm...	Employee data and monitoring
<b>Background to the data protection regime</b> Data protection principles in Hong...	<b>Data breaches</b> Preventing data breaches Responding to data breaches	<b>Cybersecurity</b> E-commerce Computer misuse and hacking Cyberthreats to intellectual property...	<b>Data protection in supply of service</b> Outsourcing
<b>Data processing cycle</b> Requirements of collecting data Data accuracy and retention Data access and correction Data openness Biometric data	<b>Compliance guidance</b> PCPD Financial industries Privacy management programme	Encryption and digital signatures Interception of communications Software	<b>International laws</b> International laws EU data protection US data protection UK data protection Asia data protection
		<b>Employee data and monitoring</b>	<b>Non-Governmental Organisation</b> NGOs and the data protection cons...

back to top close

The **Direct marketing** landing page provides you with links to Practice Notes, Precedents, Checklists, Legislation and Cases.

There is an Overview on the landing page to guide you through the sub-topic.

## Direct marketing

Read Overview

# 2

In this Overview, under the section **Prohibition of using personal data for direct marketing purposes under the PDPO**, there is a link to a Practice Note on your client’s particular issue: **Direct marketing in Hong Kong**.

### Prohibition of using personal data for direct marketing purposes under the PDPO

The new Part VI A under the PDPO, which took effect on 1 April 2013, has introduced, among other changes, tighter restrictions on direct marketing. Under the new provisions, the PDPO has moved from the previous ‘opt-out’ regime (whereby data subjects’ personal data may be used for direct marketing unless they have opted out) to an ‘opt-in’ mechanism, in which data subjects’ personal data may only be used after data subjects have consented to such use.

Subject to a limited exception referred to as the ‘grandfathering’ arrangements, a data user is strictly prohibited from using or providing personal data to others for direct marketing purpose, unless:

- the data user has provided certain prescribed information and a response channel for the data subjects to communicate their consent or indication of ‘no objection’ to the intended use or provision of the data
- the notification is easily understandable and readable; and
- the valid consent is made explicitly and voluntarily, otherwise data users must not use the data subjects’ personal data for direct marketing before the relevant data subjects’ consent or indication of ‘no objection’ have been obtained

If a data user intends to transfer data subjects’ personal data to another person for use by that other person for direct marketing purposes, the data user must inform the data subjects in writing in a manner prescribed under the PDPO regarding that intention to use the data.

For details, please see Practice Note: [Direct marketing in Hong Kong](#)

For templates of marketing consent or indication of no objection and opt-out clauses, please see Precedents: [Direct marketing clause — notification and obtaining consent \(selective\)](#), [Direct marketing clause — notification](#)



# 3

In order to assist the user, related Precedents and drafting notes are highlighted and quick links are provided, as well as related Practice Notes.

## Direct marketing — overview

Produced in partnership with [Woo Kwan Lee & Lo](#)

There is no stand-alone legislation regulating direct marketing activities in Hong Kong. The most relevant pieces of legislation are:

- the Personal Data (Privacy) Ordinance (Cap 486) (PDPO)
- the Unsolicited Electronic Messages Ordinance (Cap 593) (UEMO)

In terms of advertising and marketing activities in general, other legislation such as the Trade Description Ordinance, the Misrepresentation Ordinance and the Control of Obscene and the Indecent Articles Ordinance etc and certain industry-specific legislations may be relevant. This module will only focus on the requirements under the PDPO and the UEMO.

## Prohibition of using personal data for direct marketing purposes under the PDPO

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👁 Overviews

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Found in: Hong Kong Data Protection

### Related documents

📄 Practice Notes 1

🗨 Precedents, drafting notes & clauses 4

» Direct marketing clause — notification and obtaining consent (selective)

» Direct marketing clause — notification and obtaining consent (general)

» Indication of no objection

» 'Opt-out' clause

One of these related documents is the Precedent you need - [Direct marketing clause - notification and obtaining consent \(selective\)](#). This clause can be used as a template for drafting a selective consent clause for direct marketing purposes.

Precedents contain [drafting notes](#) which give you guidance on how to draft the document, commercial considerations to look out for etc.

# 4

## Direct marketing clause — notification and obtaining consent (selective)

Produced in partnership with [Woo Kwan Lee & Lo](#)

- 1 We intend to use your personal data for direct marketing.
- 2 We may not so use your personal data unless we have received your consent.
- 3 We shall use the following personal data for marketing our products and services mentioned in paragraph 4:

- your name\*
- your residential address\*
- your mobile phone number\*
- your residential phone number\*
- your email address\*

\*Please tick the box provided to indicate your consent to the item.

# 5

**THIS IS NOT THE ONLY WAY TO FIND THE RELEVANT INFORMATION.** From the homepage, you could also use key search words to find the same material: [direct marketing](#)

Home > Hong Kong Data Protection > Search Results

Refine results Clear all  
Select one or more practice areas and/or one or more document types to refine your search.

Practice areas (9) Clear

Hong Kong Commercial	(110)
Hong Kong Corporate	(62)
Hong Kong Data Protection	(75)
Hong Kong Dispute Resolution	(51)
Hong Kong Employment	(36)
Hong Kong Financial Services	(27)
Hong Kong Tax	(8)
Hong Kong Wills, Probate an...	(26)
<a href="#">View more</a>	(1)

Search results Subscribed practice areas  
(286 results)

- Direct marketing — overview**  
👁️ **Overviews**  
... **Direct marketing** — overview Produced in partnership with Woo Kwan Lee & Lo There is no stand-alone **MAINTAINED** • Hong Kong Data Protection
- PCPD: A watch company fined for using personal data obtained from public domains in...**  
★ **News**  
The Privacy Commissioner provides advice to data user (individual or organisation) not to use an individual's **ARCHIVE** •07.02.2017 • HKPG Data Protection News Analysis Hong Kong Data Protection
- Direct marketing in Hong Kong**  
📄 **Practice notes**  
This Practice Note summarises the statutory and regulatory rules that apply to **direct marketing** activities under the **MAINTAINED** • Hong Kong Data Protection
- Direct marketing clause — notification and obtaining consent (selective)**  
🗨️ **Precedents**  
This clause can be used as a template for drafting a selective consent clause for **direct marketing** purpose.

The correct Overview comes up as the first result. Customers are able to narrow their results using the “Document types” box on the left hand side of the page as well as the “Practice areas” box seen above:

Document types (8) Clear

🔪 <b>Cases &amp; decisions</b>	(89)
📄 <b>Checklists, diagrams &amp; flowc...</b>	(6)
📖 <b>Legislation &amp; guidance</b>	(14)
📰 <b>News</b>	(17)
👁️ <b>Overviews</b>	(6)
📄 <b>Practice notes</b>	(58)
🗨️ <b>Precedents, drafting notes &amp;...</b>	(92)
<b>Unclassified</b>	(4)