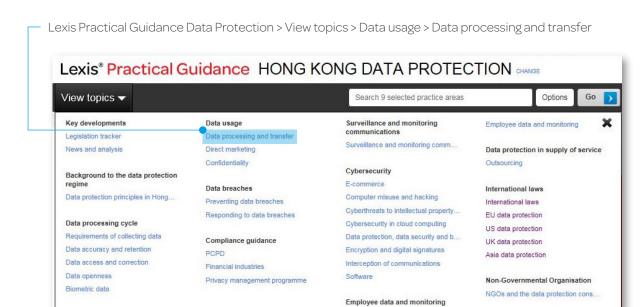
# Lexis® Practical Guidance Data Protection Scenario: TRANSFER OF DATA OUTSIDE OF HONG KONG

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



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*.

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

MAINTAINED





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	PDPO, s 33 (even if not in force), PDPO, s 60B (to the extent that there is a HK court order) and Data Privacy Principles (DPP) 3 and 4.
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 Shrems 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

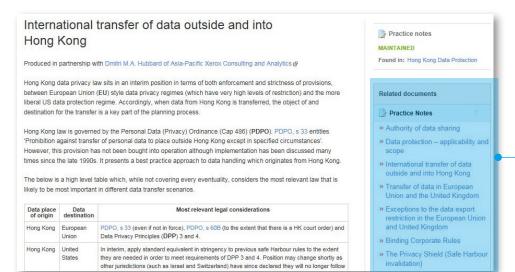
### Transfer of data into Hong Kong

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.







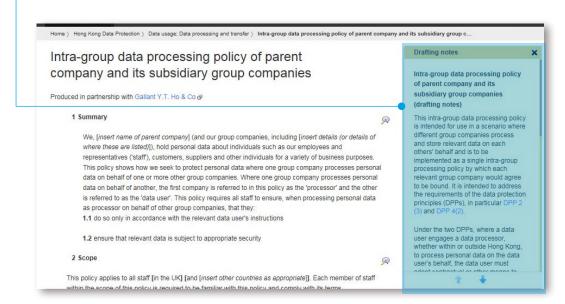
There is also a specific Precedent for transferring data within the company to its subsidiary group -Intra-group data processing policy of parent company and its subsidiary group companies. This can also be accessed from the *Direct Marketing* landing page.

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

This is a precedent intra-group data processing policy.

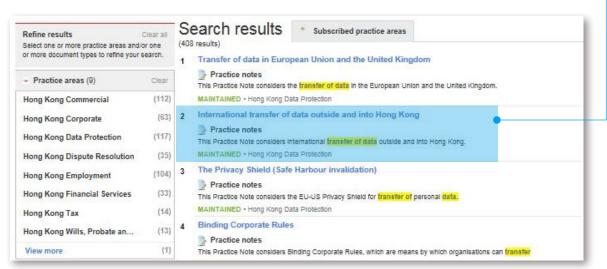
#### MAINTAINED

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.



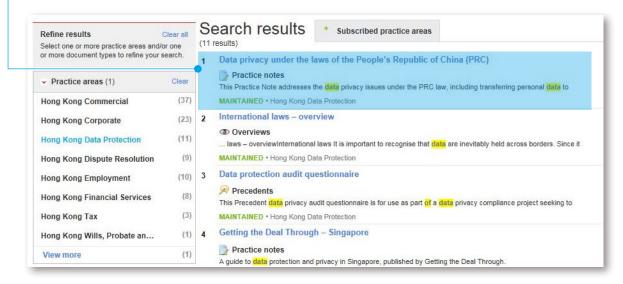
THIS IS NOT THE ONLY WAY TO FIND THE RELEVANT INFORMATION. From the homepage, you could use

key search words to find the same material: transfer of data.



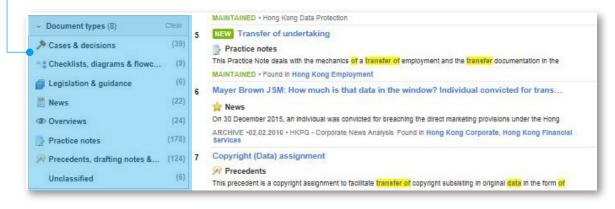


The search result can be narrowed down to be more specific and accurate by entering the country name. For example if you were interested specifically in data transfer to the PRC: *transfer data China* 



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:

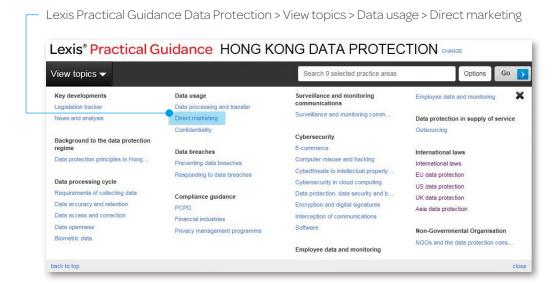




# Lexis® Practical Guidance Data Protection Scenario: DIRECT MARKETING

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.

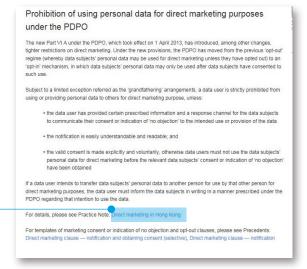
1



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.

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*.



Direct marketing

Read Overview



2

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

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

MAINTAINED
Found in: Hong Kong Data Protection

Related documents

Practice Notes

Precedents, drafting anotes & clauses

Direct marketing clause—
notification and obtaining consent (selective)

Direct marketing clause—
notification and obtaining consent (general)

Indication of no objection

'Opt-out' clause

**P** 

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.

### 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:



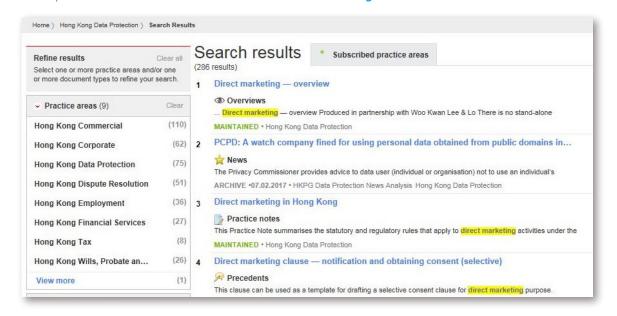
- □ your residential address\*
- □ your mobile phone number\*
- □ your residential phone number\*
- □ your email address\*
- \*Please tick the box provided to indicate your consent to the item.





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* 



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:



