

Hong Kong – Data Privacy

The collection, holding, processing, use and transfer of personal data are regulated under the Hong Kong Personal Data (Privacy) Ordinance ("PDPO"). The PDPO became effective in December 1996, and incorporates the principal requirements of both the OECD Guidelines and the EU Data Protection Directive 95/46/EC. The Office of the Privacy Commissioner for Personal Data (the "Privacy Commissioner") oversees the enforcement of the PDPO. Provisions of the PDPO have been clarified in nonbinding Codes of Practice and Guidelines issued by the Privacy Commissioner.

Collection and Processing of Personal Data	
<i>Compliance Alternatives</i>	<p>Employers are required to notify employees in a Personal Information Collection ("PIC") Statement of: 1) the purpose for the collection of data; 2) whether it is obligatory or voluntary for the employee to supply the data and where it is obligatory, the consequences for the employee if he or she does not provide the data requested; 3) the employee's right to access the data held by the employer and the right to ask for necessary corrections to that data; 4) the identity and contact details of the employee responsible for the employer's data protection policies and for which such data access and data correction request may be made; 5) the procedures in relation to access and correction of the data held by the employer; and 6) the classes of persons to whom the data may be transferred.</p> <p>PIC statements should be provided to employees and to applicants for job postings on or before collection of the data, such as when they start work or via a link if data is collected through a website.</p> <p>Personal data should only be used for the same purpose(s) as that/those for which the data was initially collected or for a directly related purpose, as set out in the PIC Statement. If the employer wishes to use the data for any other purpose, the consent of the employee must be obtained.</p>
<i>Disclosure/ Registration</i>	<p>In certain circumstances, an employer must submit to the Privacy Commissioner a data user return in the specified form, containing the prescribed data required, and accompanied by the prescribed fee.</p>
<i>Other Requirements</i>	<p>The employer should ensure that:</p> <ul style="list-style-type: none"> - the personal data is accurate; - the personal data is kept no longer than necessary; - appropriate security measures are applied to the personal data; and - employees have rights of access to, and correction of, the personal data in accordance with the PDPO.

This summary is intended to reflect local law and practice as at 1 May 2013. Please note, however, that recent amendments and legal interpretations of the local law may not be included in these summaries. In addition, corporate governance, administration, and option plan design facts that are specific to your company may impact how the local laws affect the company's equity based compensation plans. With these matters in mind, companies should not rely on the information provided in this summary when implementing their stock plans.

Transfer of Personal Data

<i>Compliance Alternatives</i>	<p>The PDPO contains a provision which generally prohibits cross border transfer of personal data to a place outside Hong Kong.</p> <p>Under this provision, cross-border transfer of personal data is permitted where: 1) the employee consents in writing; 2) the employer reasonably believes that the foreign jurisdiction in question has enacted a law that is similar to the PDPO; 3) the employer has put in place “all reasonable precautions and exercised all due diligence” so that the transferred data is not processed in the foreign jurisdiction in a way that would breach the provisions of the PDPO if processed in Hong Kong; 4) it is necessary for the purpose of safeguarding security, defense, or international relations in respect of Hong Kong; 5) the transfer is to avoid or mitigate adverse action against the employee and it is not practicable to obtain the written consent of the employee or if it was practicable the employee would give it; or 6) the Privacy Commissioner has specified the place in a notice for the purpose of cross-border transfer under the PDPO.</p> <p>The PDPO empowers the Privacy Commissioner to publish a list of countries to which the cross-border transfer of personal data is permitted by notice in the Gazette. Even though there is no statutory standard form of contract, the Privacy Commissioner has produced a model contract between the employer transferring the personal data and the third party recipient. The model contract should be adopted.</p>
<i>Other Requirements</i>	<p>Employers must inform employees in the PIC Statement as to whether the data will be transferred, as well as the likely recipients of the data or categories of recipients.</p>

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