

APPENDIX G
Jurisdictional Report for Hong Kong

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Context

Hong Kong Special Administrative Region (HKSAR) is a small region of the People's Republic of China which continues to operate with a high degree of autonomy.

Although the legal system largely reflects the century spent as a U.K. colony, the cultural context is very different. For example, it is understood that the first Privacy Commissioner needed to develop a Chinese character-pair to enable the depiction of 'privacy' to non-English-speaking citizens.

This report reflects research variously conducted and updated during July 2007, including interactions with the Hong Kong Privacy Commissioner's delegate, Allen Ting, Acting Chief Privacy Compliance Officer.

Legislative and Policy Framework

Legislation

The Hong Kong Personal Data (Privacy) Ordinance (PDPO) has been in force since 1996.¹ Among other things, the Ordinance created the Office of the Privacy Commissioner for Personal Data (PCPD):²

The Ordinance does not mention PIAs. However, under s.8(1)(d), the Commissioner has a duty to examine proposed legislation that he considers may affect data privacy and report the results of his examination to the agency concerned.

There are no circumstances in which PIAs are required. The Privacy Commissioner may make suggestions under s.8(1)(c). Successive Commissioners have indicated the need for, and benefits of, conducting PIAs, and appear to have had success on at least one occasion in convincing an agency to conduct a PIA.

PIA Guidance Material

The Commissioner has not issued any publications on PIAs. The text in Appendix 1, extracted from a 2001 document dealing specifically with E-Business, appears to be the only guidance currently provided in the jurisdiction.

The Commissioner recommends that a PIA should be undertaken in any of the following circumstances:

- introducing new public policy initiatives that involve significant collection, processing and use of personal data;
- implementing a technological proposal with personal data involved that impacts upon a wide population; and
- where a major endeavour to change existing business practices entails significant increases in the scope of collection, use and sharing of personal data.

In his guidance material, the Commissioner states that "PIA is a process that may be applied to a wide range of E-Business proposals that may be intrusive in terms of

¹ Chapter 486, Personal Data (Privacy) Ordinance, at: <http://www.pcpd.org.hk/english/ordinance/ordfull.html>.

² See website of the Office of the Privacy Commissioner for Personal Data for Hong Kong at: <http://www.pcpd.org.hk/>.

reasonable expectations of privacy, or the privacy rights enshrined in the Ordinance. It has equal validity applied to a public policy initiative e.g. electronic road pricing, as it has to a corporate initiative e.g. online customer profiling for prospecting purposes.”³

NZ Deputy Commissioner Blair Stewart has presented in Hong Kong on several occasions, and some of the wording in Appendix 1 appears to reflect his contributions. The Commissioner notes that many public bodies in other jurisdictions have issued materials guiding the conduct of PIAs, including the Privacy Commissioners of Australia and New Zealand.

The Hong Kong PIA

History and Development of the Hong Kong PIA

In early-to-mid 2000, it appears that the then Privacy Commissioner, Stephen Lau, advised the Immigration Department to conduct a PIA in respect of the planned replacement of the HKSAR ID Card.

In November, 2000, in the Newsletter of the Office of the Privacy Commissioner for Personal Data, Issue No.5, the then Privacy Commissioner wrote:

"Privacy Impact Assessment (PIA) should be conducted as an integral part of the planning and development of [the new HKSAR ID Card]. PIA is an assessment of any actual or potential effects that the activity or proposal may have on individual privacy and the ways in which any adverse effects may be mitigated".⁴

In December 2000, in a speech on 'Personal Data Privacy Issues of E-Medicine', the then Privacy Commissioner said:

"A Privacy Impact Assessment study should be conducted in the planning stage. **PIA is an assessment of any actual or potential effects that the activity or proposal may have on individual's privacy and the ways in which any adverse effects may be mitigated.** Such studies should also be conducted at different stages of the implementation of a medical record database, e.g. the detailed design of a web-enabled system, the introduction of new applications which access the database."⁵

In March 2001, a session on PIAs was included as part of a Public Seminar on 'E-Privacy in the New Economy', featuring New Zealand's Deputy Commissioner, Blair Stewart.⁶

In his Annual Report for 2000-01, the then Commissioner wrote,

"the PCPD urged the Health and Welfare Bureau to subject the project to a Privacy Impact Assessment (PIA) at an early stage. A PIA would seek to map the implications of access to lifelong electronic health records.

³ Office of the Privacy Commissioner for Personal Data, E-Privacy: A Policy Approach to Building Trust and Confidence In E-Business, Stage 2: E -Privacy Strategic Planning and privacy Impact Assessment, section 8.4, 2001, at http://www.pcpd.org.hk/english/publications/eprivacy_9.html

⁴ http://www.pcpd.org.hk/english/publications/newsletter_2000nov.html.

⁵ "1. Privacy Impact Assessment(PIA)", at http://www.pcpd.org.hk/english/infocentre/speech_20001216.html.

⁶ http://www.pcpd.org.hk/english/activities/promotion_eprivacy.html.

The slide-set can be viewed at:

<http://www.pcpd.org.hk/misc/stewart/sld001.htm> and the text is at:

<http://www.pcpd.org.hk/english/infocentre/files/stewart.doc>.

On the matter of PIA the PCPD had occasion during the year to advise the Immigration Department on the proposal to replace the current Hong Kong identity card with a smart card. Two issues were brought to the Department's notice."

"Firstly, this technology permits a large amount of personal data to be concentrated in one card. In the wrong hands therefore an individual smart card could represent a personal data bonanza. This immediately raises the issue of security and the attendant risks of unauthorised access to, and use of, the personal data stored in the card and associated back-end databases. With multiple application cards another real danger is that personal data stored in one part of the card could be cross referenced with data stored in another part of the card.

"We felt that it was our responsibility to inform the Immigration Department of these concerns and the possible unintentional consequences for the smart card holder.

"For this reason, and because the smart card would be so widely held, the PCPD suggested that the Immigration Department conduct a PIA to identify the impact of a smart card upon privacy. We were pleased to learn that the Department subsequently accepted this advice and appointed consultants to undertake a PIA study."⁷

In 2001, PIAs were mentioned in s.8 of a Commissioner's Office document 'E-Privacy: A Policy Approach to Building Trust and Confidence in E-Business'. The relevant passages are extracted in Appendix 1 to this document.⁸

In the Annual Report for 2003-04, the then Commissioner, Raymond Tang, said,

"Over the course of the next year we will embark upon a programme to educate the community, private and public sectors in particular, about Privacy Impact Assessment ("PIA"). PIA has been defined as "the identification of future consequences of a current or proposed action"⁹ and implies the adoption of a systematic process that evaluates any project proposal in terms of its impact upon privacy. The position taken by the PCPD is that PIA should become a constituent component of the project planning process.

"PIA has the potential to become a major force in identifying and managing the "downstream" privacy impact of projects, especially those that make use of computer based or surveillance technologies that capture and collect personal data. We will therefore make PIA a focus of our efforts over the year and, in the longer term, move on to consider the related aspect of privacy compliance or the auditing of projects that have been evaluated by PIA".

In 2007, the Commissioner sees a PIA as "an evaluative process for assessing privacy risks associated with proposals that involve the processing and use of personal data".¹⁰

Tools

The only guidance provided for the conduct of PIAs Hong Kong is provided by the Office of the Privacy Commissioner for Personal Data and found in the Information Book of 2001, E-Privacy: A Policy Approach to Building Trust and Confidence In E-Business,

⁷ Office of the Privacy Commissioner for Personal Data, Annual Report for 2000-01, at: http://www.pcpd.org.hk/english/publications/overview2001_5.html.

⁸ Office of the Privacy Commissioner for Personal Data, Information Book of 2001, *E-Privacy: A Policy Approach to Building Trust and Confidence in E-Business*, at http://www.pcpd.org.hk/english/publications/files/eprivacy_booklet.pdf.

⁹ Office of the Privacy Commissioner for Personal Data, Annual Report for 2003-04, at: http://www.pcpd.org.hk/english/publications/overview2004_1.html.

¹⁰ Interview with Allen Ting, Acting Chief Privacy Compliance Officer, Office of the Privacy Commissioner for Personal Data, Hong Kong.

under Stage 2: E -Privacy Strategic Planning and Privacy Impact Assessment.¹¹
Pertinent extracts are reprinted in Appendix 1.

Completion of PIAs

By Whom?

In his guidance material, the Commissioner states that “There are distinct advantages in outsourcing a PIA study not the least of which is that it lends impartiality to the process. This may be critical in influencing consumer or public opinion.”¹²

By What Organisations?

The new Hong Kong ID Card was the subject of a PIA at each of four phases between 1999-2000 and 2004.¹³ They appear to have been performed for the Immigration Department by at least two and as many as four different consultancy firms. The first report was presented to the Privacy Commissioner for comment during 2000, and was published by the Legislative Council. However it does not appear that the three subsequent PIAs were published.¹⁴

In a presentation in April 2005 at a conference in Geneva by the then Acting Privacy Commissioner, Tony Lam, the following further examples of PIAs conducted in Hong Kong were mentioned:¹⁵

- the 'Caller Number Display' feature of telecommunication service;
- 'Electronic Road Pricing' proposal;
- 'Online banking' services.

It is noteworthy that these examples cross over into the private sector.

When and under what circumstances?

The Commissioner’s guidance material says that the, “PIA is a process that may be applied to a wide range of E-Business proposals that may be intrusive in terms of reasonable expectations of privacy, or the privacy rights enshrined in the Ordinance. It

¹¹ Hong Kong PIA guidance material may be found at:

http://www.pcpd.org.hk/english/publications/eprivacy_9.html.

¹² Office of the Privacy Commissioner for Personal Data, *E-Privacy: A Policy Approach to Building Trust and Confidence In E-Business*, Stage 2: E -Privacy Strategic Planning and privacy Impact Assessment, section 8.5, 2001, at: http://www.pcpd.org.hk/english/publications/eprivacy_9.html.

¹³ Reports from the Legislative Council are at:

1. Feb 2001: <http://www.legco.gov.hk/yr00-01/english/panels/se/papers/b752e04.pdf>.

2: Jul 2002: <http://www.legco.gov.hk/yr01-02/english/panels/se/papers/se0710cb2-2433-7e.pdf>.

3. 2003-04 No reference located.

4. Feb 2005 <http://www.legco.gov.hk/yr04-05/english/panels/se/papers/secb2-858-1e.pdf>.

The Legislative Council Database on the HKSAR Identity Card Project is at:

http://www.legco.gov.hk/database/english/data_se/se-hksar-identity-card-project.htm

¹⁴ Hong Kong Special Administrative Region Identity Card Project - Report on Initial Privacy Impact Assessment' Submitted September 2000, Revised after Client comments, November 2000, Pacific Privacy Pty Ltd <http://www.legco.gov.hk/yr00-01/english/fc/esc/papers/esc27e1.pdf>

¹⁵ Tony Lam’s presentation may be found at slide 22 at:

http://www.itu.int/osg/spu/ni/ubiquitous/Presentations/10_lam_dataprotection.pdf

has equal validity applied to a public policy initiative e.g. electronic road pricing, as it has to a corporate initiative e.g. online customer profiling for prospecting purposes.”¹⁶

Review/Approval of PIAs

Oversight Office Review and Acceptance

The Commissioner may provide critique and feedback on PIA reports, but does not play any role such as formal advisor, consultant or inspector.

Public Availability

There are no known examples of published PIA Reports. However, in his guidance material, the Commissioner states that “in the public sector the findings of a PIA study might be incorporated in a public consultation exercise, or policy position statement.”¹⁷

Lessons Learned

Observations on the Quality of PIAs

No information has been located relating to the quality of PIA processes or PIA Reports.

Utility of PIAs in Hong Kong

This is limited to date, but with a couple of beacon cases.

Room for Improvement

Oversight Body

The Privacy Commissioner continues to encourage the conduct of PIAs, and is prepared to assist with critique and feedback.

Central Agency

No central agency has to date played any role in relation to PIAs.

Practitioners

No evidence of the practitioner’s perspective was able to be gained during the study.

Directions of PIAs in Hong Kong

No information has been found more recent than the statements in the Annual Report for 2003-04 that “PIA should become a constituent component of the project planning process” and “we will therefore make PIA a focus of our efforts over the year and, in the longer term”.

¹⁶ Office of the Privacy Commissioner for Personal Data, *E-Privacy: A Policy Approach to Building Trust and Confidence In E-Business*, Stage 2: E -Privacy Strategic Planning and privacy Impact Assessment, section 8.4, 2001, at: http://www.pcpd.org.hk/english/publications/eprivacy_9.html.

¹⁷ Office of the Privacy Commissioner for Personal Data, *E-Privacy: A Policy Approach to Building Trust and Confidence In E-Business*, Stage 2: E -Privacy Strategic Planning and privacy Impact Assessment, section 8.5, 2001, at: http://www.pcpd.org.hk/english/publications/eprivacy_9.html.

In his Annual Report for 2005-06, the current Privacy Commissioner, Roderick Woo, referred to an extensive review being undertaken of the now 10-year-old Ordinance, with the intention that amendments be proposed to the Legislative Council. It is reasonable to expect that some provision relating to PIAs may feature in those proposals.

Research

The following individuals were interviewed:

Office of the Privacy Commissioner (the oversight body):

- Mr Allen Ting, Acting Chief Privacy Compliance Officer, for the Privacy Commissioner for Personal Data
- Mr Stephan Lau, former Privacy Commissioner for Personal Data

In addition, documents provided by the Privacy Commissioner's Office and Legislative Counsel and found on websites were reviewed. These included:

- PIA templates and instructions
- Web pages describing the PIA process
- Annual Reports
- Internet searches of media coverage.

Appendix 1

Extract from

E-Privacy: A Policy Approach to Building Trust and Confidence In E-Business Stage 2: E-Privacy Strategic Planning and privacy Impact Assessment¹⁸

Office of the Privacy Commissioner for Personal Data
Information Book of 2001

Note: *Emphasis added in this document.*

Q3) *Is there a clear definition of what a PIA is, and how it differs from other compliance tools such as legal compliance checks and auditing?*

- 8.3** The E-Privacy Strategic Planning process needs to operate in parallel with a Privacy Impact Assessment ("PIA"). In the absence of a common definition, a PIA may be described as **a systematic process that evaluates proposed initiatives or strategic options in terms of their impact upon privacy**. To be effective a PIA needs to be **an integral part of the project planning process rather than an afterthought**. The purpose of this assessment is twofold.
- To identify the potential effects that a project or proposal may have upon personal data privacy e.g. the introduction of a multi-purpose smart card.
 - Secondly, to examine how any detrimental effects upon privacy might be mitigated.
- 8.4** PIA is a process that may be applied to a wide range of E-Business proposals that may be intrusive in terms of reasonable expectations of privacy, or the privacy rights enshrined in the Ordinance. **It has equal validity applied to a public policy initiative** e.g. electronic road pricing, **as it has to a corporate initiative** e.g. online customer profiling for prospecting purposes.
- 8.5** **A PIA needs to commence at the outset of any planning initiative, strategy or policy proposal**. Although the approach taken to PIA may vary with the context in which it is undertaken that approach should be methodical. Experience indicates that it should begin with definition of the problem or statement of issues. **There are distinct advantages in outsourcing a PIA study not the least of which is that it lends impartiality to the process**. This may be critical in influencing consumer or public opinion. For example, in the public sector the findings of a PIA study might be incorporated in a public consultation exercise, or policy position statement. This suggests that PIA is not an end in itself.
- 8.6** **The outcome of any PIA should be measured against the influence it exerts upon proposals and strategic decision making**. Ultimately the purpose is to ensure that decision-makers are cognizant of the privacy dimension and work towards decisions that are privacy enhancing.
- 8.7** PIA has been referred to by a leading figure in the privacy community as **an "early warning system"**. Approached correctly a PIA should ensure that organisations avoid the pitfalls that are implicit in a less disciplined approach to privacy issues. More significantly, as E-Business volumes grow, PIAs will contribute to protecting the image, goodwill and public confidence in those organisations that offer their services online.

¹⁸ at http://www.pcpd.org.hk/english/publications/eprivacy_9.html.