

BOCHK

Item	Relevant Paragraph Number	Relevant Extract	Comments
1.	3.4.3	Individuals acting in a personal or domestic capacity: Under the PDPO, individuals acting in a personal or domestic capacity are excluded from the applicability of the Data Protection Provisions. "Domestic" is defined in the PDPO to mean "related to home or family". An example of this would be an individual keeping an address book or contacts list with names, contact numbers, addresses and birthdates of friends and family for personal use.	As the example in paragraph 3.4.3 includes an address book or contacts list with names, contract numbers, addresses and birthdates of <u>friends</u> and family for personal use, we suggest the definition of "Domestic" in the PDPO could be revised to "related to personal affairs, home or family". For AITI's reference, the similar section under Hong Kong PDPO is as follows: Section 52 - Domestic purposes Personal data held by an individual and – (a) concerned only with the management of his personal, family or household affairs; or (b) so held only for recreational purposes, is exempt from the provisions of the data protection principles, Parts 4 and 5 and sections 36 and 38(b).
2.	4.6.4 (c)	Deemed Consent: There are circumstances where consent may be deemed under the PDPO, broadly:	From the perspective of individual, explicit consent sought from individual is preferred.
		...	Would AITI please share under what circumstance where deemed consent are applied?
		if the organisation, after conducting a prescribed assessment for adverse effect on the individual, notify the individual of the new purpose and provide a reasonable period of time for them to opt out (provided that the individual does not opt out or otherwise withdraw their consent).	
			Is there any valid period of the prescribed assessment? If so, please provide the information of valid period.
3.	4.7.2	Fresh consent would need to be obtained where personal data collected is to be used for a different purpose from which the individual originally consented.	Would AITI provide in which circumstances where fresh consent is needed as it seems that Deemed Consent in paragraph 4.6.4 is an alternative?
4.	4.8.1	Under the PDPO framework, the requirement to provide an individual with notice is tied to the Consent Obligation. As part of obtaining valid consent, the organisation must provide the individual with information on: (a) the purposes for the collection, use or disclosure of his personal data, on or before collecting the personal data; and (b) any other purpose for the use or disclosure of personal data that has not been notified to the individual, before such use or disclosure of personal data.	Under Data Protection Principle 1(3) of Hong Kong PDPO, the classes of transferee of personal data is also included in the notice. Please consider to add the classes of transferee in the PDPO.
5.	4.9.1	Under the PDPO framework, individuals have the right to request an organisation to provide them with their personal data that is in the possession or under the control of the organisation, and information about the ways in which that personal data has been or may have been used or disclosed within a year before the date of request for access, subject to the exceptions in the PDPO.	It seems that "information about the ways in which that personal data has been or may have been used or disclosed within a year before the date of request for access" is an additional requirement to hinder the individuals to exercise their data access rights.
			In general, the data access right enables an individual to know whether a data user holds his personal data, and to obtain a copy of the data under Hong Kong PDPO. The use, potential use and time period of use of data are not considering factors in the data access right in Hong Kong.
			Please consider whether this additional requirement may limit the right of individual right in the PDPO.
6.	5.2	These data subject rights are not unfettered and will be subject to exceptions in the PDPO. When an individual exercises any of these rights, organisations would have a corresponding obligation to give effect to these rights.	It is noted that the drafting of using "would have" on organisation's corresponding obligation to give effect to these rights. Please consider to use "should have" in law to avoid the corresponding obligation of the organisations being unambiguous.
7.	Not Applicable	Not Applicable	Other comment In respect of a vulnerable individual who is a minor, incapable of managing his own affairs or mentally incapacitated, would AITI please consider to define class of individual who represents the vulnerable individual to exercise his right in PDPO?