

ALB Hong Kong Data Protection Forum 2017
Asian Legal Business & Thomson Reuters
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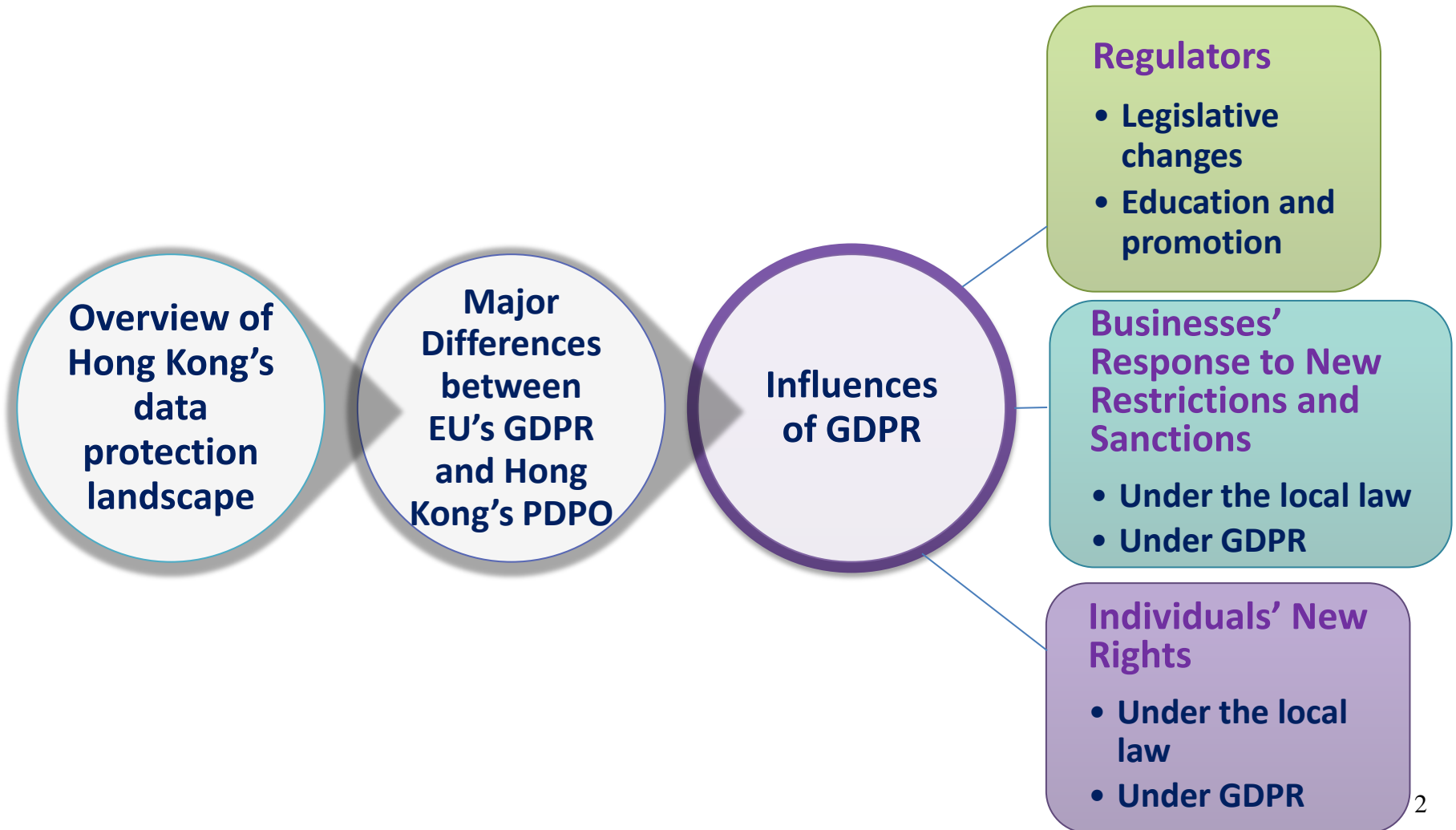
Influence of the EU GDPR 2018 on Hong Kong's Data Protection Landscape

Fanny Wong

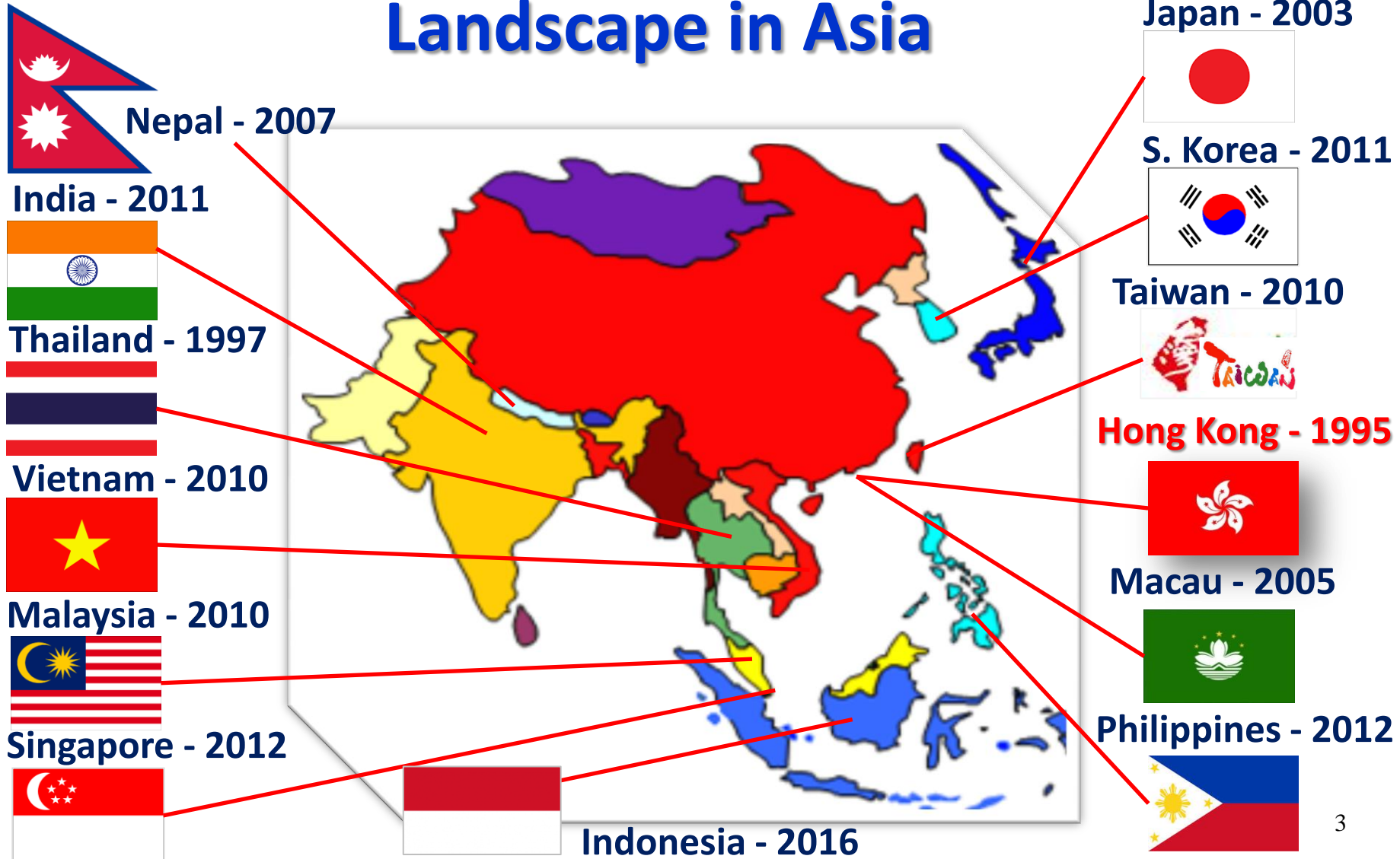
Deputy Privacy Commissioner for Personal Data

Office of the Privacy Commissioner for Personal Data, Hong Kong

Presentation Outline



The Personal Data Protection Landscape in Asia



Hong Kong's Data Protection History

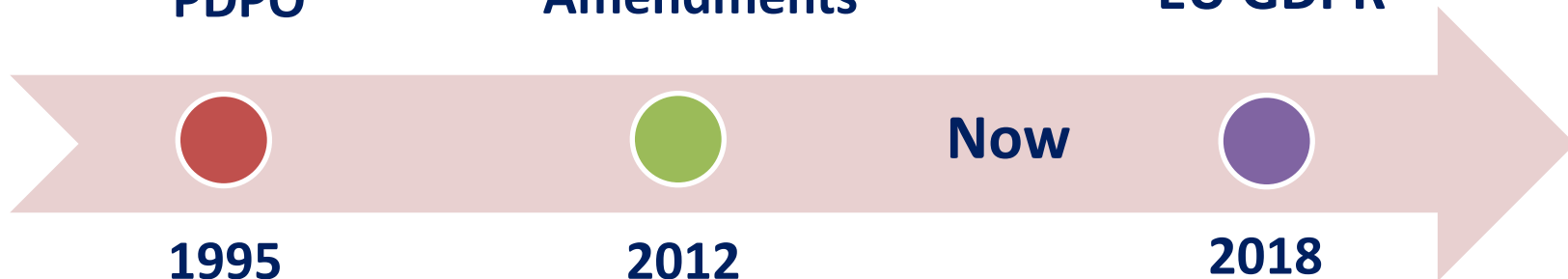
OECD Privacy Guidelines 1980



PDPO

PDPO Major Amendments

EU GDPR



1995

2012

Now

2018

EC's Data Protection Directive 1995



EU General Data Protection Regulation (GDPR)

- Enacted in May 2016
- Will be implemented on **25 May 2018**
- Will replace **1995 EC Data Protection Directive (95/46/EC)**
- Harmonises data protection laws across EU member states





PDPO – GDPR Comparative Study

Background

- **Keep abreast with overseas'** privacy law developments
- Assess GDPR's **impact on businesses** (in particular multi-national organisations) and to issue guidelines to data users, if necessary
- Harmonise legal framework to facilitate **free flow of information** and commercial activities

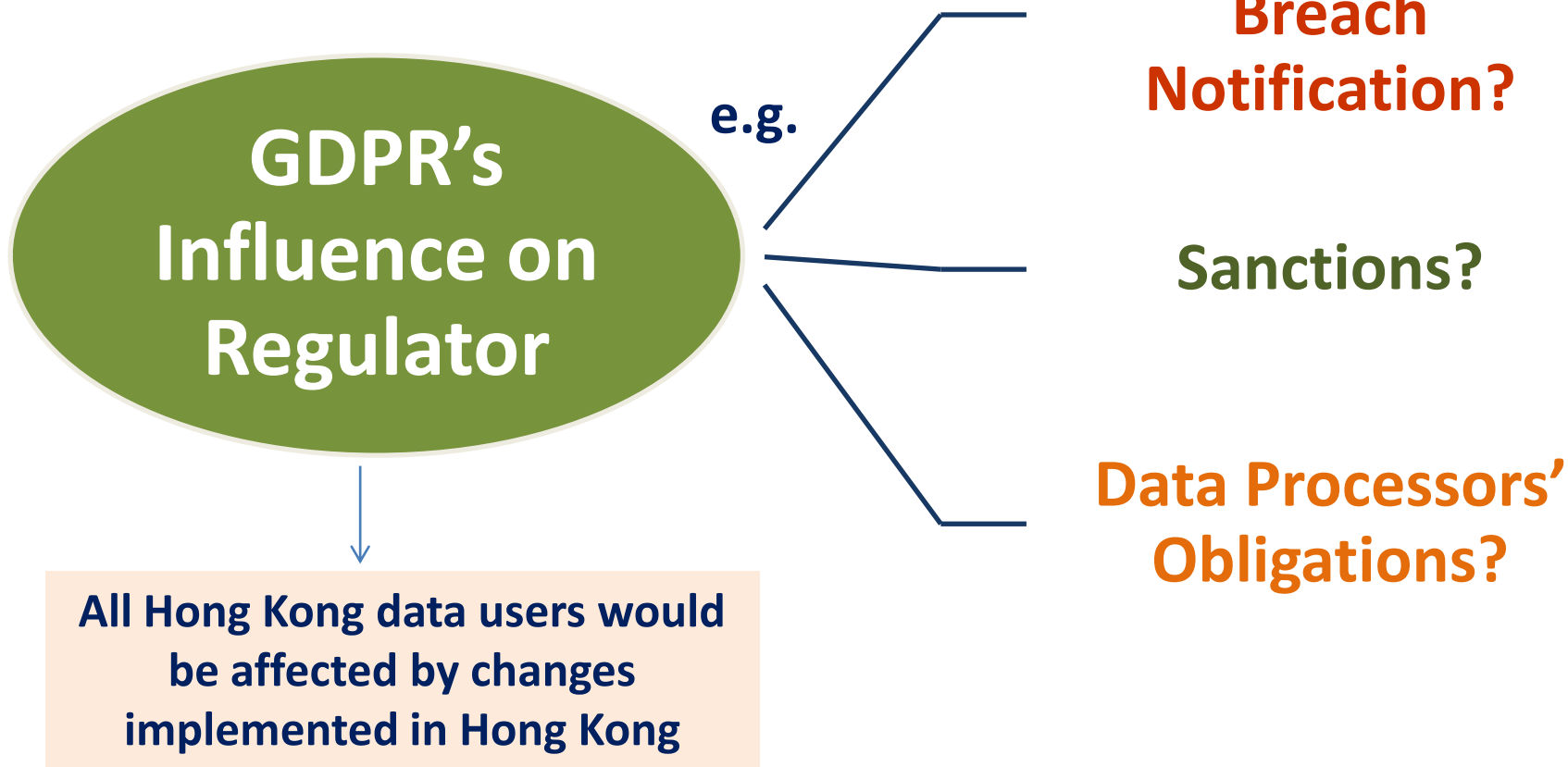


PDPO – GDPR Comparative Study

Major differences identified by PCPD

1. Extra-Territorial Application	2. Accountability
3. Mandatory Breach Notification	4. Sensitive Personal Data
5. Consent	6. Data Processors' Obligations
7. New and Enhanced Rights	8. Certification
9. Sanctions	

Influences of GDPR



Mandatory Breach Notification



GDPR

- Notify data protection authority without undue delay
- Notify affected data subjects for high-risk breaches

PDPO

- No mandatory requirement to notify
- Voluntary breach notification

Sanctions



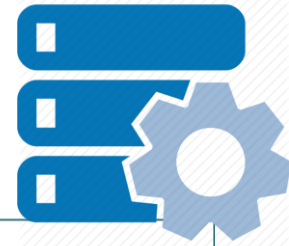
GDPR

- **Administrative fine up to €20 million, or 4% of the total worldwide annual turnover of preceding financial year, whichever is higher, for serious breaches of the GDPR**

PDPO

- **Serve enforcement notices on organisations in breach of DPPs**
- **Breach of enforcement notice is a criminal offence**
- **Other offence provisions concern mainly direct marketing activities**

Data Processors' Obligations



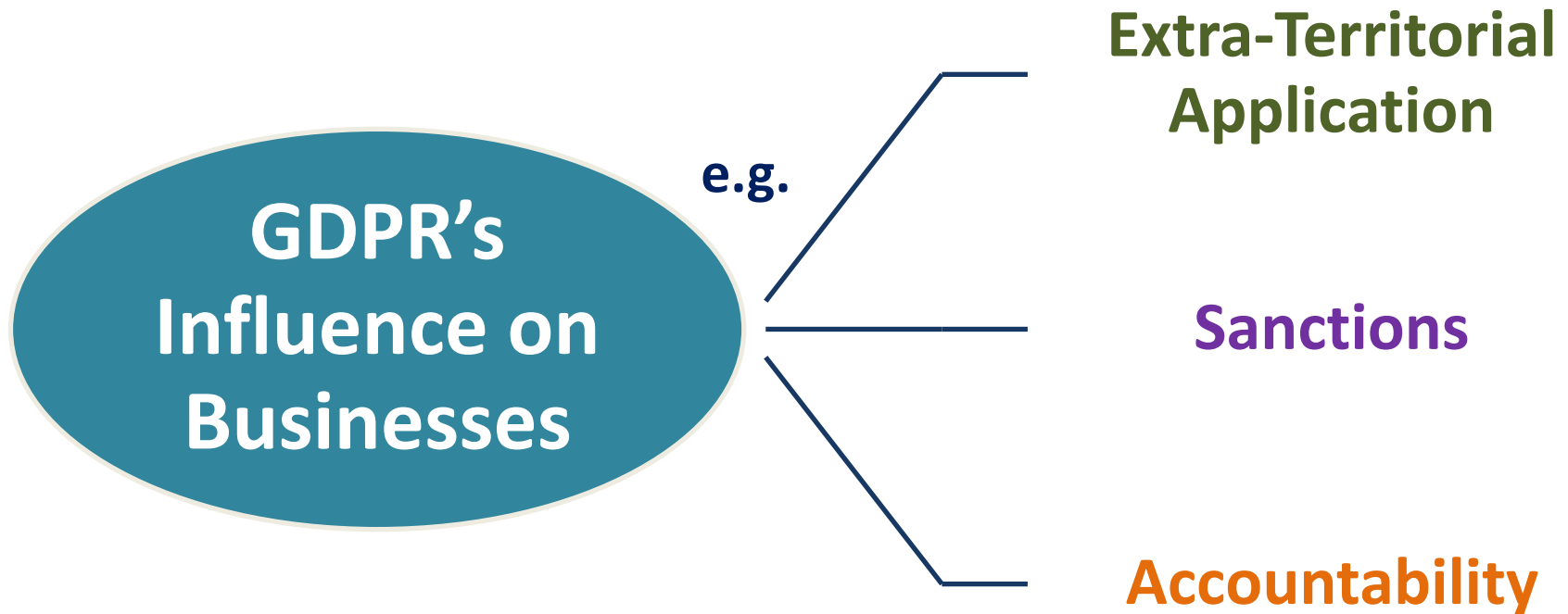
GDPR

- New obligations, such as maintaining records of processing, ensuring security of processing, reporting data breaches, designating Data Protection Officers, etc. are imposed on data processors

PDPO

- Data processors are not directly regulated
- Data users are required to adopt contractual or other means to ensure data processors' compliance in certain aspects

Influences of GDPR



Extra-Territorial Application



GDPR

- Apply to a controller or processor established outside EU, so long as (a) the offering of goods or services; or (b) the monitoring of the behaviour are targeted at EU individuals.

PDPO

- Apply to data users which control the processing of personal data in or from Hong Kong
- No explicit provision imposing obligations on data users outside Hong Kong, nor expressly confers rights upon data subjects not present in Hong Kong

Sanctions



GDPR

- **Administrative fine up to €20 million, or 4% of the total worldwide annual turnover of preceding financial year, whichever is higher, for serious breaches of the GDPR**

PDPO

- **Serve enforcement notices on organisations in breach of DPPs**
- **Breach of enforcement notice is a criminal offence**
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Accountability



GDPR

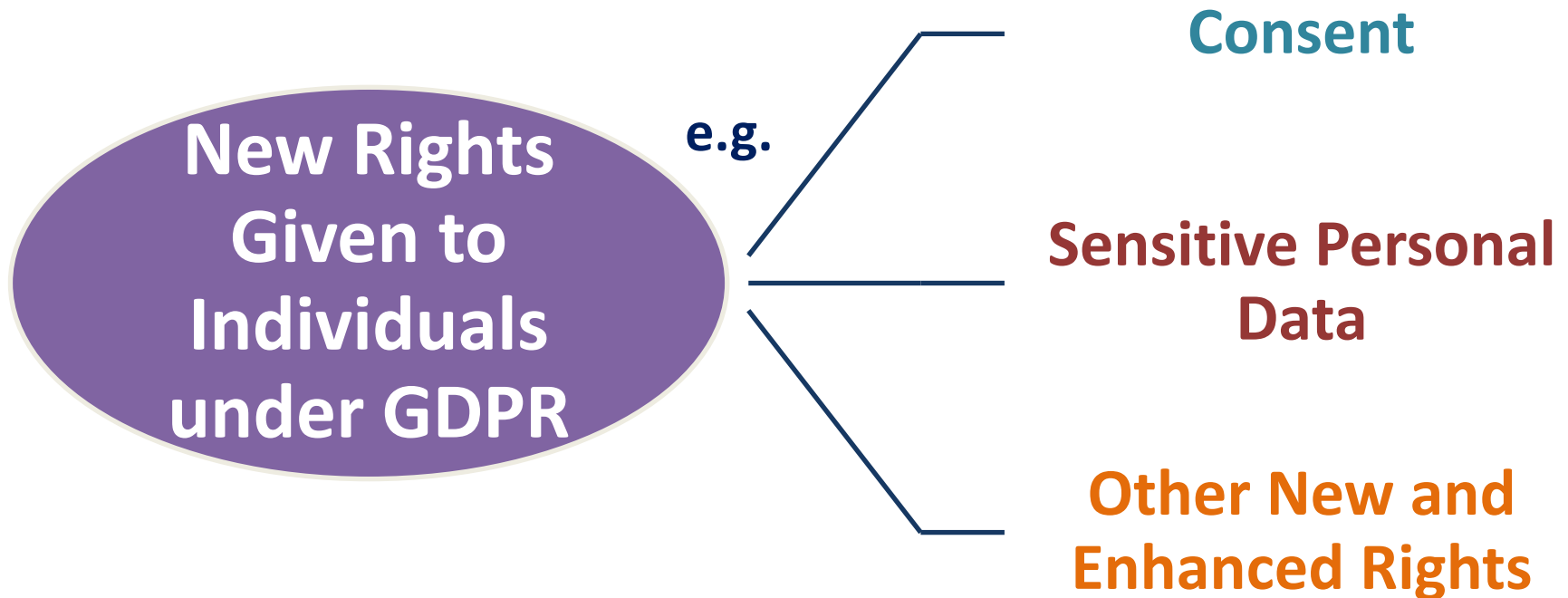
- Expressly states the accountability principle
- Specific measures to implement accountability (e.g. appointment of data protection officer, DPIA, privacy by design)
- Designate data protection officer if: (a) public body conducts data processing; (b) core activities involve large-scale data subjects monitoring; or (c) core activities involve large-scale sensitive data processing

PDPO

- Not explicitly state the accountability principle
- PMP to encourage organisations to shift from compliance to accountability. Leaflet on “Privacy Impact Assessment”.

15

Influences of GDPR



Consent



GDPR

- freely given, specific, informed and unambiguous agreement to processing by a statement or a clear affirmative action

PDPO

- Data collection –
not prerequisite (focus on providing notice by data users)
- Data use –
prescribed consent if use data for new purposes
→ express consent given voluntarily and not withdrawn in writing

Sensitive Personal Data



GDPR

- Expanded the categories to include genetic data, biometric data, sexual orientation
- Processing of sensitive personal data is allowed only under specified circumstances

PDPO

- No distinction between sensitive and non-sensitive personal data

Other New and Enhanced Rights



GDPR

- Right to erasure (or 'right to be forgotten')
- Right to data portability
- Right to object to processing (including profiling), etc.

PDPO

- No general right to erasure, but has requirement on retention period
- No right to data portability
- No general right to object, but may opt out from direct marketing

Conclusion

- The EU's GDPR is envisaged to bring significant impact on non-EU businesses due to its extra-territoriality, especially multinational companies (note: sanctions)
- Businesses should ensure that they are GDPR-ready
- Businesses should start to review their internal privacy policies and controls and identify gaps in GDPR compliance

Q&A

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Privacy Commissioner for Personal Data, Hong Kong

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What's New

- PCPD Wins the "Most Breastfeed-caring Corporate" Award
- PCPD's New Chinese Publication Entitled 《注意！這是我的個人資料私隱》 has been released at the Hong Kong Book Fair 2017! The new book sharing session was held at the HKCEC on 24 July 2017.
- PCPD Publishes a New Book Entitled "Watch out! This is my personal data privacy" - Have a Say on Your Own Privacy! (Chinese version Only)
- Privacy Commissioner Welcomes the Enactment of the Apology Ordinance
- Organisations and Individuals Should Comply with Lawful Requirement of the Privacy Commissioner - A Company Director Became the First Offender Convicted of this Offence
- Privacy Commissioner Publishes Investigation Report on the Loss of Registration and Electoral Office's Notebook Computers containing Personal Data of Election Committee Members and Electors
- PCPD Joins Global Sweep Exercise to Examine Consumers' Control Over Their Personal Data Collected by Customer Loyalty and Reward Programmes

"It is a timely opportunity for Hong Kong to review the data privacy protection law" Privacy Commissioner Delivers Keynote Address at the 7th European Data Protection Days in Berlin, Germany

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