

**For discussion
on 5 February 2024**

**Legislative Council
Panel on Information Technology and Broadcasting**

**Facilitating Cross-boundary Data Flow Within the
Guangdong-Hong Kong-Macao Greater Bay Area**

Purpose

This paper aims to brief Members on the facilitation measure for cross-boundary data flow from the Mainland cities of the Guangdong-Hong Kong-Macao Greater Bay Area (“GBA”) to Hong Kong and its early and pilot implementation arrangement.

Background

2. Developing Hong Kong into an international innovation and technology (“I&T”) centre is a priority work area of the current-term Government. Data is the key impetus for advancing I&T. With its distinctive advantages of enjoying strong support of the motherland and being closely connected to the world under the principle of “One Country, Two Systems”, as well as its strengths in finance, law, I&T, digital infrastructure and professional services industry, Hong Kong has the potential to become an international data hub, thereby propelling the development of a data-driven smart city and digital economy. Indeed, facilitating data flow within the GBA is an important initiative for promoting the integrated and high-quality development of the Guangdong-Hong Kong-Macao region. Such effort would not only bring convenience to the public and businesses, but also help accelerate the economic integration and scientific research development in the GBA.

3. Since 2017, the Mainland has enacted several national legislations related to cross-border data flow, including the Cybersecurity Law¹, the Data Security

¹ The Cybersecurity Law of the People’s Republic of China (“PRC”), which came into effect in June 2017, mainly stipulates that critical information infrastructure operators that gather or produce personal information and important data during operations within the Mainland should be stored domestically. If such data are to be transferred overseas, a security assessment must be conducted in accordance with relevant regulations.

Law² and the Personal Information Protection Law³. To facilitate cross-boundary data flow between the Mainland and Hong Kong, the Chief Executive (“CE”) proposed in the 2022 Policy Address to explore facilitation arrangements with the Mainland for the flow of Mainland data to Hong Kong. To this end, we have conducted surveys with Hong Kong enterprises, and the findings of which suggested that most of the cross-boundary data involve personal data/information. The respondents also shared their experiences and various challenges in their compliance activities in accordance with the requirements of the Mainland regulations, including the conduct of security assessments, application for personal information protection certification, and concluding standard contracts.

4. With a view to fostering cross-boundary data flow between Hong Kong and the Mainland, the Innovation, Technology and Industry Bureau (“ITIB”) and the Cyberspace Administration of China (“CAC”) entered into the “Memorandum of Understanding on Facilitating Cross-boundary Data Flow Within the Guangdong-Hong Kong-Macao Greater Bay Area” (“MoU”) in June 2023, which provides a clear framework for facilitating the secure and orderly data flow from the Mainland to Hong Kong under the national framework on the safe management of cross-boundary data flow. Subsequently, the CE set out in the 2023 Policy Address the proposal of streamlining the compliance arrangements for personal information flow from the Mainland to Hong Kong under an early and pilot implementation arrangement in the GBA.

5. Under the framework set out in the MoU, the ITIB and CAC jointly announced on 13 December 2023 the facilitation measure of “Standard Contract for the Cross-boundary Flow of Personal Information Within the Guangdong-Hong Kong-Macao Greater Bay Area (Mainland, Hong Kong)” (“GBA Standard Contract”)⁴, which seeks to facilitate and streamline the compliance arrangements on cross-boundary flow of personal information in the Mainland cities in the GBA to Hong Kong. Details are set out in the following paragraphs.

² The Data Security Law of the PRC, which came into effect in September 2021, mainly regulates the processing and security surveillance for important data and personal information.

³ The Personal Information Protection Law of the PRC, which came into effect in November 2021, stipulates the management requirements for cross border flow of personal information.

⁴ For details, please refer to the “Implementation Guidelines on Standard Contract for the Cross-boundary Flow of Personal Information within the Guangdong-Hong Kong-Macao Greater Bay Area (Mainland, Hong Kong)” https://www.ogcio.gov.hk/en/our_work/business/cross-boundary_data_flow/doc/gbascc00_gn_scc_en.pdf.

Facilitation Measure on the GBA Standard Contract

6. The GBA Standard Contract is the first facilitation measure launched under the framework of the MoU to foster the safe and orderly cross-boundary flow of personal information within the GBA. It enables enterprises registered in or individuals located in the nine Mainland cities in the GBA (viz. Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing in Guangdong Province) and Hong Kong to enter into a standard contract on a voluntary basis using a standardised template, which binds both contractual parties on their responsibilities and obligations as personal information processors and recipients in respect of the cross-boundary flow of personal information.

Streamlined Arrangements and Benefits of the Facilitation Measure

7. With the implementation of the GBA Standard Contract, the compliance arrangements for the cross-boundary flow of personal information from the Mainland cities in the GBA to Hong Kong will be streamlined and thus help enterprises reduce the compliance costs of cross-boundary flow of personal information, thereby facilitating the provision of relevant cross-boundary services in the GBA. The arrangements also promote the development of digital economy in the GBA, hence fostering further integration of Hong Kong into the national development plan.

8. The facilitation measure mainly streamlines the compliance arrangements for the cross-boundary flow of personal information from Mainland cities within the GBA to Hong Kong, lifting the restrictions on the volume of cross-boundary flow of personal information⁵; simplifying the contents of personal information protection impact assessments (“PIAs”); waiving the requirement for an assessment of personal information protection policies and regulations in the jurisdiction of the recipient (i.e., Hong Kong)⁶; and shortening the time of

⁵ According to the Mainland’s Measures on the Standard Contract for Cross-border Transfers of Personal Information, which came into effect in June 2023, a personal information processor shall meet four specified conditions to transfer personal information out of the Mainland. Amongst them, the conditions related to volume of personal data involved include: (1) personal information of not more than 1,000,000 persons in aggregate; (2) where the personal information processor has cumulatively made outbound transfers of personal information of not more than 100 000 persons in aggregate since 1 January of the preceding year; and (3) where the personal information processor has cumulatively made outbound transfers of sensitive personal information of not more than 10 000 persons since 1 January of the preceding year. By adopting the GBA Standard Contract, all these relevant restrictions will be lifted.

⁶ As compared to the Mainland’s Measures on the Standard Contract for Cross-border Transfers of Personal Information, the key assessment areas of the PIA in the GBA Standard Contract had been simplified from six to three, including: (1) the legality, legitimacy and necessity of the purposes and means, etc. of processing personal information by the personal information processor and recipient; (2) the impact on and security risks to the rights and interests of personal information subjects; and (3) whether the obligations undertaken by the recipient, as well as its management and technical measures and capabilities, etc. to perform the obligations can ensure the security

document checks in application filing from 15 working days to 10.

9. When adopting the GBA Standard Contract for personal information transfer across the boundary, both contracting parties shall ensure compliance with the relevant laws and regulations of their respective jurisdictions. Consents of the personal information subjects should be obtained prior to cross-boundary flow of Mainland personal information in the GBA to Hong Kong. At the same time, the export of personal data out of Hong Kong shall continue to be regulated strictly in accordance with the prevailing laws in Hong Kong, including informing data subjects or obtaining their consents in accordance with the Personal Data (Privacy) Ordinance prior to the transfer of personal data.

Early and Pilot Implementation Arrangement for the Facilitation Measure

10. The GBA Standard Contract facilitation measure is designed to benefit different sectors in the Mainland cities within the GBA and in Hong Kong. The Office of the Government Chief Information Officer (“OGCIO”) is responsible for the related coordination and implementation work in Hong Kong. To implement the facilitation measure in an orderly manner, OGCIO launched an early and pilot implementation arrangement for the GBA Standard Contract facilitation measure on 13 December 2023. The first phase of implementation invited participation from the banking, credit referencing and healthcare sectors which have relatively greater demand for cross-boundary services, so as to improve the efficiency of cross-boundary services in these sectors and bring convenience to citizens in both places.

11. To enhance the awareness of the GBA Standard Contract and the early and pilot implementation arrangement amongst the industries, OGCIO has arranged publicity through multiple channels, including (1) setting up a thematic webpage to provide details of the facilitation measure, relevant documents and frequently asked questions, etc.; (2) organising introductory briefings and exchange sessions with experts and industry representatives on the facilitation measure; (3) participating in seminars organised by industry organisations or professional bodies; and (4) promulgating the facilitation measure to the public through media interviews and feature reports, and responding to public enquiries about the facilitation measure.

Initial Feedback from the Industry on the Facilitation Measure

12. We had conducted briefings for the banking, credit referencing and healthcare sectors on the day of announcing the facilitation measure, where

of personal information transferred across the boundary.

details about the facilitation measure and the early and pilot implementation arrangement were shared with around 100 industry representatives. They generally welcomed the facilitation measure and considered it a policy breakthrough that allows them to provide cross-boundary services more effectively.

13. After the announcement of the early and pilot implementation arrangement and up to 31 December 2023 (deadline for submission of Expression of Interest (“EoI”)), OGCIO received a total of about 70 EoIs, about half of which came from the healthcare sector, with the rest coming from the banking and credit referencing sectors, etc. According to the EoIs received, about one-third of the respondents expect to conclude the signing of the GBA Standard Contract with their Mainland partners, conduct PIAs and complete the filing procedures within 1 to 3 months, while another one-third expect to complete the related work within 6 months. After the deadline of EoI submission, OGCIO continued to receive dozens of EoIs (including some from other sectors). These suggest that the GBA Standard Contract facilitation measure has been well received by the industries.

Next Steps

14. We plan to review the early and pilot arrangement in light of its outcomes and the actual circumstances in mid-2024, and refine relevant details as appropriate, with a view to extending the facilitation measure to different business sectors, hence fostering the provision of more cross-boundary services to benefit more businesses and members of the public.

15. Meanwhile, ITIB and OGCIO will continue to explore effective management measures with CAC and roll out initiatives as soon as they are ready under the framework of the MoU to further facilitate the cross-boundary flow of more data within the GBA in a secure manner.

16. Members are invited to note the content of this paper.

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