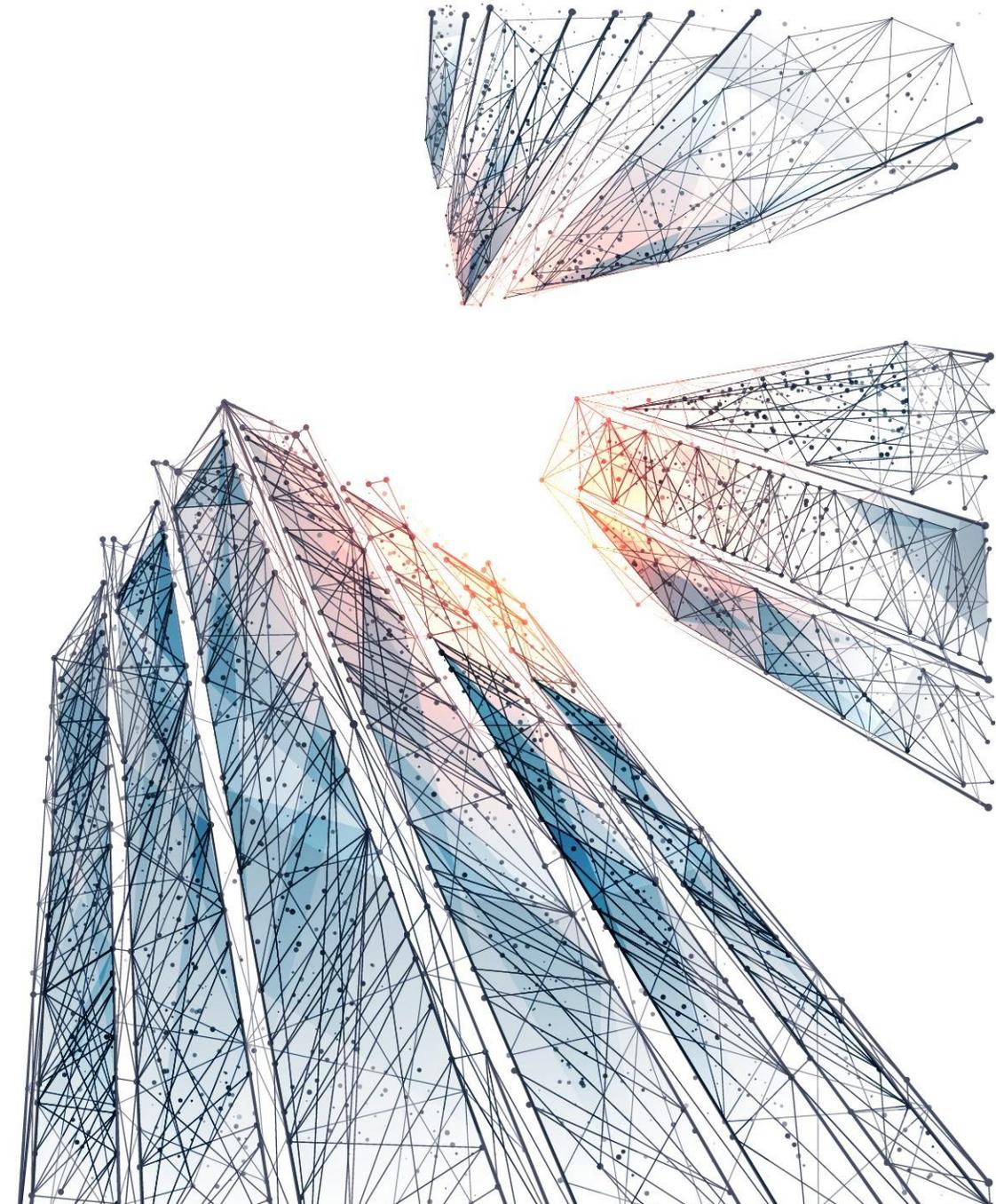


Connecting Data: Establishing Hong Kong as a Cross-Boundary Financial Data Hub

December 2022



Pain points facing Hong Kong's financial services industry

Lack of specific legislation to facilitate cross-border/boundary data transfers



Companies with operations in Mainland China and Hong Kong struggle to integrate their businesses



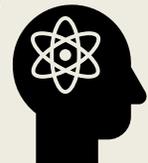
The changing regulatory landscape of data protection gives rise to unintended uncertainties



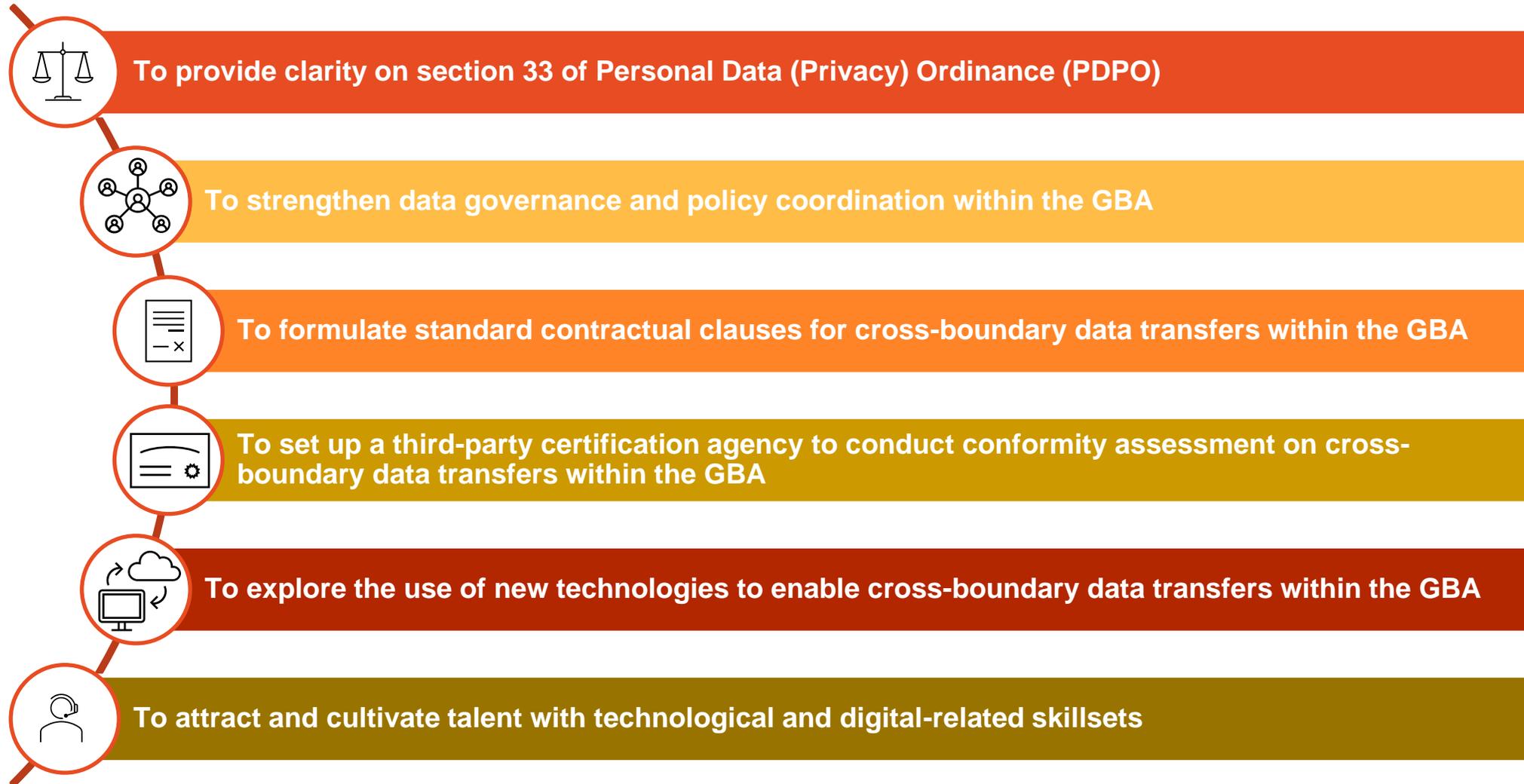
The cost and resources to meet legal requirements for cross-boundary transfer of data is significant



Businesses experience challenges to acquire and nurture home-grown and foreign talent



Six key recommendations



Recommendations: To provide clarity on section 33 of Personal Data (Privacy) Ordinance (PDPO)

- While PDPO's section 33 governs the international transfer of personal data, it has not been implemented since its introduction in 1996 due to concerns from businesses over its operational impact and compliance difficulties.

FSDC's Recommendations

- A clear legal framework that spells out mechanisms for cross-boundaries data flow can **facilitate international data transfers**, demonstrates a jurisdiction's **adequacy of data protection**, and crucial for establishing a legal framework for **data integration with the GBA**.
- Laws of section 33 that govern data transfer were first created decades ago, prompting a **need to review** and potentially update the rules to ensure they remain fit for purpose.
- Consider mandating companies of a certain scale, or companies handling large amount of personal and/or sensitive data, to designate a **data protection officer (DPO)** to take on the responsibility of ensuring their organisations comply with all the relevant data laws.

Recommendations: To strengthen data governance and policy coordination within the GBA

- To strengthen mutual understanding of the rules and regulations in each other's jurisdictions by rolling out various forms of pilot projects that allow fast-tracking cross-boundary data exchanges for certain data types among some GBA cities.
- In the long run, these initiatives can be scaled to the wider GBA area, based on implementation experience accumulated.
- As such, a more harmonised data governance standard applicable to the entire GBA can be developed.

FSDC's Recommendations

To establish white- and grey-lists to facilitate cross-boundary data transfers

- A white-list will permit certain categories of data to enter and exit freely.
- A grey-list is for the categories of data that are allowed to be transferred only within the GBA.
- The parameters for the data categories can be of specific industries, purposes, company sizes, and should have the flexibility for adjustment as needed.

To explore the feasibility of cross-boundary data sharing through conducting pilot projects

- Allow cross-boundary provision of data related to the financial services industry within the GBA.
- Allow eligible foreign financial institutions to transfer certain data involving their holding of financial institutions in Mainland China overseas for group management purposes.
- Launching pilot projects in experimental business zones or special economic zones.

To develop a set of GBA data governance standards

- To develop a 'GBA-wide' legal and regulatory data framework that reduces friction for transferring data across Mainland China, Hong Kong, and Macao.
- Build consensus that legal requirements for exporting data within the GBA to consider the features of the financial services industry.
- A GBA-wide data governance framework should be built with a view to advocating the ethical use of data.

Recommendations: To formulate standard contractual clauses for cross-boundary data transfers within the GBA

- The GBA covers three jurisdictions, each with different legal systems. While this is the unique set up of the region, regulatory fragmentation should not become the impediment for integrating the financial services industries within the region.

FSDC's Recommendations

- The Government should actively work with relevant counterparts in Mainland China (and Macao) to formulate **a set of standard contractual clauses that meet the regulatory requirements of the jurisdictions** for businesses to overcome the challenges of complying with various data regulations across the region.
- The Government could consider drawing reference from the ASEAN's Model Contractual Clause for Cross Border Data Flows (MCCs) to formulate such model contractual clauses.

The MCCs are template contractual terms and conditions that can be incorporated in the legally binding agreements between companies when transferring personal data to each other across borders.
- Introduction of standard contractual clauses **helps reduce the negotiation and compliance cost and time** for businesses while **ensuring the protection of personal data** when it is transferred abroad.

Recommendations: To set up a third-party certification agency to conduct conformity assessment on cross-boundary data transfers within the GBA

- Many jurisdictions, including Mainland China and the EU, allow international data transfer if data users have obtained certain certifications issued by professional organisations that are recognised by local authorities or regulators.

FSDC's Recommendations

- The Government should consider **establishing an independent and professional organisation, or leveraging existing professional organisations if practical, to provide certifications to companies with robust data governance frameworks** as trusted data users or processors for cross-boundary transfer within the GBA (and beyond in the future).
- The organisation should be entrusted to issue certifications by making reference to a set of data governance principles, such as the DSL, PIPL, CSL, PDPO, and GDPR.
- The organisation should have the capacity to handle various types of certifications, including certifications related to AI adoption.
- For an organisation to be qualified as a certification agency, one should have sufficient expertise and experience of legal knowledge within the systems of Mainland China and Hong Kong, and should also be recognised by regulators of both sides.
- An alternative solution is to set up professional bodies respectively in Mainland China and Hong Kong, with an endorsement from their corresponding authorities and mutual recognition from authorities of the other side.

Recommendations: To explore the use of new technologies to enable cross-boundary data transfers within the GBA

- With proliferating data regulations and rising concerns over data privacy from data subjects and regulators, new technologies are sought after for safe and efficient handling of data. Various technologies have been adopted in different parts of the world. Three examples are listed below.

FSDC's Recommendations

Shenzhen and Singapore's Blockchain-based Transnational Trade Network (BTTN)

- Shenzhen and Singapore have developed a blockchain-based data-exchange network to share trade information between the two locations.
- The BTTN has built-in Systems-level Services that allows secure document transfer, decentralised identity verification, and decentralised data storage to support cross-border/boundary data sharing.
- The BTTN helps firms remain in compliance with local data privacy and security laws.

Europe's Gaia-X Infrastructure

- In Europe, businesses and organisations from various sectors have developed a Gaia-X infrastructure, which uses innovative technology to build an infrastructure that facilitates free and secure flow of data within the region.
- The Gaia-X project was initiated by Germany and France with an aim of building a federated and secure data ecosystem based on European standards.

User-held data model and self-sovereign identity (SSI)

- Under the user-held data model, users have full control over their own personal data. Access to personal data is restricted to individual data owners. Authorisation is needed from them prior to the access. Such an arrangement helps mitigates compliance risks for businesses.
- Under the SSI model, users have control over their identity data. SSI is built on an ecosystem with blockchain technology. The personal information of users is stored within the ecosystem and users can choose to reveal the necessary data to an entity for a given interaction, so increasing the security and privacy of the users.

Recommendations: To attract and cultivate talent with technological and digital-related skillsets

- Hong Kong needs to be supported by talent with expertise in a broad range of areas, from data science, artificial intelligence, digital innovation, and business acumen, to financial analytics, etc, to position itself as the data connector for the GBA.
- However, Hong Kong, like many markets, faces challenges of talent shortage with technological and digital skills.
- The Government, industry players, and universities should enhance collaboration to address this issue.

FSDC's Recommendations

To adjust the visa application process for foreign specialists

- To explore facilitative measures to expedite the visa approval process for critical sectors.
- To consider utilising Technology Talent Admission Scheme as a fast-track arrangement for specialised talent, and expanding the scope of eligibility or uplifting existing pre-allocated quota.

To attract talent from the mainland GBA cities

- To attract talent from the GBA, which offers Hong Kong a large talent pool that it can readily access as the region has a population of 79 million and is home to some valuable unicorns in the world.
- Improve talent mobility to enhance the attractiveness of Hong Kong to talent from other GBA cities.

To explore closer collaboration between Hong Kong universities and industry players

- Hong Kong universities should work with industry players to develop practical content and training opportunities in the real business environment.
- Such practical experience can effectively train students' critical thinking and problem-solving abilities, in addition to theories learned in a classroom setting.

Collective and coordinated efforts between the Government and industry players

- To harmonise different talent development programmes into a single go-to platform for greater synergies.
- One way is to consolidate all public technology talent-related initiatives and ensure that there is minimal overlap between the different schemes.

Thank you!

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