

Good Privacy Practices and Good Corporate Governance Hong Kong Experience

by

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Introduction

A past mayor of New York City once made the observation that, "In politics the perception is the reality". This is an interesting idea and one I believe that can be taken out of the political arena and applied to many other aspects of life. In my talk today, I want to draw upon that concept as the basis for how we, in Hong Kong, have approached the task of marketing privacy issues to all sectors of our community, in particular, the business sector, and share with you our experiences.

I would like to begin by saying that in Chinese society the concept of privacy is relatively new. In particular, privacy relating to personal data is a very new concept. Until recently there was no word for "privacy" in the Chinese vocabulary largely because the notion was alien to our culture. In a personal sense privacy is a very individualistic phenomenon and an element of a person's value system. The value attached to privacy ranges from the position taken by privacy purists to those that are much less pre-occupied with the need to protect the privacy of the individual.

Privacy: The Early Days

The Office of the Privacy Commissioner for Personal Data ("PCO") is a statutory body that was established in Hong Kong in August 1996. The Hong Kong privacy law, the Personal Data (Privacy) Ordinance, was

enacted on 3 August 1995 and its core provisions were brought into operation on 20 December 1996. Our privacy law provides for statutory control of the collection, holding and use of personal data. It applies to both the public and private sectors and is based on internationally accepted data protection principles. It legislates for personal data to which access is reasonably practicable whether they are in computerized, manual or audio-visual form.

In common with other jurisdictions Hong Kong faced difficulties in implementing its data privacy law. Initially personal data privacy did not register as an issue of social significance among most citizens. Secondly, privacy was not high on the government's agenda as more pressing issues such as housing, education and health care were given priority. Thirdly, some elements of the private sector went on the defensive by articulating the view that business would become less efficient, and consequently less competitive, if it were obliged to incur the costs of compliance with the provisions of the privacy law.

In the early stages the signals we were receiving had an apprehension about them. This apprehension was derived from established custom and practice around how we do business in Hong Kong i.e. a *laissez-faire* minimal interventionist economy. We took notice of this apprehension because it was our belief, and remains so, that privacy law

can only operate effectively if it is understood and accepted by business and the community at large. A priority task was, therefore, to create a privacy culture in which personal data privacy was both understood and valued. We believed that this could only be achieved through a "cultural shift" in the collective consciousness of the Hong Kong community. In practice, it meant implementing changes in business practices that embrace privacy protection as a core value that connects organizational culture with the best interests of the consumer.

From its inception the PCO was conscious of, and sympathetic towards, the needs of the business sector. Clearly the private sector has a vested interest in driving the information revolution and the PCO did not wish to constrain that initiative by enveloping businesses in a massive amount of bureaucracy. However, we realized that the PCO would be monitored closely by business interests to see if its policies and procedures were a burden upon this sector of our community. Being wary of that possibility we took calculated measures to position the PCO as a business-friendly organization that was not indifferent to the needs of business. However, we also recognized that the projection of this perception could not be taken for granted and that we would have to take appropriate measures to influence views before we could claim that personal data privacy interests and business interests were two sides of the same coin. To reach that goal we needed to manage perceptions towards the PCO as a means of effectively countering any resistance.

Positioning the PCO

It has been said that positioning has less to do with what you do to your product/service offering and more to do with what you do to the mind of your target customer. Accordingly, the positioning of the PCO is important in terms of creating and managing favourable impressions in the community. If we had been legalistically heavy handed, or rigid, we would have alienated the business sector. Conversely, if we had been too

submissive in confronting personal data privacy issues we would have been criticised for being ineffectual. In seeking to influence attitudes towards the PCO we sought to adopt a strategic approach that aims to balance competing interests amongst the community and work for a win/win outcome. This has been achieved in a number of ways.

- (a) **We very much believe in the value of a consultative approach.** In seeking to promote a privacy conscious culture in the business sector, we sought to enhance awareness of privacy protection through co-working arrangements with business, industry and professional bodies. In consultation with relevant professional bodies and the business sector, we have issued three codes of practice that provide practical guidance on compliance with the provisions of the privacy law. They are (a) collection and use of "The Hong Kong Identity Card Number"; (b) guidance to credit providers and credit reference agencies relating to "Consumer Credit Data" and (c) guidance on "Human Resource Management" practices relating to employment-related data. In response to the rapid development of E-Business, we recently produced a management handbook on E-Privacy, which offers the business sector a systematic approach to the formulation of an E-Privacy policy. In each of these respects we have given a deliberate emphasis to publications that target private sector needs, as they become known to us. We feel that this approach has paid dividends in the private sector. Three months ago the PCO was rewarded for its contribution to HRM by winning the Outstanding Contribution to Human Resource award conferred at the Asian HR Awards in Hong Kong. I would like to emphasize that much of this collective effort has been undertaken with the support and co-operation of the business sector.
- (b) **We regard continuous promotion as central to the creation of privacy awareness.** Our promotional strategy has been to both inform and educate all

sections of our society. Today, we run main media campaigns, hold scores of public seminars and training sessions each year, and operate a very active Data Protection Officers Club. All these endeavours seek to raise the awareness of the general public in terms of their rights under the privacy law. On the business front, we organize talks and presentations to a variety of business sectors ranging from telecommunications to banking, insurance, property management, social services and education. In September 1999, and for the first time in Asia, we hosted the 21st International Conference on Privacy and Personal Data Protection in Hong Kong. For over twenty years this annual conference has been the major international forum for privacy commissioners, data protection authorities, academia, business leaders and government officials from all parts of the world to get together and discuss matters of common interest. In March 2001, we hosted a local privacy conference entitled "E-Privacy in the New Economy" that attracted a full house of 300 representatives from the private sector. We also hosted the first Asia Privacy Forum in March 2001, in which privacy officials from over 10 cities in the Asian region gathered in Hong Kong to exchange views and share experiences in respect of future trends in privacy and the protection afforded in different jurisdictions. There is no question in my mind that these events have raised public awareness around privacy issues within our community and have created a climate in which individual privacy rights to personal data protection have continued to be a social issue of importance.

- (c) **We promote privacy compliance by encouraging systemic improvements to business practices as distinct from intervention and legal enforcement.** In handling public complaints lodged with our Office, it is our policy in the first instance to seek, where practicable, to mediate the dispute with a view to resolving the matters informally without

resource to our statutory power of investigation. In our five years' operational experience, the majority of complaints were settled through mediation after the party complained against accepted our advice to implement improvement measures. In other cases in which a contravention of the requirements of the privacy law was found to have occurred after our formal investigation, we sought a written undertaking from the party concerned regarding the remedial actions to be taken. Only in rare cases when such undertakings were not forthcoming then we would resort to our statutory power of enforcement. In my view, this approach has fostered a reciprocal understanding between our Office and the business sector. It also amounts to good relationship management.

Good Privacy Practices: The Corporate Pay-off

Today, the promise of e-business, and the emergence of wireless m-business have a profound effect upon the way organizations operate. The increasingly competitive global market poses difficult and far-reaching management challenges for business leaders. Some of these challenges are already evident and having a profound effect upon the "ways of doing business". Among them, and of paramount importance, is the issue of "How e-business can maximize its value to consumers and simultaneously retain their trust and confidence?" Building consumer trust and confidence requires thoughtful analysis of the nature of the relationship between buyers and sellers. Not only are consumers concerned about sellers offering quality products and services, they are also concerned about their ability to exercise control over the use of their personal data. This is an issue that hinges on an organization's ability to respect and protect the personal data entrusted to it by consumers. Protection of consumers' privacy is a critical management responsibility. In any new business initiative, that duty has increasingly become a key determinant of business success and increasingly regarded as a way of differentiating competing business providers.

There is a growing body of evidence that suggests that organizational resistance to embracing privacy as a core value in business has a downside that could be potentially damaging. Worldwide, high profile business failures have been attributable to the lack of recognition to implement best privacy policies and practices, and the lack of commitment to privacy as a consumer issue. The consequences of this oversight have led to erosion of consumer loyalty, attraction of negative publicity, and loss of potential business. These adverse effects have directly and adversely affected stock price and market share. Not the least of these consequences though is the risk of litigation by consumers arising from alleged privacy infringement.

Questions have often been asked about the cost of compliance with privacy protection and what the pay-off of this investment is likely to be. One answer to that question is that, as some commentators have observed, it is not whether companies can afford to adopt good privacy practices, but rather a case of whether they can afford not to do so. Simply put, the choice is no choice. I do not disagree with this observation. However, I would add to this with a more positive review of the corporate pay-off from our business sector experience in Hong Kong:

(a) **Building Consumer Trust and Confidence.** Where management succeeds in guaranteeing the exactitude with which personal data is managed it is likely that this will have a corresponding effect upon the level of trust and confidence expressed by customers and other stakeholders. This can only be beneficial, especially in the world of online business transactions where privacy and security protocols assume special importance. Where the protection of personal data are demonstrated to be exemplary this will reflect upon corporate reputations and brand equity which could boost growth by reinforcing loyalty and expanding the customer base.

(b) **Gaining Competitive Advantage.** The logical extension to this benefit is that businesses should be able to use a high level of demonstrated trust and confidence as the basis for differentiating themselves from their rivals. Differentiation not only adds to the value of brands and their positioning but also offers business an alternative means of seeking competitive advantage.

(c) **Minimizing Privacy Litigation Risks.** Privacy infringement is subject to regulation by privacy laws. An investment in best privacy practices and protocols by business may therefore be regarded as one strategy for managing that risk.

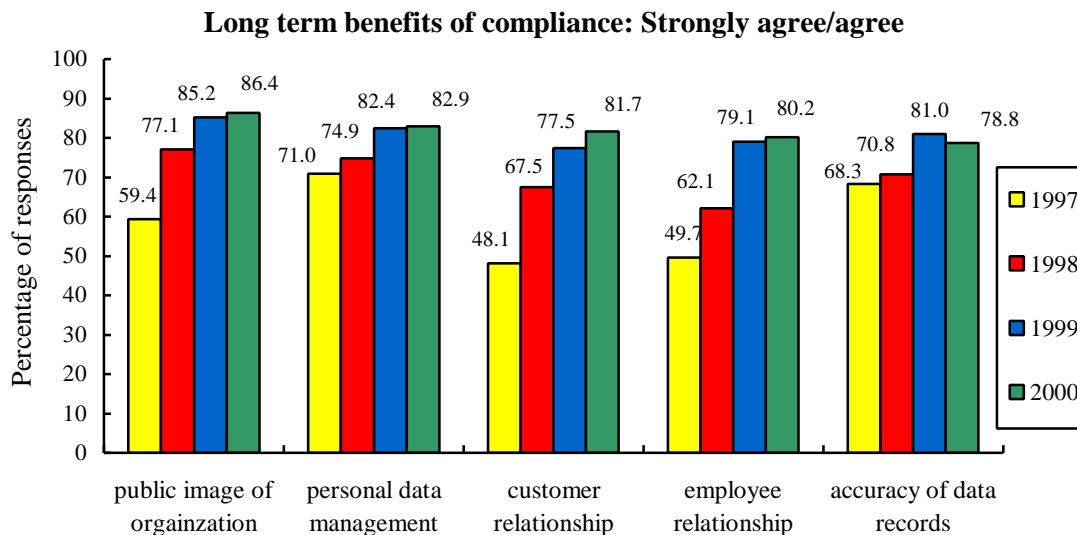
(d) **Reducing Marketing costs.** Privacy protection practices emphasize involving customers in the compilation and management of their information. This involvement lets customers indicate their own preferences, thereby allowing businesses to market their products or services only to those who have indicated they are receptive to receiving such marketing. Permission Marketing is gaining in popularity because of its ability to reduce costs and pinpoint targets. By recognizing the customer as a valuable source of information to be respected and protected, businesses are able to focus resources cost-effectively in responding to their customers' needs.

(e) **Improving Quality of Customer Service.** In today's information economy, the quality and integrity of information is of paramount importance. Today's business environment demands complete, accurate, timely and relevant information to make informed business decisions. The most reliable source of information about a customer is the customer. With accurate information about their customers, businesses are able to effectively focus their efforts, time and resources to respond to customers' demands for personalized and customized services. The adoption of privacy protection practices can assist

businesses to concentrate their resources and to improve the quality of their customer service.

It is for these reasons that I would argue that good privacy policies and related best practices should not be regarded as yet another imposition decreed by governments. Consumers are becoming more concerned, more informed, and more demanding with regard to the protection of their privacy. Adopting privacy protection practices makes good business sense as such practices can effectively address their concerns. In Hong Kong, many business sectors and companies, particularly those in the information business such as banks, telecommunications and insurance companies, have realized the need to rise to the challenge and have voluntarily responded by introducing code of fair information practices or privacy policies. For them this was just part and parcel of being a good corporate citizen and a professionally run business that sought to accommodate new challenges rather than oppose them.

Each year, the PCO conducts an annual territory-wide opinion survey that maps public attitudes, and those of the business community, towards the implementation of the privacy law. Over the past four years, our annual opinion surveys have shown, on the one hand, increased awareness in the community of privacy rights and, on the other hand, more and more business organizations recognizing the long term benefits that are to be derived from compliance with the privacy law. The 2000 Opinion Survey showed that over 80% of the responses either agreed, or strongly agreed, that compliance with the law brought, and continues to bring, long term benefits to their business in terms of their public image, personal data management, customer and employee relations. The percentage agreeing with this view in the 1997 baseline survey was only 48%.



Conclusion

I hope I have been able to convey to you a sense that good privacy practice amounts to good business sense. In Hong Kong, good governance in the private sector in respect of individuals' privacy rights is producing measurable results and will continue to do so. For those that remain less convinced by the arguments I have presented I would like to conclude by asking two questions.

- (a) As a responsible business are you prepared to tell your customers, employees and other stakeholders that you do not care about the accuracy or security accorded to their personal data?
- (b) Similarly, would you tell your customers or employees that you were using their personal data for purposes other than those for which they have given their consent?

I would think that the vast majority of businesses would answer these questions in the negative. In today's economic environment, the issue of privacy protection has often been portrayed as anti-business and privacy laws as restricting legitimate business activities. In Hong Kong, we have demonstrated that this is not the case.

Privacy is not an absolute value. Its protection, where relevant, has to be considered in the overall context of the collective rights of an enlightened society. In our implementation of the privacy law, we are proud to say that we have been instrumental in developing an environment that has made the "cultural shift" possible in our society. In corporate governance and in respect of personal data privacy the perception is the reality. In managing the perception business will ensure a convergence of views between provider and consumer, deliver added value and recognize that they have made a prudent investment.