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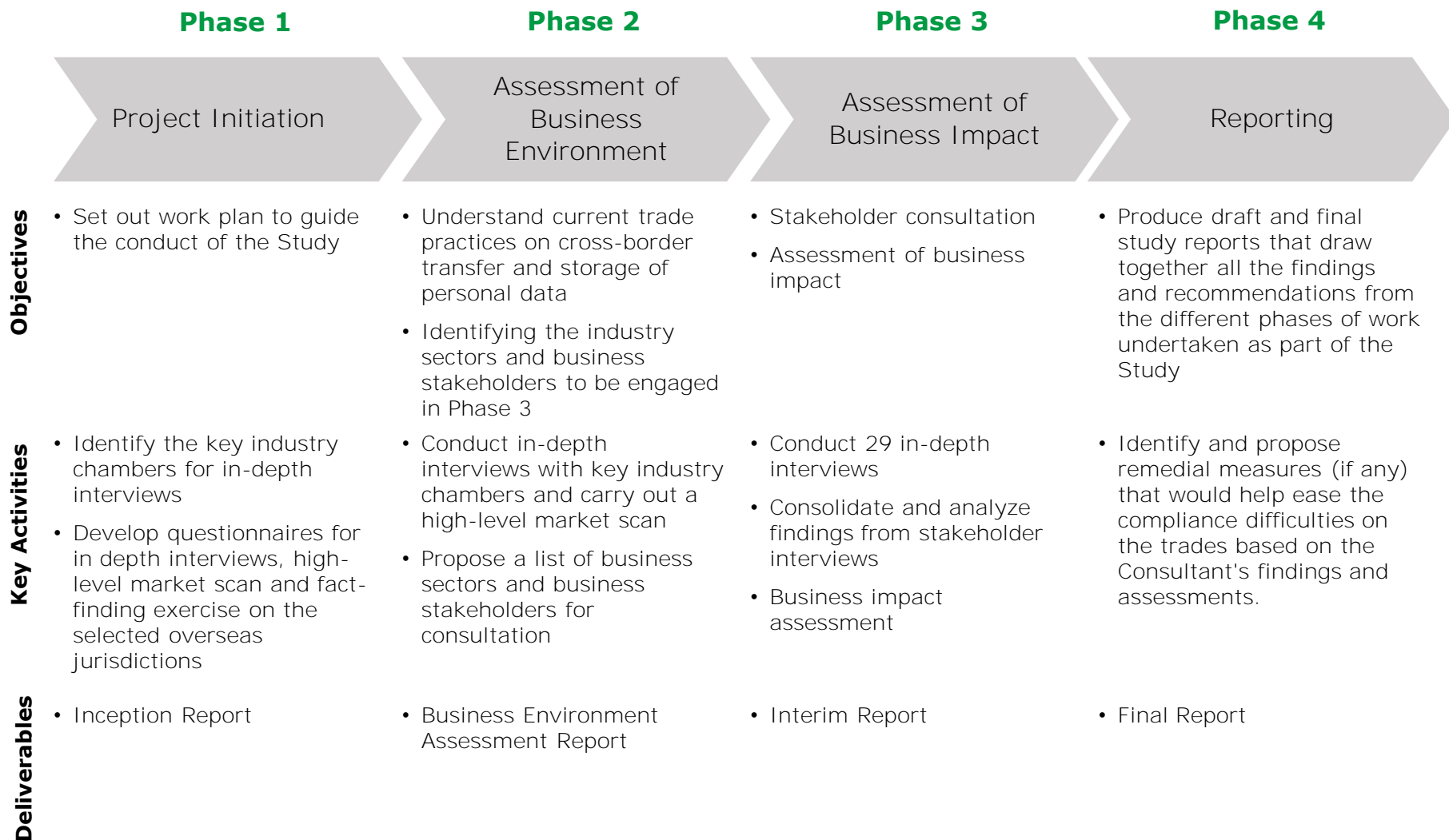


**Business Impact Assessment (BIA) on the Proposed Implementation
of Section 33 of the Personal Data (Privacy) Ordinance**

15 May 2017

Project Approach

Project Approach



Stakeholder Engagement Approach

- A high-level market scan exercise had been conducted in the form of an online survey
- In-depth interviews had been conducted with the selected key industry chambers including:
 - The Hong Kong General Chamber of Commerce
 - Federation of Hong Kong Industries
 - The Chinese Manufacturers' Association of Hong Kong
 - The Chinese General Chamber of Commerce (via a written response)
- 29 in-depth interviews were conducted with key trade associations and business stakeholders from the finance and insurance, information and communications, transportation, storage, postal and courier services, professional and business services, retail, accommodation and food service and manufacturing sectors.

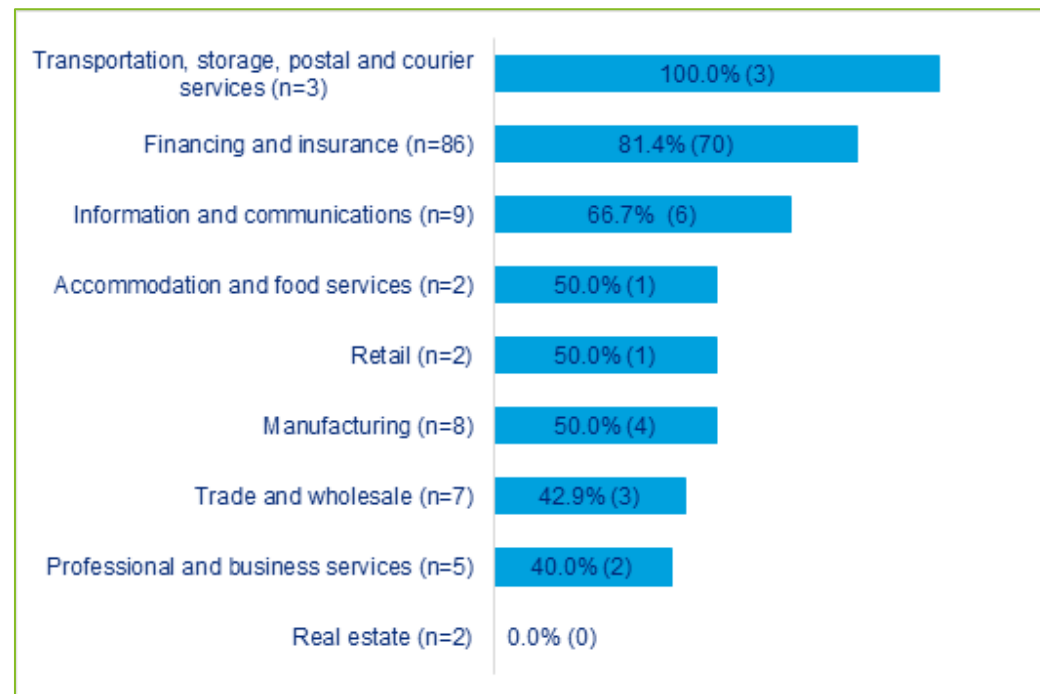
Stakeholder Engagement Approach

Sector	Stakeholder			Number of interviews
	Trade Associations	Large Corporates	SMEs	
Financing and Insurance	Hong Kong Association of Banks	2 asset management firms	1 securities brokerage firm	8
	Hong Kong Federation of Insurers	2 securities brokerage firm	1 insurance brokerage firm	
Information and Communications	Hong Kong Information Technology Federation	2 telecommunications service providers	3 IT service providers	9
	Hong Kong Wireless Technology Industry Association	2 IT service providers		
Transportation, Storage, Postal and Courier Services	-	1 aviation company	1 logistics company	4
		1 land transport company		
		1 logistics company		
Others	The Federation of Hong Kong Hotel Owners	<u>Professional and business services:</u> 1 recruitment agency	<u>Professional and business services:</u> 1 recruitment agency	8
		1 business service company	1 travel agency	
		<u>Retail:</u> 1 retail chain company	1 accounting firm	
			<u>Manufacturing:</u> 1 manufacturing company	
TOTAL	5	14	10	29

Preliminary Key Findings

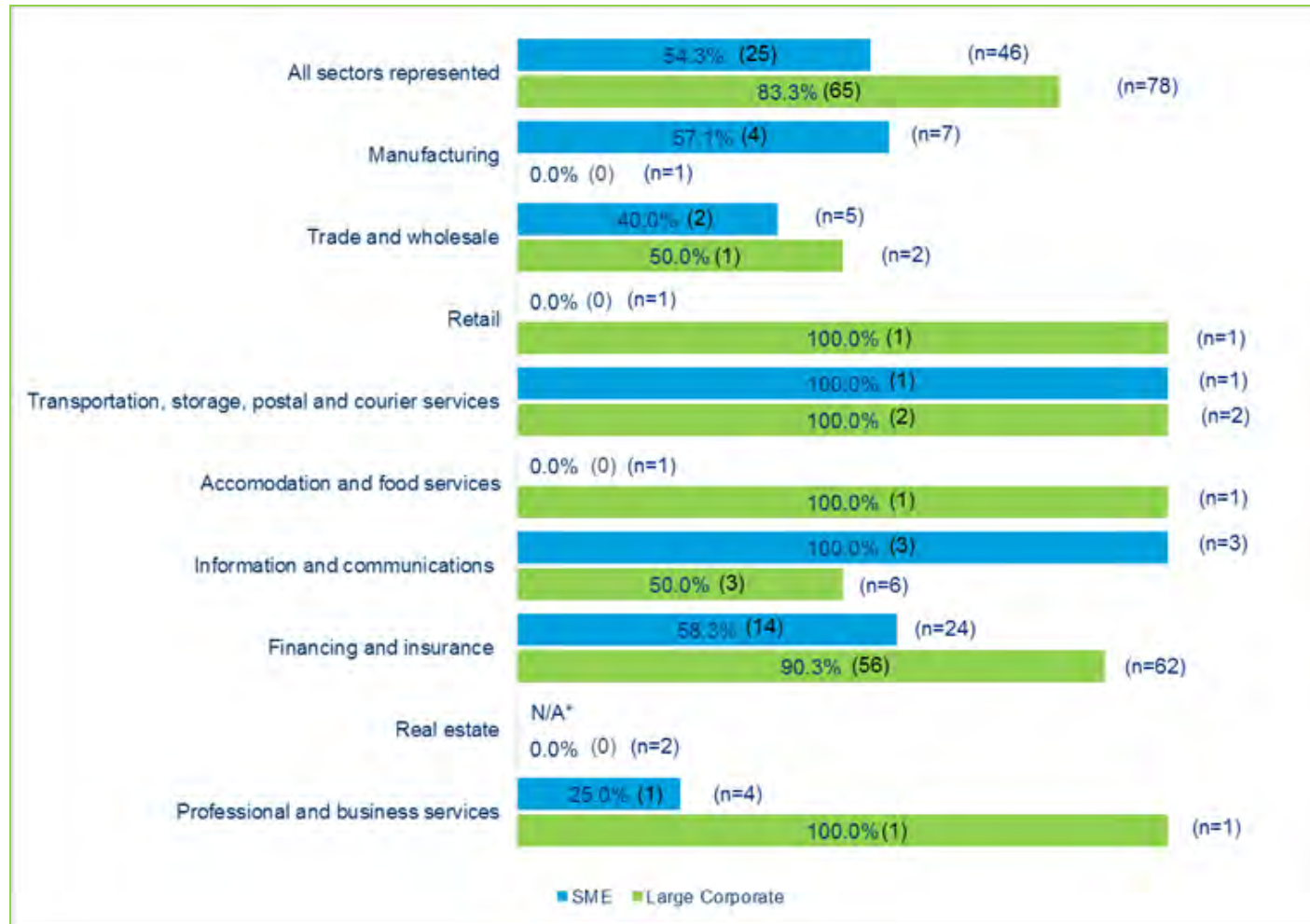
Key Findings From the Market Scan Exercise

- A total of 135 respondents participated in the survey with 124 valid responses. 72.6% of the respondents transferred personal data to places outside Hong Kong.
- The ***transportation, storage, postal and courier services; financing and insurance*** and ***information and communications*** sectors were identified to have the highest proportion of the respondents from who transfer personal data to places outside Hong Kong.



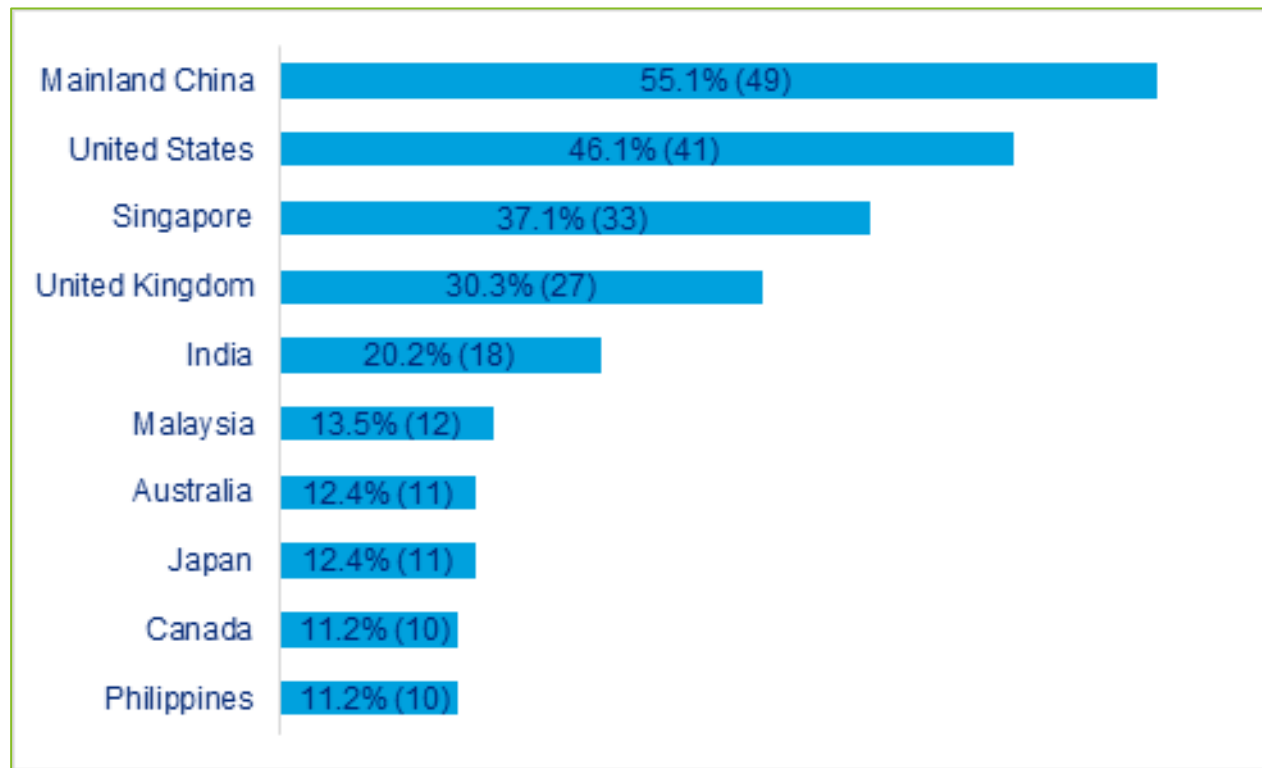
Key Findings From the Market Scan Exercise

- Large corporates (83.3%) are more likely to transfer personal data outside Hong Kong compared to SMEs (54.3%).



Key Findings From the Market Scan Exercise

- The top five locations to which personal data were transferred were Mainland China (55.1%), the United States (46.1%), Singapore (37.1%), the United Kingdom (30.3%) and India (20.2%).



Section 33 – Means of Compliance

Section 33 prohibits the transfer of personal data to places outside Hong Kong unless one of the following conditions is met:

Exception	Conditions
Section 33(2)(a)	Intended location for transfer is specified as a White List jurisdiction by the Commissioner in the Gazette
Section 33(2)(b)	Intended location for transfer has been proven to have in force "any law which is substantially similar to, or serves the same purposes" as the Ordinance (upon undertaking professional assessment by data user)
Section 33(2)(c)	Data subject has expressly and voluntarily given consent in writing to the transfer and has not withdrawn the consent (provided that the data user has informed the data subject about the related purpose and consequences)
Section 33(2)(d)	Transfer is for avoidance or mitigation of adverse actions against the data subject and it is not feasible to obtain the data subject's written consent before the transfer
Section 33(2)(e)	Any one of the exemptions under Part VIII of the Ordinance already applies (e.g. for domestics purposes, crime prevention, health purposes, legal proceedings, news activity, statistics and research or emergency situations)
Section 33(2)(f)	Data users have taken all reasonable precautions and exercised all due diligence that the personal data will not be handled in a manner in contravention of the Ordinance (e.g. enforceable contract, non-contractual oversight and auditing mechanisms)

Preliminary Key Findings From In-depth Interviews

Exceptions	Compliance difficulties
Section 33(2)(a) <i>White List jurisdictions as specified by the Commissioner in the Gazette</i>	<ul style="list-style-type: none">• Locations to which personal data are being transferred may not be on the White List.• Mechanism of countries being white-listed and the uncertainties associated with it.
Section 33(2)(b) <i>there is in force that place "any law which is substantially similar to, or serves the same purposes as" the Ordinance</i>	<ul style="list-style-type: none">• High compliance cost may be involved, especially for SMEs, since legal advice are expected to be sought.

Preliminary Key Findings From In-depth Interviews

Exception	Compliance difficulties
Section 33(2)(c) <i>data subject's consent in writing to the transfer</i>	<ul style="list-style-type: none">• Feasibility of obtaining valid written consents from all customers.• Potential increase in administrative burden and costs.
Section 33(2)(f) <i>taken all reasonable precautions and exercised all due diligence that the personal data will not be handled in a manner that would be a contravention of the Ordinance</i>	<ul style="list-style-type: none">• Lack of legal knowledge to understand the requirements set out under section 33(2)(f), especially for SMEs.• Limited bargaining power over contract terms and conditions, especially for SMEs.• Uncertainties associated with the requirements of the non-contractual means under section 33(2)(f) – minimum standard is unknown.

Key observations on potential business impacts and unintended consequences

- With advancement in technology and changes in **organisations'** business practices, transferring personal data across borders has become increasingly common and in greater scales in Hong Kong.
- Businesses face certain difficulties in complying with section 33, it may cause disruptions to businesses if no viable means of compliance are available.
- The implementation of section 33 would impose additional costs of compliance for businesses, which may reduce their competitiveness, especially for SMEs.
- The level of playing field would be potentially disrupted, since SMEs generally face more difficulties in understanding and identifying means to comply with section 33 compared to large corporates.
- Prior to the proposed implementation of section 33, further considerations should be given to:
 - the applicability of section 33 in the context of technological developments today;
 - the coverage of “**cross**-border transfer of personal **data**” that may fall under the scope of section 33; and
 - the difficulties that trades have expressed in meeting the requirements set out under the various exceptions of section 33.



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