

ABLI Data Privacy Forum
7 February 2018 8:30am – 6:30pm
Auditorium of the Supreme Court of Singapore



“Towards a shared legal ecosystem for international data flows in Asia”

Outline

- ◆ Adoption and reform of Data Protection laws is accelerating across Asia
- ◆ Urgent need for legal convergence of Data Protection regulation in Asia
- ◆ Desire to achieve greater compatibility between data protection regimes in the region and beyond
- ◆ Lack of adequate structure of cooperation to facilitate the necessary discussions

Aim

- ◆ To lay the foundations of a shared legal ecosystem for international data flows in Asia
- ◆ To promote interoperable solutions for cross-border data flows
- ◆ Regional perspective, considering global developments

Purpose of this Forum

- ◆ Gather experts, public and private stakeholders to commence the discussions and groundwork for such an ecosystem

For full concept note, please see Appendix I

Details

When: Wednesday 7 February 2018
8:30 am to 6:30pm

Where: Supreme Court, 1 Supreme Ct Ln,
Singapore 178879

Welcome address:

The Honourable the Chief Justice Sundaresh Menon, Supreme Court of Singapore, Chair of the Board, Asian Business Law Institute

Who will attend:

Asian regulators, governments, international organisations, industry representatives, legal practitioners, leading academics, international trade specialists

By invitation only

Enquiries

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Programme highlights

- ◆ Presentation of the objectives of ABLI and the Forum
- ◆ Adoption and reform of data protection laws in Asia: how legal systems adapt to global developments and regulatory competition
- ◆ The legal and economic risks of inconsistencies and gaps in coverage in Asian data protection laws
- ◆ Strengthening cross-border cooperation and establishing an effective regulatory structure in Asia
- ◆ How Asian legal systems can strike the balance between privacy, law enforcement, business innovation and international trade
- ◆ Data transfer mechanisms: looking for a solvable equation between diplomacy, accountability, interoperability, and the role of the individual in Asia

Evening networking event at Jones Day

- ◆ 7 February 2018 - 7.00 pm to 9.00 pm

Time	Title
8:30– 9:00	Registration and networking
9:00– 9.15	Meet and greet, Welcome address The Honourable the Chief Justice Sundaresh Menon, Supreme Court of Singapore, Chair of the Board, Asian Business Law Institute
9:15– 9:30	Presentation on the objectives of ABLI and the Forum - Professor Yeo Tiong Min, Academic Director (ABLI) - Dr. Clarisse Girod, Research Fellow, Data Privacy Project Lead (ABLI)
9:30– 10:45	<p>I. Adoption and reform of data protection laws in Asia: how legal systems adapt to global developments and regulatory competition</p> <p>Chair: Deputy Commissioner Yeong Zee Kin (Personal Data Protection Commission, Singapore)</p> <p>Speakers:</p> <ul style="list-style-type: none"> - Siti Meiningsih (Secretary Public Information and Communication, Kominfo, Indonesia) - Mitsukuni Terada (Deputy Director, Personal Information Protection Commission, Japan) - Amber Sinha (Senior Programme Director, Center for Internet and Society, India) - Susan Ning (Partner, King&Wood Mallesons, China) - Cheang Sopheak, General Department Posts and Telecommunications, ASEAN TELSOM Chair (Cambodia) - Katrine Evans (Haymans Lawyers, New Zealand) <p>This session will identify the different policy options used for shaping data protection laws and data transfer restrictions in Asia, taking into account their capacity to achieve legal convergence and their impact on data flows in the region.</p> <p>Over the past few years, a number of Asian jurisdictions have been reviewing their privacy laws in light of global and technological developments in order to compete as global data, analytics and AI hubs. Others are working on their future data protection regimes, conscious that the absence of domestic legal protection may inhibit incoming or outgoing data transfers. At the other end of the spectrum, some jurisdictions primarily deal with data transfers in cybersecurity laws.</p> <p>Harmonisation is illusory, but legal convergence is achievable if sufficient commonalities are identified for Asian jurisdictions to build on in this area. Do jurisdictions actually need a data protection law and how would they start to develop one? What is the purpose of a data protection law, and how does it articulate with cybersecurity and localisation laws? The interoperability of regimes based on economic fundamentals, human rights, or hybrid models will be analysed, as well as the role which international standards like the OECD or APEC frameworks can play. What is a “high” or “low” level of protection? Must data privacy laws contain restrictions on data flows, if so, should these flows be forbidden or authorised by default?</p>
10:45– 11:15	Coffee break

11:15-12:30	<p>II. The legal and business risks of inconsistencies and gaps in coverage in Asian data protection laws</p> <p>Chair: Professor Graham Greenleaf (University of New South Wales, Australia)</p> <p>Speakers:</p> <ul style="list-style-type: none"> - Jj Disini (Managing Partner, Disini & Disini Law Office, Philippines) - Min Hue Nguyen (Asia Pacific MSME Trade Coalition) - Ken Chia (Principal, Baker McKenzie.Wong & Leow, Singapore) - Professors Kaori Ishii & Fumio Shimpō (Faculty of Law, Universities of Tsukuba and Keio, Japan) - Derek Ho (Senior Managing Counsel Privacy & Data Protection APMEA MasterCard, Vice president AsiaDPO) <p>The objective of this session is to highlight the risks of certain options, particularly for jurisdictions currently in the process of adopting or reforming local data protection laws.</p> <p>Important gaps in data protection coverage exist between Asian jurisdictions. Some jurisdictions have no laws in this area, some have partial laws, and some have laws that require amendment. Many national laws contain significant gaps and exemptions. For example: the type or set of data covered might vary, as might the interpretation of key notions; and some sectors such as outsourcing might be wholly exempted. Different legal concepts or terminology may be used; baseline legislation and sectoral regulations might take different routes; and jurisdictional issues may be ambiguous, or intentionally not deal with.</p> <p>During this session, knowledgeable contributors and participants will consider how exemptions or uncertain coverage in national laws, while they may seem to favour economic players locally, may in fact weigh against them in international competition: companies operating cross-border may be disadvantaged, as a result of legal gaps and uncertainty.</p>
12:30-13:30	<p>Lunch</p>
13:30-14:30	<p>III. Strengthening cross-border cooperation and establishing an effective regulatory structure in Asia</p> <p>Chair: Professor Simon Chesterman (Dean of Law, National University of Singapore)</p> <p>Speakers:</p> <ul style="list-style-type: none"> - John Edwards (Privacy Commissioner of New Zealand, former ICDPPC Chair) - Yeong Zee Kin (Deputy Commissioner, Personal Data Protection Commission, Singapore) - Ivy Patdu (Deputy Privacy Commissioner of the Philippines) - Lee Jeong Soo (Korean Communications Commission, Korea) - Nozomi Matsui (Personal Information Protection Commission, Japan) - A representative (Department of Personal Data Protection, Malaysia) * <p>The objective of this session is to discuss how the position of Asian regulators can be strengthened or adapted to create a level playing field for regulatory activities and cross-border flows in Asia.</p> <p>A strong regulatory environment is essential to build a sound legal ecosystem for international data flows in Asia: weak or uncoordinated enforcement action may lead to an uneven playing field. At the national level, this implies that Commissioners should build the capability to act effectively and to prepare for the impact of regulatory and technological developments on their activities. From experience, which powers and capacities should a data protection regulator be granted by law?</p> <p>At the international level, the global community of Commissioners is thriving and international enforcement networks have become operational. What does this suggest for Asian regulators? Are local laws adapted? Is there a need for an operational structure of regulatory coordination be built in Asia, or are existing international fora sufficient?</p>

14:30-15:45	<p>IV. How Asian legal systems can strike the balance between privacy, law enforcement, business innovation and international trade</p> <p>Chair: Data Privacy Commissioner Stephen Wong (Hong Kong)</p> <p>Speakers:</p> <ul style="list-style-type: none"> - Deborah Elms (Executive Director, Asian Trade Centre) - Natasha Beschorner (Senior Trade Specialist, World Bank) - Trần Thanh Hà (Ministry of Information and Technology, Vietnam) - Rahul Sharma (Entrepreneur, The Perspective, India) - Justisiari P. Kusumah and Danny Kobrata (Founding Partner and Lawyer, K&K Advocates, Indonesia) - Dr Yanqing Hong (Research Director, Internet Development Research Institute, Peking University) <p>This session brings together industry, trade specialists, governments, data protection regulators to explore the related topics of personal data in free trade agreements and data localisation laws, to raise collective awareness and make proposals of standards that could be mutually-acceptable for the region.</p> <p>More free trade agreements (FTAs) are signed every year in Asia, and major economic partnerships are in the pipes. At the same time, data localisation and cybersecurity laws seem to shape a new phase of regulatory development in the region, and data cannot flow with goods and services whose trade has been liberalised. This session will consider the tensions that result from this antagonism, and how they are currently dealt with. Are data protection and localisation laws not being confused? FTAs such as TPP and RCEP appear as possible vectors to manage the potential conflict between the need for data to flow and transfer restrictions. How are such agreements negotiated, what is the level of understanding of data protection issues by trade negotiators? Should there be a common position on data protection clauses in Asian FTAs? Is the test that data protection laws must not be “a disguised restriction on trade” or “impose restrictions on transfers of information greater than are required to achieve the objective” workable?</p>
15:45-16:15	<p>Tea break</p>
16:15-17:45	<p>V. Data transfer mechanisms in Asia: looking for a solvable equation between diplomacy, accountability, interoperability, and the role of the individual</p> <p>Chair: Privacy Commissioner John Edwards (New Zealand)</p> <p>Speakers:</p> <ul style="list-style-type: none"> - Huey Tan (Senior legal counsel, Apple, President AsiaDPO) - Bruno Gencarelli (Head of Unit International Data Flows, European Commission) - Mark Parsons (Partner, Hogan Lovells, Hong Kong) - Peter Leonard (Principal, Data Synergies, Australia) - Kwang Bae Park (Partner, Lee&Ko, Korea) <p>In this session, a comparative cost/benefit analysis of the role of consent and transfer mechanisms will be done; the notions of interoperability, mutual recognition, and reciprocity will also be discussed and analysed to understand how they can effectively for legal convergence in this area of law.</p> <p>Contracts and consent are the most frequently used legal bases for data transfers in Asia today. However, the CBPR system is gaining momentum, and certification mechanisms, Privacy Seals, Codes of Conduct are also being developed, in part under the influence of EU GDPR. How do these systems work, what are the conditions for their take off, and how can they be interoperable, within Asia and with other regions? Can any lessons be learnt in Asia from the European experience? Most Asian laws envisage the adoption of “white lists” of countries to which personal data can freely flow. What are the benefits and difficulties, which criteria to use? Should all these mechanisms be developed, or priority be given to accountability-based tools? The role of regulators in the regulation of international transfers will also be discussed.</p>
17:45-18:15 (end)	<p>Next steps</p> <p>Presentation and discussion of ABLI’s project, Phase 2: role of Experts’ Committee, timeline, methodology, deliverables</p>

Appendix I

Concept note

During the last few years, the need to achieve convergence in the regulation of data protection and privacy in Asia has been stressed repeatedly by Industry, Regional and International Organisations, Data Privacy Commissioners, and Asian Leaders and Ministers. Indeed, the reports written by ABLI's Reporters in the fourteen Asian jurisdictions covered in the project provide ample evidence that greater compatibility between data protection regimes is urgently needed in the region, primarily in the area of cross-border data flows.

Governments and lawmakers in major Asian jurisdictions, including India and Indonesia, are actively engaged in the process of adopting comprehensive data protection laws. Law reform has been achieved or is underway in Singapore, Japan, Korea and New Zealand, whilst the entry into force of data transfer restrictions is under debate in Hong Kong. Meanwhile, the implementation of the ASEAN framework is a priority of the new Singaporean chairmanship, the APEC CBPR system is expanding, and the extraterritorial effects of EU GDPR are pushing national reforms or the adoption of new guidance in Asian countries.

In this context, it is urgent that public and private stakeholders go beyond general discussions and formally engage in the policy development process, lest the opportunity to achieve effective convergence in this area of law be compromised. This engagement must be ambitious and aim at laying the fundamentals on which to build a **shared legal ecosystem for international data flows in Asia**. To achieve this, the whole spectrum of legal issues related to cross-border data flows in Asia should be covered in a single project, rather than each issue viewed in separate fora.

Unlike other regions in the world, Asia currently lacks an adequate structure of cooperation to lead the necessary discussions from a truly regional angle, while also taking global developments into account. ABLI aims to help fill this gap. It has thus built its Data Privacy Project, of which the Data Privacy Forum is part, as an *ad hoc*, multi-jurisdictional, and multi-stakeholder platform of cooperation, from which the necessary discussions can be launched, and hopefully taken over in other fora for concrete implementation.

The first phase of the project has consisted in the write up, by high-level experts, of Jurisdictional Reports on the regulations of cross-border data flows in the fourteen Asian jurisdictions covered in the project, and in the constitution of a wider pan-Asian network of experts and stakeholders capable of advancing these discussions. The second phase, starting February 2018, will consist in the joint elaboration of recommendations to undertake concrete actions of convergence in Asian legal systems. These actions will be developed by ABLI's Experts Committee, in liaison with public authorities and regional and international organisations whose activities are relevant to the region.

ABLI's Data Privacy Forum is a pivotal moment in the life of the project. The programme of the day has been built around five key themes. These themes have emerged from the Jurisdictional Reports as requiring in-depth discussions to lay the ground for a shared Asian legal ecosystem for international data flows.

The format of the sessions has been designed to facilitate discussions: attendance has been limited; seating will be U-shaped, no slides will be shown, and no formal presentations made.

Sessions will be moderated by Data Protection Commissioners or high-level experts, and ABLI's Jurisdictional Reporters will play a prominent role on all sessions. Several speakers have been pre-identified to comment on the theme, based on the specificities of their national laws or expertise. Discussions during the rest of the session will be free, and all will be encouraged to speak. Participants are not expected to adopt positions or make formal commitments.

At the end of the Forum, the themes to be retained for future work on recommendations will be agreed by consensus, and a methodology and a work schedule will be proposed.