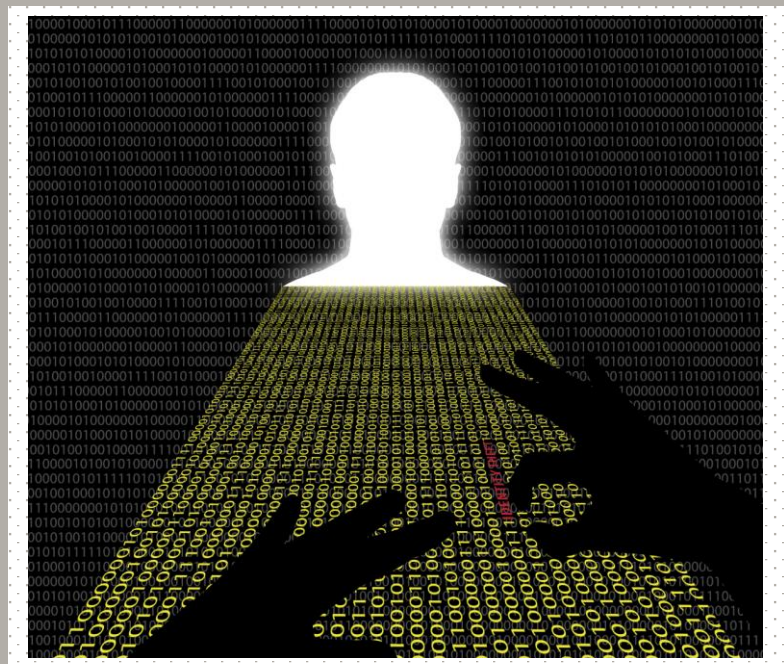


INSIGHT

JANUARY 2019

THE STATE OF DATA PRIVACY IN ASIA-PACIFIC

A MAP OF THE REGULATORY REQUIREMENTS



Data privacy and protection continue to gather attention with each data breach and new regulations. Some of the news makers recently have been GDPR, Cathay Pacific, and most recently Marriott. Businesses operating in Asia-Pacific face a variety of different Data Privacy laws that can impose significant restrictions on business functions. This article is the first of a two part series on these laws. First, we will examine the current state of data protection and privacy in ten Asia-Pacific (APAC) markets. The next article will compare and contrast these markets against the GDPR, highlighting key differences and overlap.

Our analysis under the level of restrictiveness point of view

We compare ten countries through six different criteria

In our analysis, we focus on the way companies must handle personal data according to local regulatory requirements, especially when cross-border activities are involved. The main objective is to highlight the differences of each country in terms of constraints and restrictiveness of data disclosure, transfer and storage.

The results are quite interesting. **Policy-making leaders such as Hong Kong and Singapore do not impose strict requirements** when it comes to processing data or cross-border disclosure and storage. Thailand also shows a low level of restrictiveness, but this is due to limited regulation on data protection or privacy. China and Indonesia present the most restrictive regulatory environments for data and technology. Some aspects of their data regulation remain unclear, with consequent application of the most stringent scenarios by companies, in order to avoid non-compliance issues.

Classifying each country can be difficult as some regulations are left ambiguous and open to interpretation. In these scenarios, we adhere to the international legal community's assessment of the regulation, its interpretation, and impact.

HEATMAP ON « RESTRICTIVENESS LEVEL » ON PERSONAL DATA REGULATION (AS OF DEC 2018) *



(*) Note: Our classification is driven by the level of restrictiveness of each country's regulation, rather than the number or exhaustiveness of regulations.

Source: Sia Partners analysis

While countries have been classified with different levels of intensity of colour, all classifications pose challenges. Countries identified as being particularly restrictive require significant intra-country compliance efforts. **Those lacking data protection laws will require compliance effort to comply with extra-territorial regulations, like GDPR.**

DETAIL ON THE RESTRICTIVENESS ANALYSIS ON PERSONAL DATA REGULATION (AS OF DEC 2018)

| | Strong restriction | Moderate restriction | Limited restriction | Out of scope | | |
|-------------|---|--|---|----------------------------------|--------------------------------------|--|
| | Restriction to disclose data to 3 rd party | Restriction to cross-border disclosure of data | Obligation of regulatory notification about data processing | Data loss or breach notification | Restriction to offshore data storage | Restriction of Cloud physical hosting in the country |
| AUSTRALIA | ● | ● | ● | ● | ● | ● |
| CHINA | ● | ● | ● | ● | ● | ● |
| HONG KONG | ● | ● | ● | ● | ● | ● |
| INDIA | ● | ● | ● | ● | ● | ● |
| INDONESIA | ● | ● | ● | ● | ● | ● |
| JAPAN | ● | ● | ● | ● | ● | ● |
| MALAYSIA | ● | ● | ● | ● | ● | ● |
| PHILIPPINES | ● | ● | ● | ● | ● | ● |
| SINGAPORE | ● | ● | ● | ● | ● | ● |
| THAILAND | ● | ● | ● | ● | ● | ● |

Source: Sia Partners analysis

Businesses will have to review each countries regulation in-depth to understand the full complexity, but here are some highlights from our research:



AUSTRALIA: Australia has minimal data privacy requirements. Consent for data usage must be obtained and data breach notifications are required when they could “pose serious harm to one or more individuals”.



CHINA: China is viewed as the most restrictive regulatory environment with onshore data storage requirements, significant regulation for transferring data offshore, and ambiguous regulatory phrasing.



HONG KONG: Hong Kong is viewed as a leader in data protection regulation. With a clear framework, dedicated data privacy office (PDPO), and readily available materials understanding requirements is easier than neighbouring countries. Hong Kong has several data disclosure requirements, but fewer rules around data usage, storage, and transfer.



INDIA: India has requirements around disclosure and data protection. We’re anticipating **new regulations will be introduced regarding cloud and onshore storage requirements**, which could make India more restrictive



INDONESIA: Indonesia is considered restrictive with disclosure, storage, data breach notifications, and cross-border transfer requirements. We also **anticipate the introduction of more restrictive regulations** for onshore storage which could impact cloud storage and hosting locations



JAPAN: Japan’s dated regulations were updated in 2017. Overall less restrictive than majority of the markets we reviewed with requirements for disclosure, outsourcing in some situations, and data breaches. Japan has no regulations for storage, cross-border transfer, and cloud



MALAYSIA: Malaysia is one of the countries that **requires regulatory approval for data centres outside the country**, which could impact system hosting and cloud

storage. The regulator has released a white list of countries for cross-border data transfer. The list covers a significant number of major markets



PHILIPPINES: The Philippines requires **data breach notifications** and disclosure. There are no restrictions or minimal restrictions for the other areas we reviewed



SINGAPORE: Singapore is also viewed as a leader in data protection regulation. Similar to Hong Kong in requirements, the notable difference is the restriction in terms of cross-border movement of data. The introduction of a mandatory breach notification is currently under discussion



THAILAND: Thailand has few data protection laws outside of data usage disclosure. It’s one of the **least restrictive** markets we reviewed

The next steps of Data Privacy Regulation

How to face a very heterogeneous regulatory landscape?

Recently, many countries are taking important steps in Data Privacy and Data protection regulations, including introducing more restrictive rules. This is not only a consequence of GDPR, but also the changing digital landscape. **With increased connectivity, digital services, and mobile content, governments must keep up with fast evolving trends** and ensure protection against growing and sophisticated cyber-crime.

The **regulation landscape remains very heterogeneous** in the Asia Pacific region. This represents an important challenge for multinational companies that operate in different countries. The top management should consider the **positive implications of a general harmonization of rules** among their different subsidiaries, which would bring higher transparency, simplification, and efficiency in the data management processes. Although the cost of implementation and maintenance of such a framework could be significant, the risk of data breach or loss should never be underestimated, with negative impacts not only in terms of law enforcement, but above all in terms of image and reputation of the company itself.

Stay tuned for our second article in this series, comparing and contrasting “The State of Data Privacy in Asia-Pacific” against GDPR. For more information regarding data privacy and protection in APAC, you can reference previous Sia Partner articles on [GDPR](#), [Data Protection](#), [the Cathay Pacific Data Breach](#), etc.

To know more, browse our GDPR website, click [here!](#)

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