

Data Protection & Privacy

Contributing editor
Wim Nauwelaerts



2017

GETTING THE
DEAL THROUGH 

GETTING THE
DEAL THROUGH 

Data Protection & Privacy 2017

Contributing editor
Wim Nauwelaerts
Hunton & Williams

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Senior business development managers
Alan Lee
alan.lee@gettingthedealthrough.com

Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com



Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

© Law Business Research Ltd 2016
No photocopying without a CLA licence.
First published 2012
Fifth edition
ISSN 2051-1280

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between July and August 2016. Be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Introduction	5	Malta	82
Wim Nauwelaerts Hunton & Williams		Olga Finkel, Robert Zammit and Rachel Vella-Baldacchino WH Partners	
EU overview	8	Mexico	88
Wim Nauwelaerts and Anna Pateraki Hunton & Williams		Gustavo A Alcocer and Abraham Díaz Arceo Olivares	
Safe Harbor and the Privacy Shield	10	Poland	94
Aaron P Simpson Hunton & Williams		Arwid Mednis and Gerard Karp Wierzbowski Eversheds	
Australia	12	Russia	101
Alex Hutchens, Jeremy Perier and Eliza Humble McCullough Robertson		Ksenia Andreeva, Anastasia Dergacheva, Vasilisa Strizh and Brian Zimpler Morgan, Lewis & Bockius LLP	
Austria	18	Serbia	108
Rainer Knyrim Preslmayr Rechtsanwälte OG		Bogdan Ivanišević and Milica Basta BDK Advokati	
Belgium	25	Singapore	113
Wim Nauwelaerts and David Dumont Hunton & Williams		Lim Chong Kin and Charmian Aw Drew & Napier LLC	
Brazil	33	Slovakia	126
Ricardo Barretto Ferreira and Paulo Brancher Azevedo Sette Advogados		Radoslava Rybanová and Jana Bezeková Černežová & Hrbek, sro	
Chile	38	South Africa	132
Claudio Magliona, Nicolás Yuraszeck and Carlos Araya García Magliona & Cía Abogados		Danie Strachan and André Visser Adams & Adams	
Denmark	43	Sweden	141
Michael Gorm Madsen Lundgrens Law Firm P/S		Henrik Nilsson Wesslau Söderqvist Advokatbyrå	
Germany	49	Switzerland	148
Peter Huppertz Hoffmann Liebs Fritsch & Partner		Lukas Morscher and Kaj Seidl-Nussbaumer Lenz & Staehelin	
India	55	Taiwan	155
Stephen Mathias and Naqeeb Ahmed Kazia Kochhar & Co		Ken-Ying Tseng and Rebecca Hsiao Lee and Li, Attorneys-at-Law	
Ireland	61	Turkey	161
Anne-Marie Bohan Matheson		Ozan Karaduman and Bentley James Yaffe Gün + Partners	
Japan	70	United Kingdom	167
Akemi Suzuki Nagashima Ohno & Tsunematsu		Bridget Treacy Hunton & Williams	
Luxembourg	76	United States	173
Marielle Stevenot, Rima Guillen and Charles-Henri Laevens MNKS		Lisa J Sotto and Aaron P Simpson Hunton & Williams	

Preface

Data Protection & Privacy 2017

Fifth edition

Getting the Deal Through is delighted to publish the fifth edition of *Data Protection & Privacy*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes Australia, Serbia and Turkey.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would like to thank and acknowledge Rosemary P Jay, of Hunton & Williams, whose tenure as contributing editor of the past four editions has shaped the publication to date. We also extend special thanks to the contributing editor, Wim Nauwelaerts, of Hunton & Williams, for his assistance with this volume.

GETTING THE
DEAL THROUGH 

London
August 2016

Taiwan

Ken-Ying Tseng and Rebecca Hsiao

Lee and Li, Attorneys-at-Law

Law and the regulatory authority

1 Legislative framework

Summarise the legislative framework for the protection of personally identifiable information (PII). Does your jurisdiction have a dedicated data protection law? Have any international instruments on privacy or data protection been adopted in your jurisdiction?

The collection, processing and use of personal data by regulated entities were subject to the Computer-processed Personal Data Protection Act (CPDPA) and its Enforcement Rules promulgated by the Ministry of Justice (MoJ). Regulated entities include all government agencies and the following entities in the private sector:

- credit investigation agents and entities or individuals whose main business is the collection of personal data;
- hospitals;
- schools;
- telecommunications businesses;
- banks and other financial entities;
- securities businesses;
- insurance companies;
- publishing and broadcasting companies; and
- any other entities designated by the competent authorities.

On 27 April 2010, the legislature passed a bill to amend and rename the CPDPA the 'Personal Data Protection Act' (PDPA). On 26 May 2010, the registration requirements under the CPDPA were abolished along with the President's promulgation of the PDPA. Other provisions (except for articles 6 and 54, explained below) under the PDPA and the MoJ's amended Enforcement Rules took effect on 1 October 2012 and apply to anyone who collects, processes or uses personal data.

Article 6 of the PDPA prohibits the collection, processing and use of sensitive data, unless any exemption condition is met. Since the exemption conditions are too limited to meet certain industries' needs, the Executive Yuan had proposed a draft bill to amend article 6 to include other exemption conditions.

Article 54 of the PDPA requires that, within one year of the effective date of the PDPA, data owners must notify data subjects of the notification information under the PDPA, if the data owners had obtained the data subjects' personal data indirectly before the effective date of the PDPA. Considering that certain industries that own a large quantity of personal data are not capable of meeting the notification requirement within the one-year period, the Executive Yuan had proposed a draft bill to amend article 54 so that data owners must meet the notification requirement no later than the first time they use such personal data to contact the data subjects. The draft bill is pending the legislature's reading.

The amended articles 6 and 54 of the PDPA passed the legislature's third reading on 15 December 2015 and took effect on 15 March 2016 (amended PDPA).

The PDPA is a general law regulating the collection, processing and use of personal data. If there is any special law regulating the collection, processing and use of personal data, the special law should apply.

Under the PDPA, data owners are referred to as government agencies and non-government agencies (private sector). The PDPA imposes civil and criminal liabilities on government agencies, and imposes civil,

criminal and administrative liabilities on non-government agencies if they illegally collect, process or use personal data. The civil liabilities relate to tortious acts. Since personal data involves a data subject's privacy, a data subject whose privacy is impinged upon may also claim damages against a government agency pursuant to the State Compensation Act and against a non-government agency pursuant to the Civil Code.

The PDPA has incorporated some provisions under Directive 95/46/EC. In addition, the MoJ has published some introductions on the OECD guidelines and the APEC Privacy Framework as references for various industries and data protection authorities to implement the PDPA.

2 Data protection authority

Which authority is responsible for overseeing the data protection law? Describe the investigative powers of the authority.

The MoJ is in charge of establishing the Enforcement Rules to the PDPA, which define and clarify, among others:

- terms under the PDPA;
- a data owner's obligations to supervise a commissioned agency;
- proper security measures;
- what constitutes a written consent and a proper notification; and
- how a data subject exercises rights.

The MoJ also answers questions from various government agencies and non-government agencies regarding how to interpret and comply with the PDPA. The MoJ's interpretations cannot bind the courts, but would usually be referred to and adopted by the courts in making judgments.

The enforcement of the PDPA is administered by the central and local (city and county) government authorities, which supervise the business operations of non-government agencies. The central government authorities may impose restrictions on a non-government agency's cross-border transfers of personal data and designate certain non-government agencies to establish a plan to maintain the security of personal data files and how to dispose of those files after they cease business operations. In addition, the purposes of the collection, processing, and use and categories of personal data are designated jointly by the MoJ and the central government authorities.

Both the central and local government authorities have the power to carry out audits and inspections. To audit and inspect any non-compliance, they may access the premises of non-government agencies, require information, and copy and retain documents and other objects from non-government agencies.

3 Breaches of data protection

Can breaches of data protection law lead to administrative sanctions or orders, or criminal penalties? How would such breaches be handled?

Breaches of data protection law can lead to administrative sanctions and orders. A government agency's breach of the PDPA is subject to its internal corrective and disciplinary measures and those imposed by its superior government agency. In addition, both the central and local government authorities (which administer the enforcement of the PDPA) have the power to impose rectification orders and administrative penalties on non-government agencies that breach any requirement under the PDPA.

The following breaches may lead to criminal penalties:

- the illegal collection, processing or use of personal data with an intent to make unlawful profit for oneself or a third party, or with an intent to damage the interest of another, causing injury to another (article 41 of the amended PDPA);
- failure to obey a central government authority's order imposing restrictions on cross-border transfers of personal data with an intent to make unlawful profit for oneself or a third party, or with an intent to damage the interest of another, causing injury to another (article 41 of the amended PDPA); and
- the illegal change or deletion of personal data files or employment of any other illegal means with an intent to make unlawful profit for oneself or a third party, or with an intent to damage the interest of another, thereby impeding the accuracy of personal data files and causing injury to another (article 42 of the PDPA).

Criminal offences can be prosecuted by an injured person or a public prosecutor upon an injured person's complaint. If the criminal offences under article 41 are committed or the criminal offences under article 42 are committed against a government agency, they can be prosecuted by a public prosecutor solely on his or her initiative.

Scope

4 Exempt sectors and institutions

Does the data protection law cover all sectors and types of organisation or are some areas of activity outside its scope?

The PDPA applies to all the public and private bodies who collect, process or use personal data. The following activities are exempt from the application of the PDPA:

- the collection, processing or use of personal data by an individual in the course of a personal or family activity; and
- the collection, processing or use of audiovisual information in a public place or a public activity, which is not associated with any other personal data.

5 Communications, marketing and surveillance laws

Does the data protection law cover interception of communications, electronic marketing or monitoring and surveillance of individuals? If not, list other relevant laws in this regard.

The PDPA regulates the use of personal data for marketing purposes; it does not specifically deal with electronic marketing. Although electronic marketing is dealt with under the Guidelines Governing the Consumer Protection in E-Commerce promulgated by the Consumer Protection Committee, the legislature has not passed a law specifically regulating electronic marketing.

The interception of communications and the monitoring and surveillance of individuals are covered by the Communications Protection and Detection Act and the Criminal Code. Since an individual's communications and activities are personal data and involve privacy, the illegal interception of an individual's communications and the illegal monitoring and surveillance of an individual's activities also constitute breaches of the PDPA and are tortious acts under the Civil Code.

6 Other laws

Identify any further laws or regulations that provide specific data protection rules for related areas?

The PDPA is the only legislation that specifically regulates personal data protection. There are many other laws and regulations that cover personal data. For example, the Act Governing the Freedom of Government Information regulates the disclosure by government agencies of government information that may contain personal data. The Financial Holding Company Act regulates sharing among a financial holding company's subsidiaries of their clients' basic and transaction information. The Pharmaceutical Affairs Act regulates the drug safety surveillance and reporting system that includes patients' personal data.

7 PII formats

What forms of PII are covered by the law?

The PDPA has extended its protection from personal data for computer-processing to all personal data regardless of whether they are in electronic records or manual files.

8 Extraterritoriality

Is the reach of the law limited to PII owners and processors of PII established or operating in the jurisdiction?

Under the PDPA, data owners are referred to as government agencies and non-government agencies (private sector). The PDPA defines a 'non-government agency' broadly to include a natural person, a juristic person and an unincorporated association. Pursuant to the book *Personal Data Protection Act's Interpretation and Practice*, written by the officials of the MoJ, a non-government agency that is subject to the PDPA is limited to a Taiwanese national or an entity registered in Taiwan, such as a foreign company that has established a branch office in Taiwan. A non-government agency must comply with the PDPA when collecting, processing or using an individual's personal data within Taiwan or a Taiwanese national's personal data outside the territory of Taiwan.

In addition, the MoJ has issued a directive confirming that the collection, processing and use of an individual's personal data by a foreign national or entity within Taiwan is also subject to the PDPA, regardless of whether such foreign national or entity is registered in Taiwan.

9 Covered uses of PII

Is all processing or use of PII covered? Is a distinction made between those who control or own PII and those who provide PII processing services to owners?

Except for the exemption activities described under question 4, all processing and use of personal data by data owners or their commissioned agencies (explained below) are covered under the PDPA.

The PDPA requires that data owners comply with the requirements under the PDPA. The persons who collect, process and use personal data under the commission and on behalf of data owners are called commissioned agencies; a commissioned agency's conduct will be deemed as the data owner's conduct. The Enforcement Rules of the PDPA require that commissioned agencies comply with the requirements applicable to the data owners. A data owner must duly supervise the commissioned agency to ensure the latter's compliance and is liable to data subjects for the commissioned agency's or its own non-compliance.

Legitimate processing of PII

10 Legitimate processing – grounds

Does the law require that the holding of PII be legitimised on specific grounds, for example to meet the owner's legal obligations or if the individual has provided consent?

The PDPA sets out different grounds for the legitimate processing of personal data, depending on whether a data owner is a government agency or a non-government agency.

A government agency may process personal data if it is for specific purposes and:

- the processing is necessary for the performance of job duties provided by law;
- the data subject has given his or her consent; or
- the processing will not be detrimental to the interests of the data subject.

A non-government agency may process personal data if it is for specific purposes and:

- the processing is specifically permitted by law;
- the processor and the data subject have entered into or are negotiating a contract and the processor has adopted appropriate security measures;
- the data is already in the public domain due to disclosure by the data subject or in a legitimate manner;
- it is necessary for statistics-gathering or academic research by an academic research institution for the public interest, provided that any information sufficient to identify the data subject has been removed;

- the data subject has given his or her consent;
- it is necessary for the furtherance of public interest;
- the data has been collected from a source accessible to the collector unless the interest of the data subject takes priority over that of the collector or processor; or
- the processing will not be detrimental to the interests of the data subject.

11 Legitimate processing – types of PII

Does the law impose more stringent rules for specific types of PII?

Article 6 of the amended PDPA sets out distinct grounds for the legitimate processing of sensitive data.

Sensitive data includes medical history, medical treatments, genealogy, sex life, health-check results and criminal records.

Article 6 of the amended PDPA prohibits processing of sensitive data unless:

- the processing is provided by law;
- the processing is necessary for a government agency's performance of its statutory duties or non-government agency's fulfilment of legal obligations, and appropriate security measures have been or will be adopted therefor;
- the data is already in the public domain due to disclosure by the data subject or in a legitimate manner;
- the processing is necessary for statistics-gathering or academic research by a government agency or academic research institution for medical, health or crime-prevention purposes, provided that any information sufficient to identify the data subject has been removed;
- the processing is necessary for assisting a government agency or non-government agency to perform its statutory duties and appropriate security measures have been or will be adopted therefor; or
- the data subject has given his or her written consent, provided that processing is still prohibited if the processing goes beyond the necessary extent of the specific purposes, or any other law prohibits the processing despite the written consent of the data subject, or the consent is obtained against the data subject's will.

Data handling responsibilities of owners of PII

12 Notification

Does the law require owners of PII to notify individuals whose PII they hold? What must the notice contain and when must it be provided?

If a data owner collects personal data directly from a data subject, the data owner must inform the data subject of the following information at the time of collection:

- the identity of the data owner;
- the purposes for which his or her data is collected;
- the type of data collected;
- the term, place and method of use and the persons who may use the data;
- the data subject's rights (explained in question 14); and
- the consequences of his or her failure to provide the required personal data (article 8 of the PDPA).

If a data owner collects personal data indirectly from a data subject, the data owner must inform the data subject of the data source and information (i) to (v) above no later than the first time they use such personal data to contact the data subject (article 9 of the PDPA).

13 Exemption from notification

When is notice not required?

The notification requirement under article 8 is exempt if:

- it is specifically permitted by law;
- the collection is necessary for the performance of job duties provided by law or the fulfilment of legal obligations;
- notification will affect a governmental agency's performance of its job duties or a non-government agency's fulfilment of legal obligations;
- notification will prejudice public interest;
- the data subjects already have such information; or

- the collection is not for any profit-seeking purpose and will obviously not be detrimental to the interests of the data subject.

The notification requirement under article 9 is exempt if:

- any of the above exemption situations (i) to (v) exists;
- the data subject has disclosed such information by him or herself, or when the information has been publicised legally;
- the notification may not be made to the data subject or his or her legal representative;
- it is for the public interest and necessary for the purpose of statistics or academic research and the data has been processed to such an extent that the data subject cannot be identified; or
- the personal data is collected by the mass media for the purpose of news reporting in the public interest.

14 Control of use

Must owners of PII offer individuals any degree of choice or control over the use of their information? In which circumstances?

A data subject has rights to access his or her data to check and review them, have a copy of the data, supplement or revise the data, demand the data owner to cease its collection, processing or use of the data, and demand the data owner to delete the data.

Unless the processing or use are necessary for the performance of job duties or fulfilment of legal obligations or the data subject has consented in writing to the processing or use, a data owner must cease the processing or use of personal data if the data subject disputes the accuracy of the data, and must delete or cease the processing or use of personal data if the purposes of processing or use no longer exist or the term of use expires.

15 Data accuracy

Does the law impose standards in relation to the quality, currency and accuracy of PII?

A data owner must ensure the accuracy of personal data and update or supplement personal data on its own initiative or upon the data subject's request.

If the failure to provide accurate personal data is attributed to a data owner, the data owner should notify the persons to whom the data was provided as soon as the data owner updates or supplements the data.

16 Amount and duration of data holding

Does the law restrict the amount of PII that may be held or the length of time it may be held?

The PDPA does not impose a specific amount of data that can be held or a retention period. A data owner may retain personal data when the purposes of processing or use exists or during the term of use. After that, it may retain the personal data if it is necessary for the performance of job duties or the fulfilment of legal obligations or the data subject has consented in writing to the same. The retention is deemed to be necessary for a data owner's performance of job duties or fulfilment of legal obligations if:

- the retention period provided by law or contract has not expired;
- the deletion will be detrimental to the interests of the data subject; or
- there is any other legitimate ground for the retention.

17 Finality principle

Are the purposes for which PII can be used by owners restricted? Has the 'finality principle' been adopted?

A data owner may use personal data only if it is for, and reasonably associated with, the specific and lawful purposes for which the personal data has been collected.

18 Use for new purposes

If the finality principle has been adopted, how far does the law allow for PII to be used for new purposes? Are there exceptions or exclusions from the finality principle?

A data owner may use personal data for a specific and lawful new purpose (ie, the purpose other than those for which the personal data has been collected) if:

Update and trends

The unauthorised disclosure of personal data via smartphones is a hot topic for the data protection authorities. According to media reports, the personal data contained in smartphones will be accessed by, and disclosed to, mobile manufacturers, mobile operators and APP service providers without the relevant data subjects' consent. Hence, the NCC has suggested that mobile manufacturers imbed appropriate security mechanisms in mobile phones in order to enhance the safety of data transmission.

Protection of consumers' personal data is another hot topic in the financial industry. On 9 January 2015, the FSC amended the Regulations Governing Joint Marketing Activities Among Subsidiaries of A Financial Holding Company. Under the amendment, the personal data of customers, which the subsidiaries of any financial holding company may share among themselves, is limited to consumers' names and addresses. Any other personal data may be shared only if the sharing is otherwise provided by law or by contract signed by consumers, or if consumers have given their written consent. The contract must provide a choice for consumers to tick to express their consent (or to not consent) to the sharing, and must list all the subsidiaries involved. If the holding company increases or decreases any of such subsidiaries afterwards, the change in the subsidiaries should be published on the website of the holding company or the websites of the relevant subsidiaries.

- such use is specifically permitted by law;
- it is necessary for the maintenance of national security or furtherance of public interest;
- it is to prevent any injury or damage to human life, body, freedom or property;
- it is to prevent any third person's material right or interest from being prejudiced;
- it is necessary for statistic-gathering or academic research by an academic research institution for the public interest, provided that any information sufficient to identify the data subject has been removed;
- it may benefit the data subject; or
- the data subject has given written consent after the data owner has notified the data subject of the following information:
 - what the other purposes are;
 - the scope of use; and
 - how the data subject's rights and interests will be affected if he or she chooses not to give consent.

Security

19 Security obligations

What security obligations are imposed on PII owners and service providers that process PII on their behalf?

The PDPA requires a data owner to have in place appropriate measures to prevent personal data or their files from being stolen, altered, damaged, destroyed, lost or disclosed.

The Enforcement Rules to the PDPA require a data owner to adopt, and to procure its commissioned agency to adopt, technical and organisational measures that are reasonable and sufficient to protect personal data. Such measures are recommended to include the following:

- allocation of personnel to enforce the measures and sufficient resources;
- identification of the scope of personal data;
- a personal data risk valuation and management mechanism;
- mechanisms for prevention, notification and handling of accidents;
- internal management procedures for collection, processing and use of personal data;
- security management and personnel management;
- education and training;
- IT infrastructure security management;
- data security auditing mechanisms;
- maintenance of access records, track log files and relevant evidence; and
- continuous improvement on security and maintenance measures.

20 Notification of data breach

Does the law include (general and/or sector-specific) obligations to notify the supervisory authority and individuals of data breaches? If breach notification is not required by law, is it recommended by the supervisory authority?

If personal data is stolen, leaked or altered, or the data subjects' interests may otherwise be compromised because of a data owner's failure to comply with the PDPA, the data owner must notify the data subjects of the incident and the remedies that the data owner has adopted as soon as the data owner has carried out an investigation of the incident.

Internal controls

21 Data protection officer

Is the appointment of a data protection officer mandatory? What are the data protection officer's legal responsibilities?

The PDPA requires that a government agency that holds personal data files must assign personnel to administer the security and maintenance of those files, but does not specify the legal responsibilities of such personnel.

The PDPA does not impose the same obligation on a non-government agency.

22 Record keeping

Are owners of PII required to maintain any internal records or establish internal processes or documentation?

Although the PDPA does not expressly require a data owner to maintain internal records or establish internal processes or documentation, the Enforcement Rules to the PDPA recommend that the security measures that a data owner must adopt include data security auditing mechanisms and maintenance of access records, track log files, and relevant evidence.

Registration and notification

23 Registration

Are PII owners and/or processors of PII required to register with the supervisory authority? Are there any exemptions?

The registration requirements under the CPDPA were abolished along with the President's promulgation of the PDPA on 26 May 2010.

24 Formalities

What are the formalities for registration?

Not applicable (see question 23).

25 Penalties

What are the penalties for a PII owner or processor of PII for failure to make or maintain an entry on the register?

Not applicable (see question 23).

26 Refusal of registration

On what grounds may the supervisory authority refuse to allow an entry on the register?

Not applicable (see question 23).

27 Public access

Is the register publicly available? How can it be accessed?

Not applicable (see question 23).

28 Effect of registration

Does an entry on the register have any specific legal effect?

Not applicable (see question 23).

Transfer and disclosure of PII**29 Transfer of PII**

How does the law regulate the transfer of PII to entities that provide outsourced processing services?

The PDPA simply provides that a commissioned agency's conduct will be deemed as the data owner's conduct. Hence, a data owner's transfer of personal data to its commissioned agency will be deemed the internal processing by the data owner of the personal data and subject to the restrictions stipulated for the processing thereof. See question 9.

30 Restrictions on disclosure

Describe any specific restrictions on the disclosure of PII to other recipients.

The disclosure of personal data to a third party constitutes the use of the personal data and thus is subject to the restrictions stipulated for the use thereof. See questions 17 and 18.

31 Cross-border transfer

Is the transfer of PII outside the jurisdiction restricted?

The central government authorities may impose restrictions on a non-government agency's cross-border transfers of personal data if:

- the transfer would prejudice any material national interest;
- it is prohibited or restricted under an international treaty or agreement;
- the country to which the personal data is to be transferred does not afford sound legal protection of personal data, thereby affecting the interests of the data subjects; or
- the purpose of the transfer is to evade restrictions under the PDPA.

On 25 September 2012, the National Communications Commission issued an order prohibiting communications enterprises from transferring subscribers' personal data to mainland China on the grounds that the personal data protection laws in mainland China are still inadequate.

32 Notification of cross-border transfer

Does cross-border transfer of PII require notification to or authorisation from a supervisory authority?

No. The transfer of personal data outside Taiwan does not require the transferor to notify or seek the authorisation from a supervisory authority.

33 Further transfer

If transfers outside the jurisdiction are subject to restriction or authorisation, do these apply equally to transfers to service providers and onwards transfers?

The restrictions on cross-border transfers apply equally to the transfers made to a commissioned agency or a third-party data owner. They do not apply to onward transfers.

Rights of individuals**34 Access**

Do individuals have the right to access their personal information held by PII owners? Describe how this right can be exercised as well as any limitations to this right.

Individuals have the right to view a copy of their personal data. On request, a data owner must provide a copy thereof to the individual unless:

- it would be detrimental to national security, diplomatic or military secrets, economic interests as a whole, or any other material national interests;
- it would impede a government agency's performance of job duties; or
- it would be detrimental to the material interests of the data owner or a third party.

35 Other rights

Do individuals have other substantive rights?

Individuals also have the right to:

- access his or her data to check and review them;
- supplement or revise the data;
- demand the data owner to cease its collection, processing or use of the data; and
- demand the data owner to delete the data.

36 Compensation

Are individuals entitled to monetary damages or compensation if they are affected by breaches of the law? Is actual damage required or is injury to feelings sufficient?

Individuals are entitled to monetary damages based on the amount of their actual loss that they have suffered as a result of the breach of the PDPA by a data owner. They are also entitled to monetary compensation for distress if any of their intangible rights (eg, privacy and reputation) are damaged. The courts may set the amount of damages at NT\$500 to NT\$20,000 for each incident per person if an individual cannot prove the amount of actual damages or compensation.

37 Enforcement

Are these rights exercisable through the judicial system or enforced by the supervisory authority or both?

If a government agency rejects an individual's request relating to any of the rights described under questions 34 and 35, the individual may file an administrative appeal with a supervisory authority of the government agency and if the appeal is dismissed, file an administrative complaint with a High Administrative Court to enforce his or her right. If a non-government agency rejects such request, the individual may file a civil complaint with a district court to enforce his or her right.

Individuals must file a civil complaint with a district court to claim monetary damages or compensation described under question 36.



Ken-Ying Tseng
Rebecca Hsiao

kenying@leeandli.com
rebecca@leeandli.com

7F, 201 Tun Hua N Road
Taipei 10508
Taiwan

Tel: +886 2 2715 3300
Fax: +886 2 2713 3966
www.leeandli.com

Exemptions, derogations and restrictions

38 Further exemptions and restrictions

Does the law include any derogations, exclusions or limitations other than those already described? Describe the relevant provisions.

No.

Supervision

39 Judicial review

Can PII owners appeal against orders of the supervisory authority to the courts?

A government agency may not appeal against orders of its supervisory authority. A non-government agency will receive orders from a data protection authority described in question 2 and may appeal against such orders to the data protection authority's supervisory authority. If the appeal is dismissed, they may file an administrative complaint with a High Administrative Court.

Specific data processing

40 Internet use

Describe any rules on the use of 'cookies' or equivalent technology.

The PDPA does not contain specific rules regarding cookies or equivalent technology. To the extent the use of such technologies involves the collection, processing or use of personal data, the requirements relating to the collection, processing or use under the PDPA will apply.

41 Electronic communications marketing

Describe any rules on marketing by email, fax or telephone.

Sending marketing information by email, fax or telephone to data subjects constitutes the use of their personal data. A non-government agency must comply with the requirements relating to the use of personal data described under questions 17 and 18 (eg, a data subject has consented in a contract or given a separate consent) when it sends marketing information to data subjects (opt-in rules). A non-government agency must immediately cease the use of personal data for such marketing purposes if the data subject has notified the non-government agency that he or she does not wish to receive such marketing information (opt-out rules).

42 Cloud services

Describe any rules or regulator guidance on the use of cloud computing services.

Taiwan does not have specific rules or regulator guidance on the use of cloud computing services. Processing personal data in the cloud is permitted, so long as it complies with the general requirements relating to the processing of personal data under the PDPA.

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Arbitration
Asset Recovery
Aviation Finance & Leasing
Banking Regulation
Cartel Regulation
Class Actions
Construction
Copyright
Corporate Governance
Corporate Immigration
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Foreign Investment Review
Franchise
Fund Management
Gas Regulation
Government Investigations
Healthcare Enforcement & Litigation
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mergers & Acquisitions
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Client
Private Equity
Product Liability
Product Recall
Project Finance
Public-Private Partnerships
Public Procurement
Real Estate
Restructuring & Insolvency
Right of Publicity
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally



Online

www.gettingthedealthrough.com



Data Protection & Privacy
ISSN 2051-1280



THE QUEEN'S AWARDS
FOR ENTERPRISE:
2012



Official Partner of the Latin American
Corporate Counsel Association



Strategic Research Sponsor of the
ABA Section of International Law

Reproduced with permission from Law Business Research Ltd. Getting the Deal Through: Data Protection & Privacy 2017, (published in August 2016; contributing editor: Wim Nauwelaerts, Hunton & Williams) For further information please visit <https://gettingthedealthrough.com/area/52/data-protection-and-privacy/>