

# ASEAN Insights

## Personal Data Protection



# Personal Data Protection








Since computing power became a commercial reality, the value of data, especially in bulk, has escalated exponentially. Data today is a valuable asset on par with, and in some cases, far exceeding, hardware. With valuable data so easily transferable in this day and age, governments around the world have been compelled to move to protect individuals from the misuse or abuse of their personal information, especially from commercial exploitation.

This is true also of ASEAN. In the first quarter of 2012, ASEAN was the most active region in the world for privacy developments. In keeping with global trends, ASEAN governments have begun to promulgate legislation in their respective countries to protect the personal information. Malaysia, Singapore and the Philippines have all introduced laws to protect data, in particular, personal data. These laws have consequences beyond the boundaries of the individual countries as they also cover the transmission or export of personal data obtained within those countries. Knowledge of what can or cannot be done is crucial to avoid the extensive penalties imposed for breaches of the statutorily imposed duties.

These front-runners and other ASEAN countries had previously all agreed to develop best practices and guidelines on data protection by 2015 as part of their commitment to establish an integrated ASEAN Economic Community – the AEC – by 2015. The indicators are clear. Data protection regulation in the region will increase in coming years. The ability to keep up with these changes may make – or break – business enterprises with regional ambitions.

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Jurisdictions	Applicable Legislation	Regulator	Scope of Legislation	Registration Requirement	Restrictions on Cross-border Transfers	Restrictions on Marketing	Restrictions on Outsourcing Arrangements	Liabilities
 <b>INDONESIA</b>	<p>The Electronic Information and Transactions Law No. 11 of 2008 (“<b>EIT Law</b>”) regulates the use of personal data in electronic transactions.</p> <p><b>Note:</b> In addition to the EIT Law, sectoral regulation such as the Banking Law No. 7 of 1992 and the Capital Market Law No. 8 of 1995 contain data privacy provisions.</p>	<p>With respect to the EIT Law, the Ministry of Communication and Information, empowered by the House of Representatives and the President of the Republic of Indonesia.</p> <p>Sectoral regulators such as the Financial Services Authority have authority to enforce banking and capital market law.</p>	EIT Law applies to persons conducting electronic transactions that have a legal impact in Indonesia or are detrimental to the interests of Indonesia.	<p>According to the EIT Law, registration requirement is mandatory for electronic system operators providing public services.</p> <p>Registration on personal data in banking and capital market sectors are dealt with under sectoral regulation.</p>	<p>Under the EIT Law, cross-border information transfers are allowed, provided that the individual whose data is being transferred has consented to the transfer.</p> <p>Sectoral regulation may however impose further restrictions on cross-border transfers of personal data by the relevant regulated parties.</p>	<p>No. There is no particular regulation that restricts personal data collection for marketing.</p> <p>Sectoral regulation may however impose further restrictions on the relevant regulated parties on the use of personal data for purposes of marketing.</p>	<p>EIT Law does not specifically restrict a person to outsource data processing in relation to electronic information and transactions to third parties (<i>ie</i> Electronic System Providers).</p> <p>Sectoral regulation may however impose further restrictions on outsourcing arrangements of personal data by the relevant regulated parties.</p>	Any person who violates the EIT law by altering, adding, reducing, transmitting, damaging, deleting, transferring, hiding any electronic information or electronic document of another person or of the public in any way, can be sentenced to imprisonment for a maximum 8 years and/or fine amounting to a maximum of Rp.2,000,000,000. Penalties for breach of sectoral regulation include imprisonment, fines and administrative sanctions that may extend to shareholders, officers and affiliated parties of the regulated party who is in breach. Such regulated party may also be subject to civil claims from affected individuals.
 <b>MALAYSIA</b>	<p>The Personal Data Protection Act 2010 (“<b>PDPA 2010</b>”) regulates the processing of personal data in commercial transactions.</p> <p>The PDPA 2010 has not come into force at the time of publication.</p>	The Malaysian Personal Data Protection Commissioner.	<ul style="list-style-type: none"> <li>• <b>Territorial Jurisdiction.</b> The PDPA 2010 applies to persons established in Malaysia; and persons not established in Malaysia but uses equipment, in Malaysia for processing the personal data, otherwise than for the purposes of transit through Malaysia.</li> <li>• <b>Commercial Transactions.</b> The PDPA 2010 only applies to personal data processed in respect of commercial transactions.</li> </ul>	Yes, for certain prescribed classes of data users ( <i>ie</i> persons who process; or has control over; or authorize the processing of, personal data, but does not include data processors).	Yes. Generally, personal data may not be transferred to a place outside Malaysia unless such place has been specified by the Minister of Information, Communications and Culture. There are prescribed exemptions to this restriction, <i>eg</i> where the individual has consented to such transfer of his personal data.	Yes. An individual may at any time require a data user to cease or not begin processing his personal data for purposes of direct marketing. “Direct marketing” means the communication by whatever means of any advertising or marketing material which is directed to particular individuals.	None. However, the data user remains primarily responsible for the processing of personal data undertaken by an agent or contractor on his behalf.	<p>Breach of the PDPA 2010 can attract penalties of up to RM 500,000 or imprisonment of up to 3 years or both, depending on the offence.</p> <p>Directors and officers can be charged severally and jointly with the body corporate.</p>
 <b>SINGAPORE</b>	The Personal Data Protection Act 2013 (“ <b>PDPA 2012</b> ”) governs the collection, use and disclosure of personal data by organisations.	The Singaporean Personal Data Protection Commission	The purpose of the PDPA 2012 is to govern the collection, use and disclosure of personal data by organisations in a manner that recognises both the right of individuals to protect their personal data and the need of organisations to collect, use or disclose personal data for purposes that a reasonable person would consider appropriate in the circumstances.	None.	An organization may transfer personal data to a country outside Singapore, provided that such organization adheres to a comparable standard of protection (as set out in the PDPA 2012) in relation to the personal data being transferred.	Yes. This includes the prohibition against sending messages for the purposes of marketing to a Singapore telephone number that is contained in the Do Not Call register.	None.	<p>Breach of the PDPA 2013 can attract penalties of up to SGD 100,000 or imprisonment of up to 12 months or both, depending on the offence.</p> <p>Directors, officers and members of an organization in breach of the PDPA 2013 can held liable for the breaches of that organization.</p>
 <b>CAMBODIA</b>			 <b>MYANMAR</b>		 <b>THAILAND</b>		 <b>VIETNAM</b>	
<p>There is no comprehensive legislation that regulates the processing and protection of personal data in Cambodia. Cambodia’s constitution does however, provide for the rights of citizens to privacy.</p> <p>There is sectoral regulation with respect to certain information in certain industries. For example:</p> <ul style="list-style-type: none"> <li>• Under the Press Law, official, commercial and financial documents must be kept confidential from the press.</li> <li>• The Code of Conduct for certain professions (<i>eg</i> lawyers), public and private institutions imposed duties of confidentiality.</li> <li>• Confidentiality agreements are recognized and upheld.</li> </ul>			<p>Myanmar does not have any data protection law in place. There does not appear to be any plans to introduce data protection law at present.</p> <p>However, as part of its commitment as an ASEAN member to establish an integrated ASEAN Economic Community (AEC) by 2015, Myanmar has agreed to develop best practices or guidelines on data protection by then. Although there does not appear to be any plans to introduce data protection law at present, it is an area to watch.</p>		<p>There is no comprehensive legislation that regulates the processing and protection of personal data in Thailand. The Thai Civil and Commercial Code provides the right to privacy protection. Under the wrongful act principle, the affected person could seek compensation if it is proved that the damage was caused by the wrongful act regarding his personal data.</p> <p>Certain sectoral legislation (<i>eg</i> telecommunications and financial services) does regulate the collection and use of personal information. There have been instances where these sectoral regulators have exerted control over their regulatees in relation to their handling of personal data.</p> <p>A personal data protection bill has been proposed to the Secretariat of the House of the Representatives.</p>		<p>There is no comprehensive legislation that regulates the processing and protection of personal data in Vietnam. However, an individual’s general right to privacy is protected under the Civil Code. As such, generally, prior consent must be obtained from the individual for the collection and publication of his information and data.</p> <p>However, the requirement to obtain consent does not apply where it is permitted by law or where disclosure is required by order of an authorized State body. Infringement of an individual’s privacy is subject to administrative or criminal penalty.</p> <p>Collection and processing of information and data pertaining to an individual in certain sectors is subject to various legislation, including e-commerce, banking, information technology, telecommunication, and protection of consumers’ rights.</p>	



# Recent Trends and Developments

## LAOS

There is no comprehensive legislation that regulates the processing and protection of personal data in Lao PDR. However, the Lao Constitution has general principles respecting the right of privacy.

Laotian Director-General of the Department of Import and Export, Koun Southammakot announced on 9 July 2013 that, "A number of laws are being revised to be stronger and in line with international standards. New laws need to be introduced to enable future trade initiatives like the electronic transactions law and the data protection laws."

## CAMBODIA

There is no comprehensive legislation that regulates the processing and protection of personal data in Cambodia.

## VIETNAM

There is no comprehensive legislation that regulates the processing and protection of personal data in Vietnam.

## MYANMAR

There is no comprehensive legislation that regulates the processing and protection of personal data in Myanmar.

## THAILAND

A personal data protection bill has been proposed to the Secretariat of the House of the Representatives.

## INDONESIA

The government has prepared draft legislation on the Protection of Individuals' Data and Information, which is anticipated to deal more specifically with the protection of an individual's data and information. It has not been announced yet when the legislation will be passed.

## BRUNEI

There is currently no data protection legislation in Brunei. Intellectual property in Brunei is protected by trade mark, patent and copyright laws. Confidential information is generally protected by common law and equity.

## PHILIPPINES

Philippines adopted the Data Privacy Act of 2012, which came into force on 8 September 2012. It declares that it is the policy of the State to protect the fundamental human right of privacy of communication while ensuring free flow of information to promote innovation and growth. The Data Privacy Act aims to ensure and protect the integrity and security of personal information, both in the government and the private sector.




## MALAYSIA

The Personal Data Protection Act 2010 is expected to come into force at the end of 2013. Subsidiary legislation and guidelines are anticipated to assist data users in their compliance efforts.

## SINGAPORE

Certain parts of the Personal Data Protection Act 2013 came into force on 2 January 2013. In the early days of this legislation, the Singaporean Personal Data Protection Commission has focused on its advocacy work to educate organizations on the impact of the legislation on their operations.



-  Jurisdictions with comprehensive data protection law
-  Jurisdictions proposing to adopt comprehensive data protection law
-  Jurisdictions without comprehensive data protection law

# Regional Expertise, Local Grounding

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Zaid Ibrahim & Co  
Level 19, Menara Milenium  
Pusat Bandar Damansara  
50490 Kuala Lumpur  
Malaysia

Tel : +603 2087 9999  
Fax : +603 2094 4888/666

Chew Seng Kok  
seng.kok.chew@zicolaw.com

ZICOLaw (Myanmar) Ltd  
33, 7 Mile Avenue,  
Corner of Pyay Road  
& Parami Road,  
Mayangone Township,  
Yangon, Myanmar

Tel : +95 1 654 086/9 7320 2094

Win Naing  
win.naing@zicolaw.com

ZICOLaw (Vietnam) Limited  
Unit 2, Level 20  
Bitexco Financial Tower  
2 Hai Trieu Street, District 1  
Ho Chi Minh City  
Vietnam

Tel : +84 8 3915 1000  
Fax : +84 8 3915 1100

David Lim  
david.lim@zicolaw.com

Roosdiono & Partners  
Indonesia Stock Exchange Building  
Tower 1, 12th Floor  
Jalan Jenderal Sudirman  
Kav 52-53, Jakarta 12190  
Indonesia

Tel : +62 21 5289 5125  
Fax : +62 21 5289 5112

Hanim Hamzah  
hanim.hamzah@zicolaw.com

ZICOLaw (Thailand) Limited  
No. 1, Q. House Lumpini Building,  
17th Floor, Unit 1702,  
South Sathorn Road,  
Thungmahamek, Sathorn,  
Bangkok 10120, Thailand

Tel : +66 2 6777 588  
Fax : +66 2 6777 589

Ruengrit Pooprasert  
ruengrit.pooprasert@zicolaw.com

Sok Siphana & Associates  
No 45 Street 355z, First Floor  
Sangkat Boeung Kak 1  
Khan Tuol Kork  
Phnom Penh 12151  
Kingdom of Cambodia

Tel : +855 23 999 878  
Fax : +855 23 999 878

Dr. Sok Siphana  
sok.siphana@zicolaw.com

ZICOLaw Singapore Pte Ltd  
8 Robinson Road  
#03-00 ASO Building  
Singapore 048544

Tel : +65 6820 3499  
Fax : +65 6820 3493

Robert Liew  
robert.liew@zicolaw.com