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Volume 17 Issue 10, 2020

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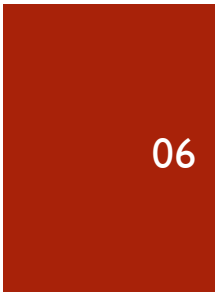
In this issue

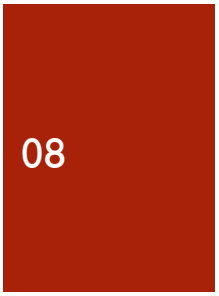
Volume 17 Issue 10 , 2020

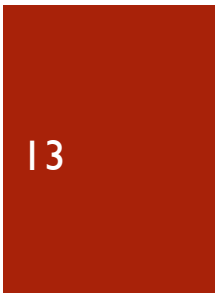
DATA + CYBER SECURITY
SPECIAL REPORT

JURISDICTION UPDATES

Key legal developments affecting the In-House Community along the New Silk Road







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Qatar Fact Sheet - Copyright

"The purpose of copyright and related rights is twofold: to encourage a dynamic creative culture, while returning value to creators so that they can lead a dignified economic existence, and to provide widespread, affordable access to content for the public."

– World Intellectual Property Organisation

What does copyright protection entail?

Copyright is a legal term describing the rights and privileges given to the creators and owners of certain types of works. In essence, copyright protects the material embodiment of a person's creative effort, to the extent permitted by law.

Which works are protected by copyright?

Provided that the requirements for protection have been met, the Intellectual Property Law No. 7 of 2002 ("Copyright Law") of Qatar generally extends protection to literary and artistic works. These types of works are defined to include:

- books, pamphlets and other written works;
- works delivered orally, such as lectures, speeches, poems and hymns;
- dramatic and musical dramatic works;
- musical works, irrespective of whether they are accompanied by words;
- designs of rhythmic movements;
- pantomimes works;
- audio-visual works;
- photographic works;
- works of applied art, whether handicraft or industrial in nature;
- drawings and paintings with lines and colours;
- works of architecture;
- sculptures, decorated arts, engravings, sketches, designs and geographic and topographic works; and
- computer programs.

The Copyright Law also protects translations, summaries, alterations, explanations and other modifications to these works.

Finally, protection is afforded to creative collections, databases and expressions of folklore.

Are ideas, methods or concepts protected by copyright?

Copyright does not protect ideas, methods or concepts *per se*, but, rather, the material embodiment of these expressions. The Copyright Law specifically states that protection is not afforded to procedures, operational methods, mathematical concepts, principles and 'mere data', unless they are represented as creative works.

What does copyright provide?

The owner of a copyright work is afforded the exclusive right to perform certain acts in relation to the work, including its: reproduction; translation; distribution for sale; public performance; musical arrangement; transformation; and making excerpts from the work.

The Copyright Law affords the owner of audio-visual works and computer programs the right to rent the works out to the public.

The original author of a copyright work also retains what is called 'moral rights' over it. These include the author's right: to have his name or pseudonym indicated on the work; to choose not to have his name indicated on the work; to object to and prohibit any distortion, deformation or any other modification to the work; and to object to and prohibit any other use of the work which would be prejudicial to the author's honour or reputation.

Are performers, such as musicians or actors, protected by copyright?

Performers are granted certain 'special' rights under the Copyright Law to protect them from being exploited, particularly in monetary terms.

How long does copyright last?

Generally, copyright protection is granted for the lifetime of the author and another 50 years after his or her death.

In the case of published works, copyright protection exists for 50 years after the date of first publication or, if the work has not been published, then 50 years from the date of completion of the work.

The author's moral rights exist in perpetuity.

What remedies are there if someone infringes another's copyright?

The Courts, for example, are empowered under the Copyright Law to: orders prohibiting infringement; order the seizure of infringing copies and any materials used in the reproduction of the copyright works; ordering appropriate indemnification and compensation as provided for in the applicable law.

How does copyright protection come into being? Do you need to register copyright in order for it to be protected?

It is not necessary to register copyright in Qatar in order to benefit from the protection afforded under the Copyright Law. It is, however advisable to do so, where possible, to ease the evidentiary burden on its owner to prove that copyright subsists. If the copyright owner decides to register its copyright, this can be done at the Intellectual Property Protection Department at the Ministry of Commerce and Industry.

Are there exceptions to copyright protection?

Yes, for example, copyright is not infringed where: the work is used exclusively for personal use through reproduction, translation, quotation, musical arrangement, acting, broadcast listening, or television watching; and the work is used for teaching purposes, to the extent required to attend to this purpose, and provided that the use is not for profit and the source as well as the name of the author are indicated.

There are conditions to the exclusions to copyright infringement, such as that the use must be reasonable and not prejudice the copyright owner.

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The sanctity of our home offices

Often quoted in cases involving searches and seizures is the principle that "a man's home is his castle". This principle finds its roots from the Constitutional right of all citizens to be secure in their homes and to privacy.

At the start of the second quarter of this year, however, many Filipino homes have been forced by circumstance to set up "home offices" as a measure against the COVID-19 Pandemic. The shift towards this new normal however may have blurred the lines between home and "business premises".

This blur may find relevance in A.M. No. 19-08-06-SC, otherwise known as the Rule on Administrative Search and Inspection under the Philippine Competition Act (Rules).

The Rules present the Philippine Competition Commissions (PCC) a process for securing an inspection order to search and inspect "business premises" and "other offices". The inspection order may be enforced nationwide and may even cover multiple locations. The inspection may cover books, tax records, documents, papers, accounts, letters, photographs, objects or tangible things, databases and such other information contained in such data bases, and electronically stored information.

The question is this: may the PCC apply for an order to inspect the "home offices" of a company's employees, officers and directors? It is humbly submitted that the answer should be "no".

First, to interpret the Rules to extend to "home offices" would be unconstitutional. This brings us back to the landmark case of Stonehill v. Diokno [G.R. No. L-19550, 19 June 1967], where the Supreme Court upheld the sanctity of ones domicile by declaring illegal warrants issued to search the residences of corporate officers who were then being investigated for alleged violations of Central Bank Laws, Tariff Customs Laws and the Tax Code. In its disposition, the Supreme Court, acting En Banc reasoned that "x x x uphold[ing] the validity of the warrants in question would be to wipe out completely one of the most fundamental rights guaranteed in our Constitution, for it would place the sanctity of the domicile and the privacy of communication and correspondence at the mercy of the whims caprice or passion of peace officers."

> "... it is still the right of every Filipino to be secure in their homes even if used temporarily as "home offices""

Second, a plain reading of Section 12(g) of the Philippine Competition Act (PCA) reveals that the PCC can only "undertake inspections of business premises and other offices, x x x as used by the entity, where it reasonably suspects that relevant books, tax records, or other documents which relate to any matter relevant to the investigation are kept x x x." The PCA gives the PCC a burden to reasonably show that the place/s subject of the inspection must be (i) where the entity itself conducts its regular business; and (ii) where the entity usually keeps its relevant business records. The law in its plain reading cannot be interpreted to extend to the personal homes of a company's employees, officers or directors.

Third, it was not the legislative intent of our lawmakers to extend the inspection to "home offices". When the PCA was passed in 2015, the Corporation Code (and even now as amended) provided and that all corporate books and records on an entity's business transactions should be kept and carefully preserved at its principal office. The location of the principal office of an entity is that stated in its Articles of Incorporation. Tax records are also required to be left at the entity's principal office since the Tax Code provides that examination and inspection of books of accounts shall be done in the "place of business".

Finally, the use of "home offices" is merely temporary. In fact, even with the "new normal" being set in place, a percentage of the workforce have been gradually permitted to work in their corporate offices. This is an indication that the State recognizes a clear delineation of business premises as against "home offices".

All told, while we continue to shift to this new normal and wait for the vaccine to be developed, the blur caused by the COVID-19 pandemic must not be used to perpetuate abuse as it is still the right of every Filipino to be secure in their homes even if used temporarily as "home offices".

This article, which first appeared in Business World (a newspaper of general circulation in the Philippines), is for general informational and educational purposes only and not offered as, and does not constitute, legal advice or legal opinion. Atty. Jacqueline Ann A. Tan is a Senior Associate primarily with the Tax Department and also practices under the Litigation and Dispute Resolution Department of the Angara Abello Concepcion Regala & Cruz Law Offices. She may be contacted at jcalegre@accralaw.com or by phone at (632) 8830 8000

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Breakthroughs in Vietnam's securities market

Since the first promulgation of the law on securities in 2006, Vietnam's securities market has experienced dramatical growth (roughly twentyfold in market capitalisation). After three rounds of amendments to and supplementation of the law, on November 26, 2019, the National Assembly approved the new law on securities No. 54/2019/QH14 coming into effect on January 1, 2021 ("Law 2019"). Significant changes brought in by the new law promise to create a relevant legal framework and strong impetus to enhance market development. This article reviews some prominent issues.

Securities offering

Currently, conditions on public offerings are specifically provided for stocks, bonds and fund certificates regardless the nature, size and influence of the offering. The Law 2019 improves such provisions by distinguishing conditions applicable for initial public offerings and secondary public offerings of stocks, conditions for offering of non-convertible bonds and convertible bonds and conditions for offerings of fund certificates. Furthermore, new regulations seem to limit public offerings to well-performing, large companies and pay more attention to minority investors' protection. Of particular note: for eligible IPO issuers, the threshold for paid-up charter increases from 10 billion VND to 30 billion VND; profitable performance history extends from one years to two years; issuers subject to criminal prosecution or having been convicted of any one of the crimes of violation of economic management order are prohibited; and it is required that at least 15 percent of the voting shares to be subscribed to more than 100 minority shareholders.

For private placements, the new law differentiates conditions applicable for the private placement of bonds and those applicable for other securities (stocks, convertible bonds and bonds with warrants). Only professional investors or strategic investors are allowed to apply in private placement. Professional investors are defined more broadly to comprise corporates with paid-in capital of more than 100 billion VND, listed companies, companies registered in the securities trading system, securities practicing certified individuals, individuals possessing a portfolio of at least 2 billion VND or having paid personal income tax in the most recent year of at least 1 billion VND besides other traditional financial institutions. The new law also regulates a private placement lock-up period to be three years for strategical investors and one year for professional investors.

Public companies

Law 2019 alters the criteria for public company classification. Paid-in charter capital of public companies increases to 30 billion VND (the current criteria is 10 billion VND) and at least 10 percent of voting shares are to be held by at least 100 minority shareholders. Companies successfully completing an IPO by registration with the State Securities Committee ("SSC") are also classified as a public company.

Public companies shall comply with various remarkable regulations. After a successful public offering, they are obliged to register for trading on the unlisted securities trading system for unlisted securities. Share repurchase by a public company shall satisfy a number of conditions including having sufficient funds from specific sources and assigning a securities company to undertake the transaction. Numerous aspects relating to the administration of public companies are also addressed in the new law, namely shareholders' rights and obligations, shareholder congress convention, the board of management's structure and its rights and obligations, the nomination of members of board of management, principles for the prevention of conflict of interest, and information transparency.

Securities trading market

Under the new law, the securities market is organised and operated solely by the Vietnam Stock Exchange ("VSE"), a corporate 50 percent and more hold by the State and its subsidiaries. Another important new player in the market is Vietnam Securities Depository and Clearing Corporation ("VSD"), replacing the Securities Depository Center, which will be in charge of registration, depository, clearing and supporting services for securities transactions. Like VSE, VSD is also owned by the State for more than 50 percent of their voting shares and under the supervision of the SSC.

Other significant changes

Depository receipts: this term is defined as securities issued on the basis of securities of an organisation legally established in Vietnam. There is also a term of non-voting depository receipts under the new law on enterprise 2020. This new derivative product is designed with the aim to open up foreign room without loosening restrictions on foreign control over local companies.

Clearing bank: there currently exist three clearing banks in the market, SBV for treasury bonds, BIDV for common securities and Vietinbank for derivatives. The new law sets conditions for new players wishing to enter this niche market. Most notable conditions include having charter capital of more than 10 trillion VND, two years of profitable operation, capital adequacy ratios satisfaction and other requirements on technical infrastructure.

Harmonisation with the law on enterprise: Securities companies and fund management companies after obtaining an operation license from the SSC shall apply for an enterprise registration certificate in accordance with the law on enterprise.

Foreign room applicable for securities companies, fund management companies is opened to 100 percent for foreign institutions operating in banking, securities, insurance industries and originated from countries signing bilateral agreement with SSC. For other foreign organisations and individuals, the room is set to 49 percent.

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5-7 Years | Hong Kong
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Funds
4-8 Years | Hong Kong
A well-known PRC asset manager with an excellent presence in Asia is looking for a legal counsel to support its business. You must have prior experience with funds formation and the related documentation, as well as familiarity with the regulatory framework in the region. Mandarin skills are essential. AC8563

Compliance
4 Years | Hong Kong
A highly-renowned fund is looking for an investment compliance professional to join its Hong Kong office. You must have at least 4-5 years of experience in handling investment, surveillance, or trading compliance matters in financial services. Cantonese speaking skills preferred. AC8551

M&A / Funds
7-12 Years | Hong Kong
This next generation technology platform focusing on investments is looking to set up its legal function in Hong Kong. You should have strong M&A and / or alternative funds experience, together with experience in dealing with SFC regulatory matters. AC8519

PRIVATE PRACTICE

M&A / PE
4-7 Years | Hong Kong
A well-regarded US firm is looking to add a mid-level senior corporate lawyer for its Hong Kong office. Mandarin skills are required. Experience in M&A or PE at a firm with a strong corporate platform is required. Opportunity to work at a firm with strong capabilities in the region. AC8543

IP (6-month contract)
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3-6 Years | Hong Kong
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M&A / PE
3-6 Years | Hong Kong
A top US firm is seeking a mid-level M&A / PE lawyer. You must have relevant experience from other top firms. Mandarin language skills and legal qualifications in either Hong Kong, New York, or England & Wales are essential. Opportunity to work with a highly reputable partner in the M&A / PE field. AC8537

Compliance
3 Years | HK / SH
An established UK firm is looking to add a compliance officer to its Shanghai or Hong Kong office. You should have relevant conflicts, AML, and KYC experience from a law firm, although investment banking compliance specialists may be considered. Mandarin language skills are essential. AC8542

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The rooster is on the run

The pursuit of happiness has been an inalienable right, at least in the United States, since July 4, 1776 when it originated as an "unalienable" right in the Declaration of Independence.

One ingredient of happiness is liberty. Predating the Declaration of Independence by more than five centuries, it is arguable that the foundation of liberty in England, in symbolic terms at least, is the *Magna Carta Libertatum*, the royal charter of rights reluctantly sealed by King John at Runnymede on June 15, 1215 to appease his barons. On the 750th anniversary Lord Denning described the Magna Carter as "the greatest constitutional document of all times – the foundation of the freedom of the individual against the arbitrary authority of the despot".

Humour is a close bedfellow of happiness. "A society that takes itself too seriously risks bottling up its tensions…. Humour is one of the great solvents of democracy. It permits the ambiguities and contradictions of public life to be articulated in non-violent forms. … It is an elixir of constitutional health." said Sachs J in Laugh It Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International and Another; 2005 (8) BCLR 743 (CC), a case involving a parody of "Oh, Pretty Woman".

George Orwell wrote in *Funny, but not Vulgar* (1945): "A thing is funny when – in some way that is not actually offensive or frightening – it upsets the established order. Every joke is a tiny revolution. If you had to define humour in a single phrase, you might define it as dignity sitting on a tin-tack. Whatever destroys dignity, and brings down the mighty from their seats, preferably with a bump, is funny. And the bigger they fall, the bigger the joke. It would be better fun to throw a custard pie at a bishop than at a curate."

> "Humour can be parlous but clever humour in the form of rhetoric and wit combined is a treasure to behold, perhaps even more so in court"

We are at liberty then to run around happily on manoeuvres, perhaps poking innocent fun at the establishment if not throwing custard pies and cheerily appreciate that the law accommodates a sense of humour. Outright buffoonery, playful contradictions or even the law being an ass, which should not be attributed to Lord Denning or even Charles Dickens in *Oliver Twist* but to George Chapman in his play *Revenge for Honour* (1654), there are many examples in English law: the oft quoted Salmon Act 1986 making it illegal to handle a salmon in suspicious circumstances; the Metropolitan Police Act 1839 making it illegal to carry a ladder home and to beat your carpet outside after 8:00 am and the London Hackney Carriages Act 1843 making it an offence to hail a taxi. Humour can be parlous but clever humour in the form of rhetoric and wit combined is a treasure to behold, perhaps even more so in court. "'The appellants' argument,…if correct'", said Lord Pannick QC in the Supreme Court, "'would mean that the 1972 [European Communities] Act, far from having a constitutional status, would have a lesser status….than the Dangerous Dogs Act.'" R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant) [2017] UKSC 5.

Talking of bumps, none other than Humpty Dumpty has been cited in various cases. "'When I use a word', said Humpty Dumpty, 'it means just what I choose it to mean – neither more nor less.' 'The question is,' said Alice, 'whether you can make words mean so many different things.' 'The question is,' said Humpty Dumpty, 'which is to be master – that's all.'" Lewis Carroll, *Through the Looking-Glass* (1872). Perhaps Humpty was thinking of an appeal which, for Bermuda, the Cayman Islands and the BVI whose companies, for jolly good reasons, dominate the HKEx, ultimately lies to the Judicial Committee of the Privy Council in London. If there is no single right answer to the interpretation of legal principles, at least in commercial transactions, there should be scope for freedom in structuring takeovers in masterful ways, two step short-form merger transactions being the latest creation. And therein lies the happiness in being an M&A lawyer. As long as you don't take liberties and you have a sense of humour! And if you are in Bermuda so much the better: "You go to heaven if you want to. I'd rather stay here in Bermuda." said Mark Twain.

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Corporate Associate | 2-4 yrs pqe| HK REF: 16096/AC

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Be it a case of wanting to spice things up or break the pattern, every now and then, it's nice to know there's something else. Whether you do so casually or stringently, take a look below to see what the legal sector can offer you.

Tech Head of Legal – In-house

5+ yrs PQE, Hong Kong

A start-up tech venture, backed up a well-known company, are now looking for a mid to senior level lawyer to support the business' operations and growth. As the sole legal counsel, you will be an active business partner, so candidates are expected to have excellent stakeholder management skills. Prior experience with technology-related matters and documents, as well as general commercial work from a reputable company or law firm is required. The team culture is energetic, vibrant, and offers a collegiate environment across all levels. Chinese language skills are highly preferred.
[AC8561]

Consultant: Chris Chu
Tel: (852) 2537 7415
Email: cchu@lewissanders.com

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[Ref: JVIHC-0047]

Contact: Aelxis Lamb
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Unique chance to join one of the fastest-growing funds in Asia. Our client is a pan-Asian alternative investment manager with a spectacular track record both in fund inflow and fund performance. With a three-pronged investment approach in long/short equity, private equity and capital markets, the firm wants a dynamic, entrepreneurial lawyer with blue-chip deal credentials gained in a top-tier law firm. You must have substantive experience in private equity transactions and be proactive, results-driven and able to work independently. Native fluency in Mandarin and English is mandatory.
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[Ref: HZ 330-00001]

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SG EA license no. 12S6213

LAW IN ORDER
Where work flows.

By David Kerstjens,
Digital Forensics Lead Consultant
David.Kerstjens@lawinorder.com

Data collection and early case assessment for investigations

Data collection and analysis for investigations is very different to collection for discovery or review. This article discusses the differences; how Early Case Assessment (ECA) can assist and the benefits of using review technology.

Data collection and analysis for an investigation

Collecting for investigation often involves overcoming many barriers. Analysis faces the added difficulty of reconstructing past events as they occurred.

An example of hidden complexity in an investigation is information about user activities in specific locations or timeframes. Video files may be overlooked but can contain complex hidden information. Studying the metadata (data about the data) such as who created the video and the time it was created, as well as the GPS location of the videos and/or images could be used to indicate when or where the item was recorded which might prove very pertinent.

Mobile phone data is another great data source which may create difficulties if the forensic investigator is not well versed. A Digital Forensics expert can assist if the person being investigated refuses to surrender their mobile phone. One would assume there is no way for the data to be collected. In reality, if the person ever connected their mobile phone to their work device and created a back-up, the forensic investigator can access the user-generated back-up. A large amount of data can be easily recovered using the back-up, including deleted data. This will likely include (but not be limited to) communications, documents and photos.

When it comes to data, ideally recovery should start as soon as possible. The longer the period of time between an incident and investigation, the higher the risk that data will not be recovered.

Our clients are particularly interested in a timeline of events to understand what occurred and allow for the development of the story. This involves reporting on significant dates and relates to when activity was recorded on a particular day. It includes activities such as when documents were created, what was deleted, when something was copied from C: drive to a USB, etc. The aim is to reconstruct these events and understand what happened on a particular day or timeframe.

The longer the period of time between an incident and investigation, the higher the risk that the data will not be recovered

Early Case Assessment (ECA)

Once all the data is collected, then what is irrelevant needs to be taken out.

Firstly, the level of duplication is checked so duplicates can be removed and the legal team doesn't have to review the same emails over and over. This involves running initial searches to filter out the rubbish, eg. emails from Yahoo Sport or Google News. It is also possible to sort by custodian, eg. emails going from the company to an external receiver.

This process assists with planning and how data will be reviewed. It is important to examine the metrics for cutting the irrelevant data and capturing what is potentially relevant. The point is to prioritise and find evidence to move the review faster, saving time and money for all parties.

One of the other benefits of ECA is the ability to look at communications between two individuals and the events that happened, and better form an opinion about whether there is a chance in winning the case.

Using the review platform

Once the data is in the review platform and on a timeline, it is possible to click into the timeline using a real-time filter on the data and see all the custodians. Search terms are provided so the data can be searched.

There are two ways to review, by reviewing for what is relevant and by reviewing for what is irrelevant so it can be removed. In other words, are they responsive or non responsive? Or is it a hot document? The document then needs to be tagged. The tags are completely customisable. If the tags have already been decided on, it makes things much easier, particularly if working with a review team or multiple teams.

The review platform allows teams to work together without doubling up over each other, so the review is much faster. Everything is tracked and properly recorded, and it can also be used remotely. Users can log in with Google Chrome or Internet Explorer.

From here, analytics and technology can be used to help refine the review further.

Cross-border transfer of personal financial information in China

Jingtian & Gongcheng partners *Yuan Lizhi*, *Hu Ke* and associate *Wang Beining* take us through the details of the regulatory framework.

How does Chinese law define personal financial information?

Chinese law specifies personal financial information ("PFI") as follows:

1. Institutional Identity

The scope of PFI depends on the definition of financial institutions, since PFI is regarded as personal information ("PI") collected and used by financial institutions in the process of providing financial products or services.

In 2011, the People's Bank of China (the "PBOC") promulgated the Notice Regarding the Effective Protection of Personal Financial Information by Banking Institutions (the "Notice on PFI"), which defines PFI as PI obtained, processed and stored by banking financial institutions. In 2020, the PBOC issued the Personal Financial Information Protection Technical Specification (the "PFI Specification"). The PFI Specification applies to licensed financial institutions supervised by China's financial regulatory authorities and, more broadly, institutions processing PFI.

2. Types of PFI

The Notice on PFI and the PFI Specification also enumerate PFI. The enumeration of PFI includes personal identity information, personal property information, personal account information, loan information, financial transaction information, derived information, authentication information and other information.

What are the regulatory rules and requirements for cross-border transfer of personal financial information under Chinese law?

Yuan Lizhi

The Notice on PFI establishes the framework of cross-border transfer of PFI in China, namely, the storage, processing and analysis of PFI shall be located within the territory of China. In addition, cross-border transfer of PFI is prohibited in principle, and there are some exceptions of the prohibition, but the Notice on PFI does not specify any exception.

In 2011, the Shanghai Branch of the PBOC promulgated the Notice Regarding the Effective Protection of Personal Financial Information by Banking Financial Institutions, which sets up exceptions to allow cross-border transfer of PFI. It requires that the financial institutions shall transfer PFI only for business needs and must obtain customers' consent, ensure confidentiality, and transfer PFI to affiliated institutions only. In addition, according to the Guidelines for the Management of Money Laundering and Terrorist Financing Risks of Corporate Financial Institutions

(Draft) issued by the PBOC in 2019, domestic corporate financial institutions can provide overseas clearing agents with customer identity information and transaction background information after obtaining the authorisation of their customers, when cross-border transfer is necessary for anti-money laundering and anti-terrorist financing.

We understand that, currently, the exception rules are the compliance path for cross-border transfer of PFI. Financial institutions shall ensure that:

(1) The cross-border transfer is to meet business needs;
(2) The cross-border transfer is under customers' authorisation;
(3) Confidentiality of PFI is not undermined; and
(4) PFI is transferred to the overseas affiliates, or PFI is transferred to the overseas entities' affiliates located within China.

What is the impact of the regulatory requirements for critical information infrastructure and important data on the cross-border transfer of personal financial information?

Chinese law has restrictions on cross-border transfer of PI and important data collected by critical information infrastructure operators ("CIIO"). Art. 37 of the Cybersecurity Law (the "CSL") stipulates that CIIO shall store PI and important data collected and produced during operations within the territory of China. When it is really necessary to provide PI and important data to overseas operators due to business needs, security assessment shall be conducted in accordance with the measures formulated by the Cyberspace Administration of China in concert with relevant departments of the State Council.

In terms of the definition of critical information infrastructure ("CII"), according to Art. 18 of the Regulations on Protection of Critical Information Infrastructure Security (Draft) and Art. 3.1 of the Guidelines for the Security Inspection and Evaluation of Critical Information Infrastructure (Draft), the CII refers to the network facilities and information systems that may seriously endanger national security, the national economy, people's livelihood and public interests if they suffer destruction, malfunction or data leakage, and both drafts of regulations take the financial sector as an example of CII. Therefore, the chances are high that the cross-border transfer of PFI will be restricted, if these


Hu Ke

two drafts are officially promulgated.

With respect to important data, apart from Art. 37 of the CSL, the Administrative Measures for Data (Draft) also has strict requirements on the cross-border transfer of important data. Even if the important data is collected by network operators other than CIIO, it is necessary to conduct security risk assessment of cross-border transfer of important data and report to the regulatory authorities for approval. Art. 28 of the Data Security Law (Draft) (the "DSL") stipulates that all the processors of important data shall conduct risk assessment regularly and submit the assessment reports to authorities.

Important data refers to data that may directly affect national security, economic security, social stability, public health and safety once leaked. Important data does not include personal information under Art. 38 of the Administrative Measures for Data Security (Draft). However, large-scale of PFI may reflect China's trends of financial and economic development after aggregation, integration and analysis, thereby negatively affecting financial security. Therefore, large-scale of PFI may be defined as important data, and thus restricted from cross-border transfer.

What are the developing regulatory requirement trends for cross-border transfer of personal financial information in China?

1. The integration of specialised regulations and general regulations

As mentioned above, the financial regulations set out the requirement of localisation and the prohibition of cross-border transfer. On the contrary, the general regulations remove the

requirement of localisation and specifies the compliance requirements for cross-border transfer. However, there is a trend that these opposite rules are being integrated. Taking the PFI Specification as an example, the PFI Specification adheres to the localisation rules under financial regulations, as well as the general principle of the prohibition of cross-border transfer with exceptions. In addition, the PFI Specification also incorporates the compliance requirements under the general regulations, that is, the PI controllers shall get PI subjects' consent, conduct self-assessment, pass regulatory authorities' assessment, and sign the standard contract terms for cross-border transfer. Even if the PFI Specification is not mandatory, it is an important reference of best practices in the financial industry.

2. The rules for cross-border transfer of PI under the Personal Information Protection Law

Chinese law has no specified detailed rules for cross-border transfer of PI, but the Personal Information Protection Law (Draft), which sets out rules for the cross-border transfer of PI,


Wang Beining

may be promulgated in the near future and apply to cross-border transfer of PFI. According to the press, the Personal Information Protection Law (Draft) may request that, before the cross-border transfer of PI, the processor shall inform PI subjects, get PI subjects' consent and: (1) pass the security assessment, or (2) obtain PI protection certification by a professional organisation, or (3) sign the agreement on cross-border transfer with the overseas PI recipients to meet the PI protection standards, or (4) meet other requirements stipulated by laws.

3. Data security audit and export control under the DSL

Since the DSL applies to all types of data, including PFI, the DSL will also affect cross-border transfer to some extent after it comes into effect. According to the press, the DSL stipulates the security audit of data activities that may affect national security, and the data of controlled items shall be subject to the export control system. These two rules are likely to apply to cross-border transfer of PFI which is relevant to national security or under export control.

Chloe Xu is deputy general manager and general counsel for Baiyin International Investment Ltd, based in Beijing:

"In the finance sector we see continuing legislative efforts by the Chinese government in preparation for the further opening-up of the country's financial market to foreign investors. One focus is to strengthen the protection of PFI to better secure local consumer rights as well as national security in the current digital world. We therefore expect more stringent and detailed requirements to be introduced on the cross-border transfer of personal financial information ("PFI").

"Our company does not engage in the finance business directly, therefore many of the rules may not directly apply to us, but we often work with the Chinese banks on cross-border financing deals that may involve cross-border transfer of PFI. I feel that it's necessary for our in-house team to keep abreast of these requirements and best practices, which will enhance our understanding of the lender's thinking, the data issues etc, and thus better facilitate cross-border financing transactions between parties."

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Dr Justine Walker, *advisor to the* British Banking Association

Data Privacy in Malaysia

DFDL's *William Greenlee* sets out the data protection regulatory framework in Malaysia and its recent developments.

During these daunting days of widespread economic disruption and global pandemic, many governments are striving to strike a balance between promoting a vibrant local business environment, ensuring adequate cyber-security, and protecting people's personal data. This article sets out the data protection regulatory framework in Malaysia and its recent developments.

Overview of the regulatory framework

The Malaysia Personal Data Protection Act 2010 ("Malaysia PDPA") is the principal legislation regulating personal data in Malaysia. Subject to prescribed exceptions, the Malaysia PDPA applies to any person who processes, has control over, or authorises the processing of any personal data in respect of commercial transactions[1]. Any information processed for credit reporting activities are carved out and separately regulated under the Malaysian Credit Reporting Agencies Act 2010.

> "The Malaysia PDPA applies to any person who processes, has control over, or authorises the processing of any personal data in respect of commercial transactions"

Categories of Protected Data

The Malaysia PDPA regulates two categories of data.

(a) Personal data is information which relates directly or indirectly to an individual, who is identifiable from that information or from that and other information in the data user's possession. For personal data (not including sensitive personal data), explicit consent is not required if such consent obtained from the individual can be recorded and maintained by the data user.

(b) Sensitive personal data is regulated more closely and is currently limited to personal data relating to a data subject's health, political views, religious beliefs, criminal record, or alleged commission of any offence. The processing of sensitive personal data requires data subjects' explicit consent.

Processing Principles

The Malaysia PDPA regulates the processing of personal data by requiring a data user to comply with seven principles ("Processing Principles").

(a) General Principle: Unless any exceptions under the Malaysia PDPA apply, a data user cannot process personal data without obtaining the subjects' consent.

(b) Notice and Choice Principle: The Malaysia PDPA prescribes eight mandatory matters which the data user must inform a data subject by a written notice. Such a notice must be given in English and the local language.

(c) Disclosure Principle: A data user must limit disclosure of the personal data to the purpose which the data subject had been informed of at the time of collection and for which the data subject had consented.

(d) Security Principle: Practical steps must be taken by a data user to safeguard the personal data from any loss, misuse, modification, unauthorised or accidental access, disclosure, alteration, or destruction.

(e) Retention Principle: A data user must not retain personal data for longer than is necessary to fulfil the purpose for which it was collected.

(f) Data Integrity Principle: A data user must take reasonable steps to ensure that the


William Greenlee

personal data is accurate, complete, not misleading, and kept up-to-date.

(g) Access Principle: The data subject has the right to access his or her personal data and to correct such data held by the data user where it is inaccurate, incomplete, misleading, or not updated.

Failure to adhere to any of the Processing Principles is an offence under the Malaysia PDPA, and can result in penalties of approximately US$24,000 to 120,000 and a term of up to three years imprisonment.

Cross-Border Transfer

Transfer of personal data outside Malaysia is prohibited unless the transfer is made to a jurisdiction approved by the Minister[2] or where any specific exceptions prescribed under the Malaysia PDPA applies. The Commissioner published a consultation paper in 2017 seeking the public's feedback on the draft whitelist of countries to which personal data may be transferred from Malaysia without having to rely on the exceptions. As of June 2020, the whitelist had yet to be approved.

Recent Developments

The Processing Principles are akin to those in the 1995 EU Data Protection Directives. The regulator's focus in the nascent years of the Malaysia PDPA has been on fostering awareness among businesses. The shift to enforcement actions have only recently begun. The Commission has been conducting inspections in the form of "audits" at business premises to assess levels of compliance.

> "The proposals in the Paper, if passed, will completely change how businesses in Malaysia handle data"

A consultation paper was published in February 2020 to seek public's feedback ("Paper") on possible amendments to the PDPA.[3] The Paper took the laws of various jurisdictions into consideration including the Philippines, Singapore, Japan, and the EU.

Considering the fast-paced development of technology in recent years, the review of this legislation is a commendable effort. The proposals in the Paper, if passed, will completely change how businesses in Malaysia handle data, as they envisage a data protection standard that is much higher than the country's current existing regime.

Endnotes

1. Personal Data Protection Act 2010, § 2.
2. Personal Data Protection Act 2010, § 129.
3. The Public Consultation Paper No. 01/2010 can be accessed on the official portal of the Department of Personal Data Protection at: https://www.pdp.gov.my/jpdpv2/assets/2020/02/Public-Consultation-Paper-on-Review-of-Act-709_V4.pdf.

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Data Privacy in Myanmar

By *William Greenlee, Partner,* **DFDL**

This article sets out the data protection regulatory framework in Myanmar and its recent developments, and concludes with some reflections on the current significant shifts in global data protection standards.

Overview of the regulatory framework of data protection

There are currently no specific data protection laws in Myanmar. The regulatory framework for protection of privacy in Myanmar consists of an overarching privacy law as well as sector-specific legislation regulating certain categories of data, such as customer information protected under the Telecommunications Law 2013 and the Financial Institutions Laws 2016.

Law Protecting the Privacy and Security of Citizens 2017

In Myanmar, the principal legislation regulating privacy and security of information is the Law Protecting the Privacy and Security of Citizens 2017 (the "Privacy Law"). The benefits of the Privacy Law apply to Myanmar citizens only and it has no application to any non-citizens residing in the country.

Among others, the Privacy Law prohibits the following activities by responsible authorities[1] without approval from the President or the government:

- Spying, investigation, or detection that may affect or adversely impact the dignity, privacy, or security of a citizen; and
- Requesting or acquiring personal telephonic and electronic communications data from telecommunication operators.

> "The benefits of the Privacy Law apply to Myanmar citizens only and it has no application to any non-citizens residing in the country"

There are no specific requirements under the Privacy Law to obtain prior consent from data subjects[2] to process the data subjects' personal data, but as a matter of good practice and in line with international practices, data users typically request consent from data users before processing any personal data.

Electronic Transaction Law 2004

Another relevant law concerning privacy is the Electronic Transaction Law 2004 (the "ET Law"). Among others, the ET Law prohibits the following activities:

- Communicating to any other person directly or indirectly with a security number, password or electronic signature of any person without permission or consent of such person.
- Creating, modifying or altering of information or distribution of such information which is deemed to be detrimental to the interest of any person.

The ET Law has extraterritorial jurisdiction and applies to every person who commits any actionable offence inside and beyond the territory of Myanmar using any form of electronic technology.

Competition Law 2015

Under the Competition Law 2015, every person is prohibited from disclosing or using secrets of another business.[3] A person guilty of an offence under this law is subject to imprisonment for up to two years and/or a fine of up to MMK 10 million (approximately US$ 7,310).

Sector-specific legislations

There are a few sector-specific laws that govern aspects of data protection and privacy issues in Myanmar, although only to a small extent.

The Telecommunications Law 2013 primarily imposes obligations on licensees that obtain a telecommunication services license from the


William Greenlee

Ministry of Transport and Communications. The telecommunication service licensee is required to maintain securely the information and contents (including confidential personal information of the users) that are transmitted or received through the telecommunications services. It is also prohibited under the law to disclose any information secured on encrypted systems to any third party by any means. Violators are subject to imprisonment for a term not exceeding one year and/or a fine.

The Financial Institutions Law 2016 (the "FIL") imposes restrictions on institutions licensed under this law. Banks are required to keep information secret relating to the affairs or the accounts, records, and transactions of their customers.[4] There are limited exceptions to the duty to maintain banking secrecy including but not limited to disclosure of information to the Central Bank of Myanmar or disclosure to comply with a court order or where required under the law.[5]

Recent Developments and Impact of the GDPR

In Myanmar, data privacy obligations are scattered across several pieces of legislation protecting data through confidentiality provisions and secrecy obligations. This means that personal information will primarily remain protected as confidential information through contractual obligations or through private claims being brought by individuals for breaches of confidentiality.

The absence of specific legislation on data protection and the lack of a data protection authority results in limited or no opportunities for individuals to seek information on their privacy rights or the protection of their personal data, and it also hampers their ability to seek redressal or compensation in cases where such rights are violated. The exponentially increasing number of electronic transactions in the country urgently calls for dedicated legislation to govern data protection issues.

Conclusion

With the continuous progress of society and technology, the concept of privacy has significantly transformed and evolved. From using internet services to social interactions to cloud computing, every activity requires revealing personal data.

The increased dependence on technology and an ever-increasing information boom calls for the establishment of a sound data protection regime. To adequately protect the interests of all stakeholders – citizens, companies, as well as the government - the enactment and proper enforcement of data protection laws is essential.

Endnotes

1. Responsible authorities refers to relevant government department, government organisation or government officials.
2. Individuals whose personal data is being shared.
3. Competition Law, 2015, § 19.
4. Financial Institutions Law, 2016, § 81.
5. Id. § 82.

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Amendments to three data privacy laws in Korea and the implications

By Kwang-Wook Lee, Helen H. Hwang, Chulgun Lim and Keun Woo Lee, **Yoon & Yang**


Kwang-Wook Lee

Three primary data privacy laws in Korea are (i) the Personal Information Protection Act ("PIPA") enacted in 2011; (ii) the Act on the Promotion of the Use of the Information and Communications Network and Information Protection (the "Network Act") enacted in 1999; and (iii) the Credit Information Use and Protection Act (the "Credit Information Act") enacted in 1995. The PIPA is a general law that regulates general matters of data protection, whereas the Network Act and the Credit Information Act are sector-specific laws. The Network Act applies to data protection for online service users. The Credit Information Act regulates credit information protection.

> "The amendments to the data privacy laws are intended to streamline the regulatory framework for data protection and governance, addressing the need for efficient use of data for the emerging economy ..."

These three data privacy laws have recently been amended extensively. The amendments to the data privacy laws are intended to streamline the regulatory framework for data protection and governance, addressing the need for efficient use of data for the emerging economy based on new technologies such as artificial intelligence, cloud computing and big data.

The amendments to the data privacy laws came into force on August 5, 2020 except for certain amendments to the Credit Information Act which will take effect in 2021.

Key aspects of the amendments to the PIPA and their implications

(1) Regulatory authorities

Prior to the amendments, the data privacy laws were enforced by multiple regulatory authorities. The PIPA was regulated by the Ministry of the Interior and Safety ("MOIS"). The regulatory bodies responsible for the enforcement of the Network Act and the Credit Information Act were the Korea Communications Commission ("KCC") and the Financial Services Commission ("FSC"), respectively. To streamline the overlapping layers of regulatory bodies, the amendments to the data privacy laws centralise the enforcement authority at the Personal Information Protection Commission ("PIPC"), transferring data protection tasks of the MOIS and the KCC to the PIPC. The PIPC has the authority to conduct investigations and impose corrective orders and administrative fines for violation of the data privacy regulations.

(2) Scope of personal information

The amended PIPA provides criteria for determining the scope of personal information. Prior to the amendments to the PIPA, the definition of "personal information" includes information that cannot identify an individual when used alone, but can be easily combined with other information to identify an individual. There was some obscurity as to the meaning of the phrase "easily combined with

other information," resulting in difficulty in enforcement. To address this issue, the amended PIPA provides more clear criteria such that the phrase "easily combined with other information" will be reasonably construed considering the time, cost and technology required to identify an individual as well as the availability of other information.

(3) Pseudonymised information and anonymised information

The amended PIPA introduces the conceptual framework of "pseudonymised data" which is defined as information which has been pseudonymised such that it cannot identify an individual without using or combining with additional information to restore it to its original state. Pseudominisation refers to processing personal information by deleting part of personal information or replacing all or part of personal information so that it cannot identify an individual without additional information. Under the amended PIPA, data controllers can process pseudonymised data without the consent of the data subject for the purposes of statistics preparation, scientific research and record preservation for public interest.

The amended PIPA further clarifies that the regulations under the PIPA do not apply to anonymised information, i.e., information which cannot identify an individual even when combined with other information, reasonably considering time, cost and technology required for such combination.

(4) Use of personal information for purposes reasonably related to the original purpose may not require the data subject's consent

Under the amended PIPA, data controllers may use or provide personal information without the consent of the data subject within a scope reasonably related to the original purpose of collection as notified to the data subject at the time of the collection of personal information, if certain conditions (such as security measures such as encryption) are satisfied. Thus, flexibility is expected in data processing within a reasonable scope.

Key aspects of the amendments to the Network Act and their implications

(1) Deletion of provisions similar to or overlapping with the PIPA

The amendments to the Network Act delete the provisions which are similar to or overlapping with the PIPA so that the general law of the PIPA can apply first for personal information protection. Most of the provisions under Chapter 4 of the Network Act are deleted, and the title of Chapter 4 of the Network Act is changed from "Personal Information Protection" to "Creation of a Safe Environment for the Use of Online Services."


Helen H. Hwang

> "To secure credit data protection, the amendments to the Credit Information Act adopt certain provisions under the PIPA with changes appropriate to the financial sector"

(2) Transfer of provisions to the PIPA

Among the provisions deleted from the Network Act, those that differ from the PIPA or exist only in the Network Act are transferred to Chapter 6 of the PIPA ("Special Provisions Regarding Processing of Personal Information by Online Service Providers") to protect personal information of online service users. In the case of online service providers that do not have business places or addresses within Korea and whose sales or number of users exceed certain thresholds must designate a local representative to deal with matters concerning personal information protection.


Chulgun Lim

Key aspects of the amendments to the Credit Information Act and their implications

(1) Relationship with the PIPA

To secure credit data protection, the amendments to the Credit Information Act adopt certain provisions under the PIPA with changes appropriate to the financial sector. Under the amended Credit Information Act, some provisions of the PIPA apply *mutatis mutandis*. The Credit information Act is a special act to the PIPA, meaning that the amended Credit Information applies over the amended PIPA in the case of any conflict between them.


Keun Woo Lee

(2) Use of big data by pseudonymisation or anonymisation

In line with the amendments to the PIPA, the amended Credit Information Act introduces the conceptual framework of pseudonymisation and anonymisation. Under the amended Credit Information Act, if a data expert institution designated by the FSC confirms that certain information has been properly pseudonymised or anonymised, such information is deemed to have been processed such that it cannot identify an individual. This is expected to ease legal uncertainty for financial institutions in their use of big data. Under the amended Credit Information Act, as under the amended PIPA, pseudonymised data can be used or provided without the consent of the credit data subject for statistics preparation, research and record preservation for public interest. The amended Credit Information Act further specifies that "statistics preparation" includes statistics preparation for commercial purposes such as market research, and "research" includes industrial research.

> "It is also noteworthy that the amendments to the privacy laws introduce the concept of pseudonymised and anonymised data"

(3) Changes to consent requirement

The amended Credit Information Act allows certain financial service providers to notify the credit data subject solely of a summary of important matter when obtaining the consent of the credit data subject, unless otherwise required by the credit data subject.

Under the amended Credit Information Act, some financial service providers are assigned with a "consent level" evaluated by the FSC. Such service providers must inform the credit data subject of the consent level so that the credit data subject can be aware of potential consequences of their consent.

(4) Rights of the data subject

The amended Credit Information Act enhances the rights of the credit data subject by introducing the right to data portability, the right to object and the right to be informed concerning automated decision making and profiling.

(5) Punitive damage

The amended Credit Information Act expands the award of punitive damages for intentional or grossly negligent leakage of credit information up to five times the amount of compensatory damages.

Conclusion

The amendments to the privacy laws have significance in that they provide a regulatory framework not only for personal information protection but also for data use. By clarifying the definition of personal information and introducing the concept of pseudonymised data, the amendments to the privacy laws are expected to invigorate the emerging data economy based on new technologies.

While the privacy laws have been amended extensively at the same time, they contain partially different provisions with different scope of application. Therefore, there still remains the possibility that those provisions may be construed differently in the context of each privacy law. In that regard, the regulating authorities are expected to further publish subordinate regulations and guidelines.

It is also noteworthy that the amendments to the privacy laws introduce the concept of pseudonymised and anonymised data. However, necessary details for its application need to be further clarified.

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The Thai Personal Data Protection Act: *Second grace period to end with enforcement*

By *Nuanporn Wechsuwanarux, Partner* and *Pranat Laohapairoj, Counsel* at **Chandler MHM.**


Nuanporn Wechsuwanarux


Pranat Laohapairoj

The Personal Data Protection Act, B.E. 2562 (2019) ("PDPA") was enacted on May 27, 2019. Prior to the end of the original one-year grace period for full enforcement of the PDPA, a Royal Decree was issued which prescribed a list of organisations and businesses that would be temporarily exempted from enforcement. The list was so extensive and the choice of words so overarching that all legal practitioners agreed that it was designed for all business operators and other types of entities as well. Hence, we were effectively given a second grace period which will end on May 31, 2021. Although the enforcement was postponed for another year, all business operators are required to arrange and maintain security and protection of personal data as prescribed by the Ministry of Digital Economy and Society ("MDES").

The MDES issued the Ministerial Notification Re: Standards of Security Protection of Personal Data, B.E. 2563 (2020), with an effective date from July 18, 2020 until May 31, 2021. The descriptions therein regarding notification and safety requirements are comparatively generic and do not prescribe specific standards, applications, or technical measures. Furthermore, the notification itself is thought to be effectively unenforceable given the grace period that has already been announced. It, therefore, is seen as a hybrid message to the operators to remind them to be mindful of this law and that the regulatory environment will be tougher in the coming months. Therefore, operators should start to plan their compliance.

Nevertheless, due to the current lack of specific guidelines, rules, and other regulations, only some business operators have commenced an internal process to prepare themselves for the law. Preparation would include undertaking internal due diligence and gap analysis to learn about how personal data comes into each of their business arms, where such data is stored and transferred to, and how each entity within their commercial loop treats and utilises such data. This would also require instituting use of internal and external documents, including

many types of personal data policies, consent forms, ad hoc notices, and specific-purpose standards of operations, guidelines, and protocols. Some operators, however, have stated that they want to wait for more supplementary regulations from the Personal Data Protection Committee, as they feel that the PDPA will need supplementary regulations to make it whole and fully functional. This would include supplementary regulations about country and organisation white lists, categorical exemptions, thresholds for necessity to have a data protection officer, guidelines on offshore transfer rules, etc.

Based on our experience working with numerous clients to achieve compliance with data protection laws and regulations, one of our key takeaways is to avoid being over-complacent. The operators should note that the internal preparation process to comply with the PDPA will take several months. Firstly, the process to undertake self-due diligence or gap analysis may take one to three months. Pinpointing the issues found during the self-due diligence or gap analysis and deciding how to plug the gaps with suitable documentation (with the appropriate facts included therein), and subsequent creation and revision of documents takes at least one or two months. Then the operators will have to deal with implementation, which will necessitate training in order to allow management and operators to familiarise themselves with the new processes. Lastly, it may be necessary to recalibrate how the different IT applications and systems work. Given the time required to complete these steps, the remaining time until the end of the grace period on May 31, 2021 is short. The operators should further note that although it is true to say that that the law will not be fully functional without supplementary regulations, however, a majority of the

"Based on our experience working with numerous clients to achieve compliance with data protection laws and regulations, one of our key takeaways is to avoid being over-complacent. The operators should note that the internal preparation process to comply with the PDPA will take several months"

provisions of the law can, and certainly will, be fully or at least partially enforceable on their own. For example, the requirements on notification, attainment of lawful basis, consent, liaison with data subjects, and safety of storage. Even certain sections that currently seem to be less than clear may be quickly completed by official consultation and approval by the Personal Data Protection Committee, such as those related to offshore transfer.

We, therefore, do not recommend that operators wait, and suggest that they undertake internal preparations to the extent that they can as soon as possible. This would eliminate risks posed by certain provisions becoming immediately enforceable on June 1, 2021, and avoid the operator being scrutinised or prosecuted by the authorities for such breach.

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‘Untact’ business and cybersecurity in Vietnam

By Sungdo Choi and Ha Thi Tinh, **Yoon & Yang**


Sungdo Choi


Ha Thi Tinh

Industry 4.0 era with the rapid growth of advanced technologies and smart digital devices has facilitated the advent of the ‘untact’ (ie, non-contact’) business which requires less in-person interaction. Although the untact business brings huge conveniences in sharing of and access to information, time-saving services and free-distance connection, it has entailed the issue of how to protect personal data and ensure cyber-information security. Most of online service users express their concern about unauthorised disclosure of their personal data and cyber-attacks while using online services.

The Constitution of Vietnam and the Civil Code recognise the inviolable right to personal data protection, and declare principles on protection of private life, personal privacy, family privacy and private communication. However, technical and legal framework designed to ensure prevention of unforeseen, unintended or malevolent use of personal data appears retarded to provide sufficient protection, mainly due to the fact that legal frameworks normally lag behind economic realities.

There are a number of laws and regulations having provisions to protect personal data privacy. These laws include Law on Cyber Information Security, Law on Cyber Security, Law on Information Technology, Law on Electronic Transactions, Law on Consumer Rights Protection, etc. These laws provide regulations on rights of the data subject to store, check, correct or erase personal information in a network environment, security requirements for data processing, obligations of data processors, responsibility of regulatory authorities, exemptions from the data protection rules, and measures required to be taken to protect cyber security. However, the application of these rules in practice is not always clear.

> “The Constitution of Vietnam and the Civil Code recognise the inviolable right to personal data protection, and declare principles on protection of private life, personal privacy, family privacy and private communication”

With the increasing number of personal data leakage cases being reported, the goal of the Vietnam Government to develop a more comprehensive legal framework in respect of data protection is explicitly expressed in Resolution of Government No.138/NQ-CP dated 29 September 2020 which approves the proposal of Ministry of Public Security to prepare a Decree on data protection. Accordingly, the proposed Decree will be submitted to Government for review by 1st Quarter of 2021.

The most updated proposed Decree consists of eight (8) chapters, while the specific contents of each chapter and articles have yet to be prepared. The proposed Decree sets out the seven (07) principles of personal data protection, specifically as follows:

(1) Principle of Lawfulness: Personal data shall be lawfully collected.

(2) Principle of Purpose: Personal data shall

be collected for the limited purposes as consented or registered

(3) Principle of Simplification: Personal data shall be collected only to the extent of such amount as is necessary to serve for a pre-determined purpose

(4) Principle of Restricted Use: Personal data shall be used only after obtaining the data subject's consent or at the request of competent authorities

(5) Principle of Data Quality: Personal data shall be updated as sufficient and necessary to serve the purpose of processing such data

(6) Principle of Security: Security measures shall be applied to protect personal data

(7) Principle of Individuality: The data subject shall be notified of all activities pertaining to their personal data

Non-compliance with the data protection laws can be subject to both administrative sanctions and criminal sanctions under the current laws. Penal Code regulates the criminal sanctions on infringement upon secret information, mail, telephone, telegraph privacy, or other means of private information exchange and illegal provision or use of information on computer networks or telecommunications networks. The administrative sanctions spread across various legal documents depending on the nature of the violation. For example, Decree 15/2020/ND-CP regulates monetary sanctions imposed to violations against regulations on cyber information security, and Decree 185/2013/ND-CP regulates monetary sanctions imposed on violation of consumer rights in e-commerce activities. The proposed Decree shall have one chapter which covers a sanction imposed on violation of personal data protection.

> "... the untact business model will continue to develop even after the pandemic finally ends"

At present, many countries have been suffering the outbreak of Covid-19 pandemic, and untact business would become more indispensable to sustain economic activities and to aid economic recovery. Daily operations have been transforming from offline to online and companies have been utilising cyber space in an alternative way to serve their customers. Obviously, the untact business model will continue to develop even after the pandemic finally ends, and legal frameworks for privacy protection and cyber-attacks are expected to continuously evolve with the increasing use of online services.

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Taking challenges head-on and leading with confidence

Before joining the AI legal solutions provider docQbot, **Jiang Fengwen** was a groundbreaking General Counsel for China, Asia, Middle East and Africa, working in major MNCs in the electrification, power and automation manufacturing industry. Here she share's on mentorship, leadership, her biggest challenges, and her motivation.

What attracted you to a career in corporate law, and what prompted a move in-house?
I was attracted to an in-house legal career because I was more interested in becoming a business savvy attorney, rather than spending lots of time on business development and keeping time sheets as you do in law firms; and I wanted to be involved in all major stages of business transactions, rather than only participating in the mid-stage aspects of project contract drafting and negotiations. Furthermore, I have always been attracted to the diversity and the high-tech aspects of the multi-national companies (MNCs) I have worked for, which have been engaged in a broad range of industries including power grids, robotics, industrial automation, digitisation, air-space, transportation, climate solutions, industrial equipment, bath & kichen business and specialty chemicals. In these companies, I was involved early on in the planning stages of all their major transactions, and thus I was able to play an instrumental role in the legal strategies and implementation support including in all phases of foreign direct investments (FDI), M&A, commercial, real estate and construction projects, on both the deal side and the dispute resolution side.

> "I have always paid great attention to learning from my leaders and colleagues whom I have trusted most as my unofficial mentors"

Did you have a mentor early in your career? Is mentorship important?
Yes, in my initial two years in-house at AlliedSignal, I had mentors who gave me guidance in my career development and recognition for my major achievements for the company, which were important for my growth early in my career. In addition and most importantly, I have always paid great attention to learning from my leaders and colleagues whom I have trusted most as my unofficial mentors. They have helped me continue to grow over my entire legal career, for which I am truly appreciative.

What do you think are the biggest challenges facing in-house lawyers today?
In-house lawyers are instrumental in enabling and safeguarding their business strategies and related implementing steps. With the global outbreak of Covid-19 which caused substantial damage to people's lives and to the global economy, and due to various regional conflicts, the rise in anti-globalisation sentiments, and the ongoing US-China trade war, the challenges, workload and difficulties for in-house counsel have greatly increased. This requires them to significantly expand and upgrade their legal knowledge and to make greater efforts in order

to successfully achieve their businesses goals with minimum legal risk.

What have been your biggest challenges? Were there any particular challenges you team faced that you overcame that you can share?
In the three decades of my legal career, I have successfully resolved tremendous challenges and protected my companies from various legal and integrity risks, but I can only share very few here.

Early in my practice at a US company, a particular business unit had serious long-overdue Accounts Receivable (A/R) collection problems that they had been unable to resolve for over two years, despite many trips by their senior leaders to negotiate with the debtors. The business challenged our legal department by providing us a list of ten long-overdue A/R cases. I took the challenge head-on by choosing the hardest two cases to tackle first, and through considerable effort to design the best legal framework to enable us to conduct more effective negotiations, I successfully collected the full overdue amount in both cases in one trip. One of the two cases involved US$2 million, which was a very large sum of money for the business at that time in late nineties, thus I was able to resolve one of the business' big headaches, and in doing so won praise for our legal department and elevated our reputation within the company as problem solvers.

I have always had so many projects on my plate at any one time, be they FDI's, M&A or other, and so I constantly worked extremely long hours, negotiating and moving deals forward as quickly and efficiently as possible. For example, once in the late nineties when I worked at Gibson, Dunn & Crutcher, I negotiated and closed a major generator manufacturing JV in Fuzhou China, working continuously for 48 hours without a break in order to meet the approval deadline set by the government. The next day, after we closed the deal at mid-night, the then Fujian government leader Xi JinPing met with our project team and praised us for our hard work and contribution to the new JV's establishment.

Another example was when, after the business team had been pursuing two major airspace JV projects for more than two years, without much movement in the negotiations, I took over the legal responsibilities and six months later, with intensive contract drafting and negotiations, often working late into the night, I was able to close both projects (at the Singapore Airshow).

Furthermore, I have also taken big challenges by leading major M&A and unique types of absorption mergers of several FIEs, as well as unprecedented surviving demergers of foreign investment holding companies and manufacturing JVs, which all required unique legal strategies, in-depth legal knowledge and extremely hard work in order to drive the deals to a successful close on urgent timelines so as to meet our global closing target dates.

Another type of major challenge I have handled in my in-house legal career related to breach of integrity/code of conduct investigations, involving employees or ex-employees' stealing money from the companies. In such cases, I and my team had to take a firm stand to uphold ethical standards under the law and the company's

From then to now: *"After 4 years of legal practice at major US law firm, Gibson, Dunn & Crutcher where I primarily worked on FDI in China, M&A in Asia, and initial public offering (IPO) in US, I joined AlliedSignal International in 1996, a US company specialised in airspace, specialty chemicals and transportation businesses, as their Assistant General Counsel for Asia Pacific. Later in 2000 AlliedSignal merged with Honeywell (a US company specialised in airspace, and automation), where I served as lead counsel for the combined company's power & transportation business, and specialty chemical business for Asia Pacific, as well as lead counsel for their corporate matters in China. In 2005 I joined American Standard (a US company specialised in bath & kitchen, vehicles, and air-conditioning businesses), as VP-General Counsel for Asia Pacific. After a series of global divestitures and spin-offs, their remaining air-conditioning business was acquired by Ingersoll Rand (a US company specialized in climate solutions and industrial equipment businesses) in 2008 and I became their VP-General Counsel for Asia Pacific for the combined companies. I remained in that role until 2013 when I joined ABB as their Senior VP-General Counsel for North Asia and China initially, and was subsequently promoted as their Senior VP and General Counsel for Asia, Middle East and Africa (AMEA). During all these years, I have led the work on hundreds of FDI projects (involving all phases including establishment, operation, restructuring and dissolution) and international and domestic M&A deals in China and AMEA, as well as many innovative legal digitisation projects covering contract standardization, online corporate governance portal, and private cloud initiatives in the region.*

"I have recently joined docQbot, a visionary legal AI service Cloud platform in China, as Senior VP and Senior Expert, helping the company to design and implement legal-tech solutions utilizing docQbot's cutting edge tools, and provide direct leadership for key elements for docQbot's content development initiatives."

policies. At the same time we had to adhere to the highest standards of integrity and professionalism in conducting the investigations, working closely with internal leadership and law enforcement agencies, to recover the stolen funds and take appropriate action against the violators, thereby protecting the companies from huge losses and severe reputational damage.

Finally, I have led and successfully resolved many major cases of labour unrest for my former US MNC employer (2011-2013) in connection with (i) a cross-provincial border absorption merger of two companies, dissolving the local entity and moving the business from Luoyang (in Henan province) to Wujiang (in Jiangsu province); (ii) a government expropriation of our two manufacturing plants involving 1,250 employees in Jiading District of Shanghai; (iii) a business restructuring case which involved moving the business from Shanghai to Wujiang in Jiangsu province and hundreds of employees thereto, and (iv) a legal entity disolution case in Shenzhen involving moving its business and more than 100 employees from Shenzhen to Wujiang (in Jiangsu province). In each case, I worked day and night to lead the strategic planning, seamless execution and on-site directing of the business and functional teams in close cooperation with the local government and law ennforcement agencies, to take all necessary action internally and externally to prevent the esculation of labour unrest, and resolving the disputes swiftly. For example, in the government expropriation case in Jiading, we were able to get 98 percent of the 1,250 employees to sign their severance agreeements on day one, a record-breaking achievement during this time.

"It is instrumental to be persistent in learning new things ... accumulating relevant skills and challenging yourself in all stages of your life"

What did you most look for in a law firm when outsourcing work?

We used outside counsel primarily in our global M&A deals as well as for cyber-security-related advice and in dispute resolution cases. Other than that we did all of the legal work in-house (including all phases of FDI projects, local M&A deals, the full spectrum of commercial transactions, real estate and construction, labor and employment, data privacy, etc.). We always looked for law firms with the best legal expertise in the relevant field, with high ethical standards, and who had a good understanding of our business so they could come up to speed very quickly. Of course, reasonable billing practice, and the potential for a long-term cooperative relationship were also very important in our selection process.

Other than law firms, what service providers, technology or tools helped you most as a legal department?

We typically did not use other service providers, but we did use legal technology and tools to drive our corporate governance by creating a digitised country and regional corporate governance portal, an on-line legal FAQ resource, an online team collaboration space, standardised contract templates, company chop on-line approval process, an external legal fee on-line approval process, and other tools to drive the legal aspects of the company's transition from traditional manufacturing to digitisation, and to migrate all of the company's ability platforms and solutions from overseas to China, to comply with the PRC Cybersecurity Law and implementation regulations and standards. All of these have significantly strengthened our company's corporate governance, board and legal entities management, increased our legal department and the company's productivity and efficiency, and reduced and prevented risks and waste of time.

What aspects of your in-house role did you most enjoy?

I most enjoyed my enabling and driving deals forward, quickly with efficiency, at high quality and low cost. In establishing and restructuring hundreds of FIEs in the Asia Pacific, in which I was able to take advantage of my bilingual capability, and being licensed in both China and the US. It all required a high-level of dedication and commitment, and the ability to work effectively with the

business team and functional department heads. This provided me with a tremendous amount of professional and personal satisfaction, and earned our in-house legal team the respect and gratitude of all of our colleagues on the business side and in the other departments. I also enjoyed my leadership role in providing regional legal strategies and execution support for our global M&A and legal entities restructuring projects in AMEA, including in the most recent three years, the global acquisition of GE Industrial System's business by ABB and the subsequent business restructuring arrangements, as well as the global carve out of ABB's Power Grids business, the unprecedented demergers of its China holding company into three holding companies, and demerger and restructuring of its manufacturing JVs and the reverse carve out of its electrification business, to achieve its global goal of separating their Power Grids business from the remaining digitisation businesses.

In addition, I have also really enjoyed my leadership role in designing and driving of the various legal digitisation and contracts standardisation during my legal practice in US and EU MNCs, for which I have achieved Certified Green Belts during my entire in-house legal career.

What attracted you to your current roll with docQbot?

I was attracted to docQbot because of my great interest and prior achievements in legal digitisation and contract standardisation (as stated above), and I view my new role as Senior VP and Senior expert at docQbot as the continuation of that work, and as an opportunity to further legal AI development and leadership. In this role, I help the in-house corporate law departments to design and implement legal-tech solutions utilising docQbot's cutting edge tools. In addition, drawing on my extensive experience heading up major M&A, spin-off and demerger deals as well as the full spectrum of commercial transactions and internal advisory matters, I provide direct leadership for key elements for docQbot's content development initiatives.

What advice would you give to young lawyers starting out in their careers today?

It is instrumental to be persistent in learning new things and best practices from all people through all channels, accumulating relevant skills and challenging yourself in all stages of your life, so that you can continue to grow and rise to opportunities, and lead with confidence. Ideally, a young lawyer should start with a reputable law firm to build up a solid and broad legal foundation before moving in-house, and once in-house, it is very important to have a good on-boarding training to promptly learn the company's corporate structure, policies and business operations so that you have a big picture in mind to guide you in your legal work. When you are assigned to a project, make sure to talk to the business and functional teams to understand the background of the project, whether there are previous or on-going negotiations between the business team with the other party, and if yes, ask for a business term sheet before you start contract drafting or review, to enable you to know clearly whether you can do the project within the parameters of law and corporate policy. Moreover, it is important that you do not too quickly or easily say "no" until you exhaust all the alternatives. You must always do your best to propose a solution when you raise an issue.

In addition, you should share knowledge and experience with your team members and help each other whenever you can.

Finally, always do your homework and be well prepared whenever taking on new tasks or talking to government agencies, and face difficulties head-on and never try to escape from them.

What is your hinterland (what do you most like to do away from work)?

I exercise regularly, read extensively, and watch news and movies involving legal, detective and suspense stories.

In conclusion

"A life in the legal profession is like a running a sprint *and* a marathon: we need both speed and endurance. We must always challenge and refresh ourselves and be the best of ourselves in all stages of our career."

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