

The Pan Asian Regulatory Summit 2018

9 October 2018 | The Grand Hyatt Hong Kong

Accountability & Ethics in the Personal Data Ecosystem

保護 - 尊重個人資料
Protect, Respect Personal Data

Stephen Kai-yi Wong, Barrister

Privacy Commissioner for Personal Data, Hong Kong

Proliferation of Fintech



Crowdfunding



E-wallet



P2P Lending



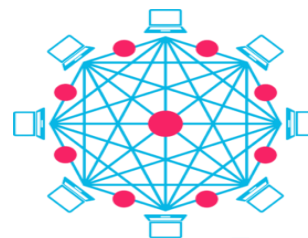
Robo-Advisor



Credit Scoring



Open API



Blockchain

Data is the lifeblood of Fintech



1

Collection of big data (e.g., transaction records, behavioural data)

2



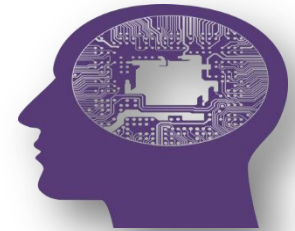
Data analytics (e.g., profiling, credit scoring)



3



Automated decision making
(e.g., granting of loans, investment recommendations)



3

Global Data Protection Landscape

As of **2017**

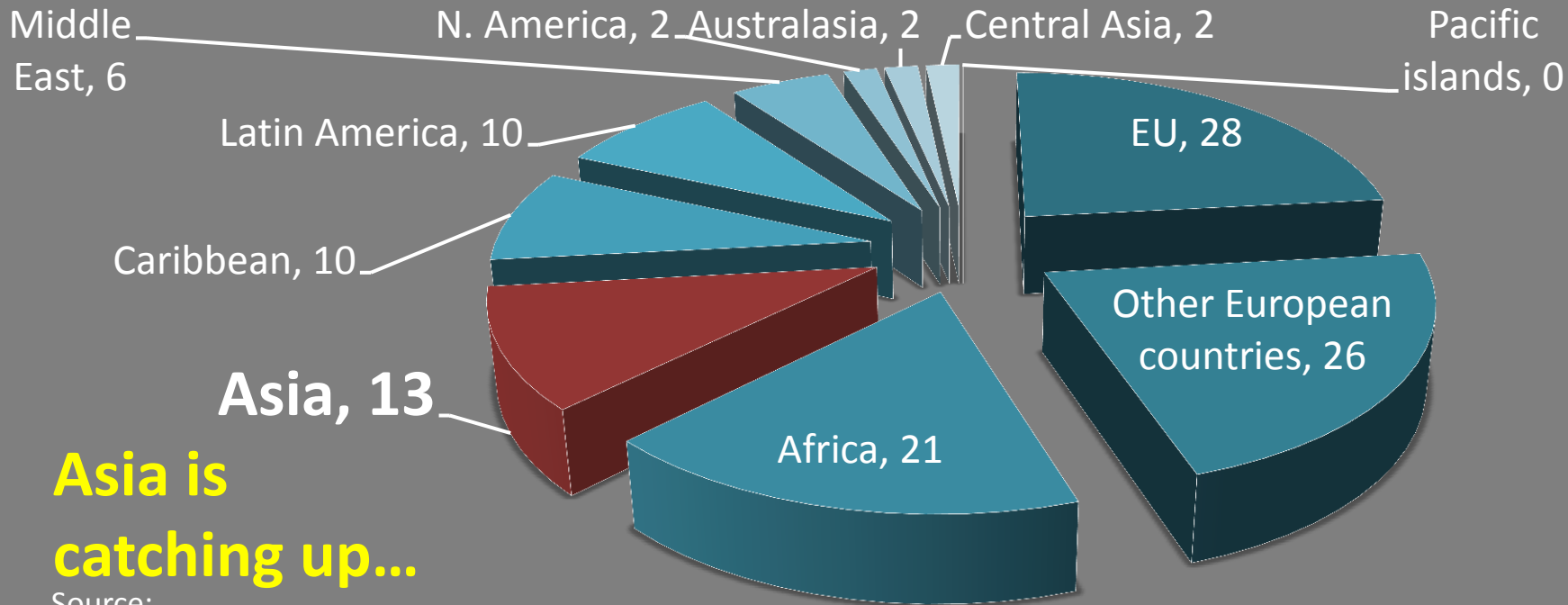
120
countries/regi
ons with data
protection
laws

30+ bills
awaiting
enactment

Source:

2017 Survey of Privacy Law Worldwide, Graham Greenleaf
(published in *Privacy Law & Business*, February 2017 issue)

Geographic Distribution of Data Protection Laws



**Asia is
catching up...**

Source:

2017 Survey of Privacy Law Worldwide, Graham Greenleaf
(published in *Privacy Law & Business*, February 2017 issue)

Asian/Oceanian Jurisdictions with Restrictions on Cross-border Transfer of Personal Data

Jurisdiction	Relevant Regulation	Restricted data
Australia	<i>Privacy Act 1988</i> , Australian Privacy Principle 8	Personal data
Mainland of China^^	<i>Cybersecurity Law (2016)</i> , article 37	Personal information & important data
India	<i>Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011</i> , rule 7	Sensitive personal data or information
Indonesia	<i>Financial Service Authority Regulation Number 01/POJK 07/2013 Concerning Consumer Protection in Financial Sector</i> , article 31	Consumer data (apply to financial sector only)
Japan	<i>Act on the Protection of Personal Information</i> (2016 amended), article 24	Personal information
Macau	<i>Personal Data Protection Act (2005)</i> , article 19 – 20	Personal data
Malaysia	<i>Personal Data Protection Act 2010</i> , section 129	Personal data
New Zealand**	<i>Privacy Act 1993</i> , section 114B	Personal information
Singapore	<i>Personal Data Protection Act 2012</i> , section 26	Personal data
South Korea	<i>Personal Information Protection Act</i> (2017 amended), article 17	Personal information
Taiwan**	<i>Personal Information Protection Act 2010</i> , article 21	Personal information
Vietnam^^	<i>Law on Cybersecurity 2018</i> (effective on 1 Jan 2019), article 26	Personal information

^^ The regulations mainly apply to providers of telecommunications services and network operators.

** The regulations empower the regulatory authorities to restrict cross-border transfer of personal data under specified circumstances, rather than imposing restrictions on the transfer directly. 6

Common legal bases for cross-border data transfer

Examples:

- EU's adequacy decisions
- White list

White list

Certifications

Examples:

- APEC CBPRs
- Privacy Shield
- Certification under GDPR

Examples:

- Model contract clauses
- Binding corporate rules

Safeguards

Consent

Including necessity for conclusion or performance of contract, etc.

Updates on the International Arrangements for Transfer of Personal Data

EU adequacy decisions

- **11 countries obtained adequacy decisions** (*e.g., Canada and New Zealand*)
- **Recently reached an agreement with Japan**
- **Will start discussion with South Korea**

APEC CBPRs

- **6 APEC economies joined** (*i.e. USA, Canada, Mexico, Japan, South Korea and Singapore*)
- **2 new applications submitted** (*i.e. Australia and Chinese Taipei*)
- **22 companies certified**

EU-US Privacy Shield

- **3,200+ companies certified**
- **Effectiveness being questioned**, *e.g., by the European Parliament*

Privacy Challenges in Digital Economy

- Abuse of dominant position by “data monopolists”
- Lack of control and genuine choices by consumers

Competition

Privacy

- Excessive and covert data collection
- Exposure of sensitive information
- Unexpected, unfair and/or discriminatory use of data
- No meaningful consent

- Hacking
- Data leakage

Data Security

Cross-discipline and cross-border issues

- Consumer protection
- Cross-border data flow

Accountability & Ethics as the Answer



Risk-based approach of
accountability

*“Arguably the biggest change [brought by the GDPR] is around **accountability**.”*

Elizabeth Denham, Information Commissioner of the UK

*“[The GDPR] aims to **restore a sense of trust and control** over what happens to our online lives.”*

Giovanni Buttarelli, European Data Protection Supervisor

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Accountability – Privacy Management Programme (PMP)



Effective management of personal data



Risk minimisation

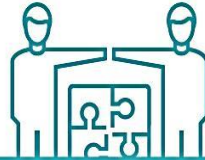


Effective handling of data breach



Demonstrate compliance and accountability

PMP – Main Components



1. Organisational Commitment

1.1 Buy-in from the Top

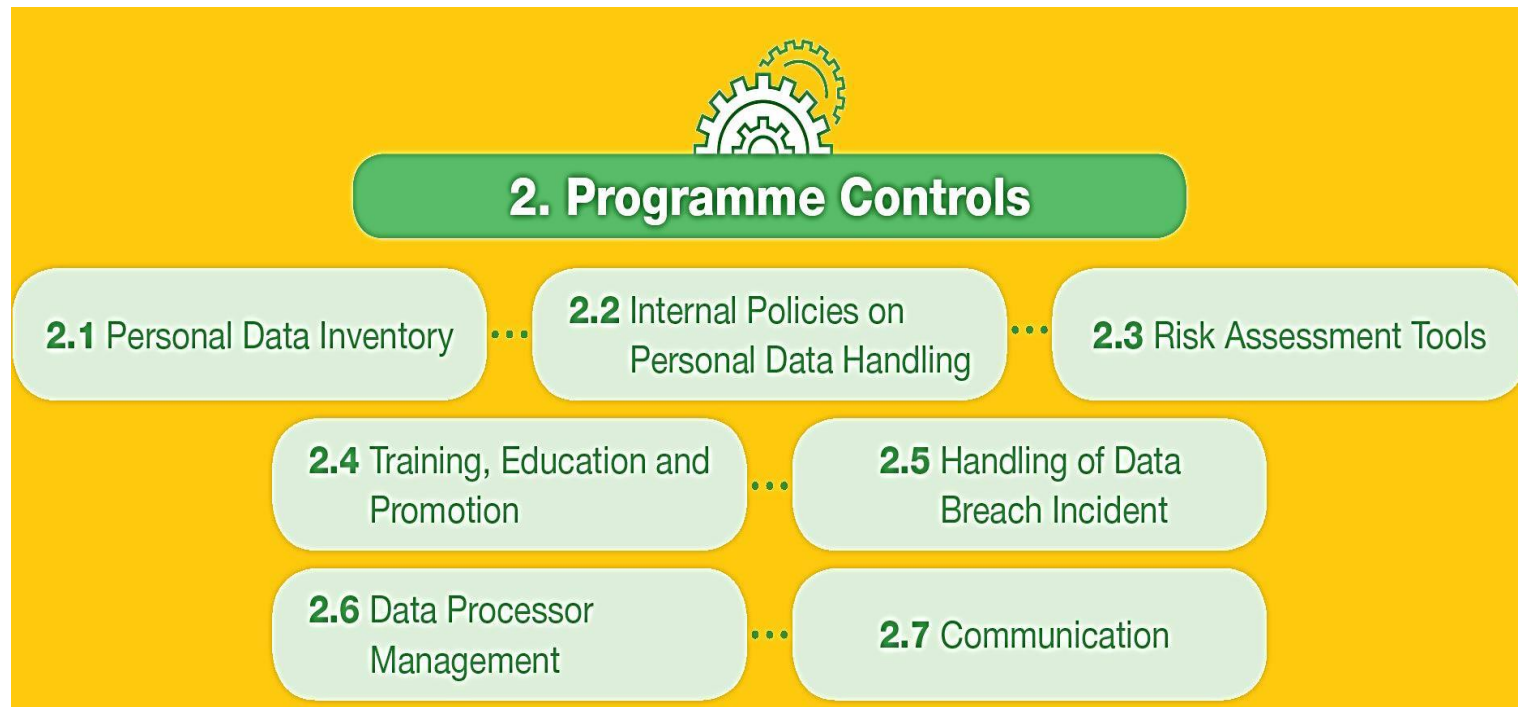
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1.2 Appointment of Data Protection Officer/
Establishment of Data Protection Office

...

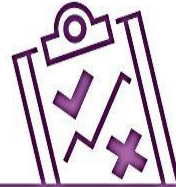
1.3 Establishment of Reporting Mechanisms

PMP – Main Components



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PMP – Main Components



3. Ongoing Assessment and Revision

3.1 Development of an Oversight and Review Plan

...

3.2 Assessment and Revision of Programme Controls

Data Ethics & Trust



No Surprise

Genuine Choices

Beneficial

15

Promoting Ethics: “Legitimacy of Data Processing Project”



Objectives

What does
“ethical data
processing”
mean?

“Fair data
processing” –
what would the
standards be to
describe what
being “fair”
means?

What is the direct or
indirect linkage
between fair/ethical
data processing and
legal requirements,
and what aspects of
ethical data
stewardship go
beyond the law?

What are the
motivators for
business to
adopt the
principles and
standards and
utilise ethical
data impact
assessments?

Deliverables by the Consultancy

(To be published in the end of October 2018)

Find out the meaning and core values of data ethics

Provide tools to bring the core values of data ethics into practice

Encourage businesses to embrace data ethics in daily operation

PCPD's Strategic Focus



Thank You!