Asia pacific news

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ARTICLE INFO	ABSTRACT
Article history:	This column provides a country-by-country analysis of the latest legal developments, cases and issues relevant to the IT, media and telecommunications' industries in key jurisdictions across the Asia Pacific region. The articles appearing in this column are intended to serve as 'alerts' and are not submitted as detailed analyses of cases or legal developments.
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1. Hong Kong

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1.1. Open wide! The HKMA's open API framework

On 18 July 2018, the Hong Kong Monetary Authority ("**HKMA**") issued its Open Application Programming Interface Framework for the Banking Sector ("**Open API Framework**"), following a consultation process that ended on 15 March 2018. The Open API Framework is aimed at the retail banking sector.

1.1.1. Background
Application programming interfaces ("**API**") are software protocols that enable different software systems or applications to communicate and interact with each other. The Open API Framework is not mandatory, and is intended to provide a high level guidance to retail banks to help streamline the process, whilst still providing flexibility.

By encouraging banks to make their system APIs open to third parties, subject to adequate security controls ("**Open APIs**"), third party platforms can more efficiently access the bank's data systems. The intent of the Open API Framework is to encourage the development of innovative technology solutions and the amalgamation of information by third party service providers ("**TSPs**") for the benefit of consumers (e.g. enabling consumers to compare competitive products offered by different banks, to view their various bank account information on one platform, to carry out payment transactions, etc).

The Open API Framework is one of the seven HKMA initiatives announced in September 2017, as part of its "New Era of Smart Banking". The HKMA has already opened the door for virtual banks and amended the licensing regime for stored value facilities, all in an attempt to stay competitive and not to be left behind. Other jurisdictions are already ahead of the game when it comes to Open APIs, including Singapore and the UK, the latter of which made Open APIs mandatory for the largest UK retail banks since January 2018.

1.1.2. Phased approach
The HKMA has proposed a four phase timeline for the implementation of the Open API Framework. The level of perceived risk increases with each phase, as does the level of protection required by the banks for the Open API implementation:

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(a) Phase 1 – "Product and service information" – this is for accessing "read only" bank information concerning details of their products and services. Prior to granting access to a TSP to the bank's Open API, the bank will need to implement safeguards concerning the authentication of the bank sites, the integrity of the data and the authentication of the TSP.

(b) Phase 2 – "Subscription and new applications for product/review" – this is in relation to a customer acquisition process, which will allow customers to make submissions or applications for bank products online. The bank will need to implement safeguards concerning the authentication of the bank sites, the integrity and confidentiality of the data and the authentication of the TSP.

(c) Phase 3 – "Account information" – this is for enabling the retrieval and amendment of account information of customers for standalone or aggregated viewing. As this poses a higher level of risk to customers, the bank will need to implement safeguards concerning the authentication of the bank sites, the integrity of the data, the authentication of the TSP and obtain the customer's authorisation.

(d) Phase 4 – "Transactions" – this relates to enabling the execution of banking transactions or payment instructions of a customer. The same level of protection as Phase 3 needs to be implemented by the bank.

Phase 1 is to be implemented within 6 months of the issuance of the Open API Framework, and Phase 2 is to be implemented with 12–15 months. The timeframe for Phases 3 and 4 shall be determined by the HKMA in the next 12 months.

1.1.3. *TSPs governance*
TSPs that access the Open APIs of banks will not need to be licensed or approved by the HKMA. As the banks will remain fully liable and responsible for any misuse of their customer data, the burden is on the bank to vet each TSP and ensure robust measures and contracts are in place to protect the data.

Phase 1
Under the Open API Framework, due to the limited risks posed by Phase 1 (i.e. no access to customer or proprietary data), the banks are only required to establish a simple TSP registration process and to require TSPs to agree to terms and conditions that incorporate some key terms. These include a requirement of the TSPs not to misrepresent the bank, to inform customers that the bank is not collecting any personal data via the TSPs platform, the TSPs must comply with applicable laws, including the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**"), and TSPs should inform customers of the risks and liabilities associated with the TSPs services.

Phase 2 to 4
More stringent requirements are imposed on the banks in Phases 2 to 4. The HKMA expects the banks to work together (e.g. via the Hong Kong Association of Banks) to establish a common baseline for TSP governance. It has been suggested that the banks centralise the process, e.g. appointing a central

assessor. This will help make the vetting of TSPs more efficient and streamlined amongst the banks, as TSPs can simply prepare standards documents and evidence required in order to gain approval and access to the Open APIs. The common baseline must require a due diligence of the TSPs business and risk management (e.g. financial stability, reputation, business and technical expertise, customer and data protection measures, cybersecurity controls, etc). In addition, the banks should establish an ongoing monitoring system to ensure that the TSPs continue to comply with the common baseline.

The banks will need to enter into agreements with the TSPs. In light of the potential risks and liabilities involved, it is vital for the banks to clearly set out what the obligations of the TSP are and their minimum responsibilities (i.e. in relation to consumer protection, disclosure, transparency, safeguarding measures, security control, restrictions on use). The banks should also incorporate strong liability and indemnity provisions, so that they can hold TSPs responsible for any losses suffered by the bank as a result of the TSPs actions or their platforms (e.g. any fines, customer claims, etc, imposed on the bank). Lastly, since the regulatory environment is still developing in this area, the TSP contract should be drafted in such a way as to allow some flexibility, e.g. change to be made in light of any regulatory amendments.

Each bank is expected to publish a list of all TSPs that have been granted access to their Open API, with information about the relevant services, mobile application, etc, offered by the TSPs.

1.1.4. *Open API implementation*
Rather than stipulating a standardised set of Open APIs or mandating security measures, the Open API Framework provides a recommended high-level list of Open API functions and recommended architecture and security standards based on existing international practice.

The banks will need to provide a roadmap to the HKMA of its Open API implementation, and to provide an explanation on how it is compliant with the recommended Open API functions, and the reasons for any divergence.

The HKMA also recommends the setting up of a single repository for all Open APIs.

1.1.5. *Conclusion*
The Open API Framework is a welcome step that will help keep Hong Kong competitive and will boost the fintech ecosystem in Hong Kong. However, the banks will need to ensure that any access to their data through the use of Open APIs is consistent with the PDPO, and robust contracts are in place to protect any misuse by TSPs.

With a lot of flexibility left to the banks, now is the time for them to come together to streamline the approach to ensure efficiency – a big job that may fall on the shoulders of the Hong Kong Association of Banks.

2. Japan

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