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The Singapore Personal Data Protection Act and an assessment of future trends in data privacy reform☆

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ABSTRACT

In the first part of this paper, I will present and explain the Singapore Personal Data Protection Act ("PDPA") in the context of legislative developments in the Asian region and against the well-established international baseline privacy standards. In the course of the above evaluation, reference will be made to the national laws and policy on data privacy prior to the enactment of the PDPA as well as current social and market practices in relation to personal data. In the second part of this paper, I will decipher and assess the future trends in data privacy reform and the future development of the privacy regime in Singapore and beyond. In the course of this analysis, international standards, technological trends and recent legal developments in other jurisdictions will be considered.

1. Introduction

The Singapore government earnestly began its study on suitable general personal data protection legislation for Singapore at the turn of the millennium. Even before that, the Law Reform Committee of the Singapore Academy of Law had published a working paper on "Data Protection in Singapore: A Case for Legislation" in 1990. Indications that the study and research into a suitable national data protection regime were almost completed came from various government officers including the Minister for Information, Communications and the Arts ("MICA"), which was the government department tasked with the matter, in early 2010. MICA subsequently issued three consultation papers between September 2011 to April 2012. The first consultation paper was on the framework of a proposed "Consumer Data Protection Regime" in Singapore.[1] This was followed by a more specific consultation paper on the feasibility of a "Do Not Call Registry" to be incorporated into the regime.[2] The third and final consultation paper,[3] which took into consideration the comments and feedback received on the first two public consultation papers, included a draft "Personal Data

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[1] On 13 September 2011, MICA released a Proposed Consumer Data Protection Regime for Singapore and began soliciting feedback through the public consultation process, which ended on 25 October 2011. The DP Public Consultation document ("CP 1") is available at: http://app.mica.gov.sg/Default.aspx?tabid=481.

[2] On 31 October 2011, MICA sought feedback on a proposed National Do Not Call Registry for Singapore, which ended on 5 December 2011. The DNC Registry Consultation document ("CP 2") is available at: http://app.mica.gov.sg/Default.aspx?tabid=483.

[3] MICA reportedly received 256 responses from organisations, mainly commercial and business entities as well as individuals or consumers representing the general public. This reflects the two main societal interests in the coverage of the regime. The responses also showed a divide in the interests of both segments.

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Protection Act" ("PDPA") with sufficiently detailed provisions and that also contained MICA's explanations on the meaning of those provisions.[4]

It has taken many years for such a law to materialise,[5] but Singapore finally saw its first general personal data protection law in Parliament in October 2012, which became law in January 2013 but will only take effect in the middle of 2014.[6] This is due to the 18 months sunrise period for most of its substantive provisions to take effect.[7]

In the meantime, significant developments have also occurred in other major jurisdictions. For example, on 25 January 2012, the European Commission proposed a major and comprehensive overhaul of the European Union's legal framework on the protection of personal data to further strengthen individual rights, especially in the face of challenges to those rights from globalisation and new technologies. A major change in its reform is the proposal to turn the data protection regime from a Directive to a Regulation, which will strengthen implementation and greater ensure harmonisation and consistency. Meanwhile, the United States is increasingly faced with the tensions of rapid development of online business and social networking models and has been addressing these at various levels of its administration.

Thus, it is an opportune time to examine both the PDPA and how it stands up to scrutiny against the established and globally recognised baseline privacy standards as well as the future development and expansion of personal data protection in the light of the challenges posed by information and communications technology. In this paper, I will first briefly present the international and regional personal data protection and privacy movement and the challenges posed by the digital era to personal data privacy, which will form the backdrop to the subsequent analyses in this paper. Second, the main substantive proposals to the national data protection regime in Singapore will be examined, with cross-references made to the provisions of the PDPA. In the process, I shall examine the significant provisions against their specific purpose and the general objectives of the law. Third, drawing ideas from the latest developments in data protection laws and practices, further proposals will be made to enhance the scope of personal data privacy protection in the longer term, both for Singapore and other countries that are at a similar level of development in its data privacy laws and policy.[8] In the process, comparative analysis of recent developments and trends in other jurisdictions, in particular the European Union ("EU") and the United States ("US") will be made where it is useful and relevant.

1.1. *The digital era and the greater need for personal data protection laws*

The digital era poses increasingly greater challenges to the integrity of personal informational privacy for many reasons. This is especially so in relation to private sector developments.[9]

First, consumer information is *"currency"*.[10] This is especially so for contact information and consumer profiles. An example of the former involves the collection and trading of marketing lists, containing contact data such as telephone numbers and electronic mail addresses, among businesses using electronic marketing tools to reach a greater group of potential clients. On the latter, the tracking of individual movement between websites constitutes valuable information and insight into personal behavioural patterns that can serve as a more effective alternative to other methods (such as customer surveys) and better improve advertisement targeting.

Second, the *nature of digitised information* contributes to an environment that does not respect personal data privacy. Personal data is much easier to collect and disseminate, and greater Internet user ignorance and carelessness in the online environment in revealing their personal 'footprints' and sharing personal information as well as the lack of knowledge and sophistication among such users to reduce or prevent data mining all add to the problem. Thus more needs to be done to educate users of their rights, and more effort is needed to compel greater transparency and disclosure by data collectors and data users as well as in the extent of the sharing personal information.

Third, the emphasis on protecting *personal privacy relating to personal data* is significant as well as opposed to privacy rights in general.[11] This recognises the need to protect personal

[4] On 19 March 2012, MICA finally released a proposed Personal Data Protection Act ("PDPA") with detailed and specific provisions including a summary of responses from its previous public consultation exercises and an explanation of its position in relation to the scope and provisions contained in the draft law. The proposed PDPA and Consultation paper ("CP 3") is available at: http://app.mica.gov.sg/Default.aspx?tabid=487. See also MICA's Press Release seeking feedback, available at: http://app.mica.gov.sg/Default.aspx?tabid=79&ctl=Details&mid=540&ItemID=1384.

[5] For an analysis of the state of the law prior to this, see Warren Chik, *The Lion, the Dragon and the Wardrobe Guarding the Doorway to Information and Communications Privacy on the Internet: A Comparative Case Study of Hong Kong and Singapore – Two Differing Asian Approaches*, 14 IJITL 47 (2005).

[6] The Personal Data Protection Act 2012 (Act 26 of 2012) became law on 2 January 2013.

[7] Under the Personal Data Protection Act 2012 (Commencement) Notification 2012, only "Parts I, II, VIII, IX (except sections 36 to 38, 41 and 43 to 48) and X (except section 67(1)), and the First, Seventh and Ninth Schedules" are in effect at the date the Act became law.

[8] Taking into account the need for a fair balance of rights and interests of all the stakeholders and larger public interest objectives. These suggestions are for further studies and are not necessarily required or even suitable for inclusion into the PDP framework at this stage.

[9] The focus of personal privacy and data protection laws in this paper is in relation to the private sector as the Singapore PDPA does not apply to the public sector. In contrast, the data protection law in some countries applies to both the public and private sector.

[10] World Economic Forum, *Personal Data: The Emergence of a New Asset Class* (World Economic Forum, 2011), available at: http://www3.weforum.org/docs/WEF_ITTC_PersonalDataNewAsset_Report_2011.pdf.

[11] See William L. Prosser, *Privacy*, 48 Cal. L. Rev. 383 (1960), available at: ww.californialawreview.org/assets/pdfs/misc/prosser_privacy.pdf.