



Malaysia next Asian country with privacy law

Japan, Taiwan and Hong Kong currently have generic laws for the protection of personal data. Malaysia plans to adopt a law in March 1988 which would cover both public and private sectors, and automatic and manual processing. The law would also create an independent data protection supervisory authority. Stephen Lau, Hong Kong's Privacy Commissioner, assesses Asia's privacy laws.

With the increasing tempo of global trade and services between Asia and the rest of the world, coupled with the recognition and expectations of increasingly affluent Asian communities for respect of human rights including privacy, the issue of information privacy is receiving significant attention by Asian governments.

Hong Kong's Personal Data (Privacy) Ordinance, adopted in 1995 (PL&B Aug '97 pp. 14-18), covers both the public and private sectors, and the processing of automated and manual data. The law also creates an independent supervisory authority with significant enforcement powers.

Japan's data protection legislation was enacted as long ago as 1988, but it applies only to national administrative organs (federal agencies), and personal data on computer processing systems. There have also been data protection guidelines in some areas of the private sector.

Taiwan's Personal Data (Privacy) Ordinance dates back to 1995. It covers both the public and private sectors, but has the same narrow scope as the Japanese law.

Asian laws conform to OECD guidelines

In order to achieve a better understanding of the three laws relative to two international sets of data protection provisions, the OECD guidelines and the EU Data Protection Directive, Mr Lau has undertaken a comparative study. While there are differences in some areas compared to the OECD principles, all three laws are in general conformance with the OECD guidelines. The following principles are manifestly present in these laws: the *security safeguard principle*, the *openness principle* and the *individual participation principle*.

EU DP Directive could impact trade

Adopted in 1995, the European Union Data Protection Directive is another milestone in global initiatives towards the protection of personal data. While enshrining a set of data protection principles as in the OECD guidelines, it goes beyond these principles in a number of significant aspects. These include the specifications of desirable *requirements* for a legal and administrative framework for member countries, and coverage of *both public and private sectors* without a differentiating distinction. Prohibition of transfers of personal data from member countries to those not having adequate data protection laws could have a far reaching impact on bilateral relationships in trade and commerce between members and other countries.

The **Hong Kong** law generally includes all aspects of the EU Directive, except in some areas such as purpose specification and processing of sensitive data. Like the Taiwanese and Japanese laws, it does not have a provision specifying the categories of sensitive data.

In general, the **Taiwanese and Japanese** laws partially conform with the EU Directive. One of the differences is the lack of an independent supervisory authority. In Taiwan, the Ministry of Justice is responsible for enforcing the law. The Japanese have a Management and Co-ordination Agency which seems to be mainly responsible for receiving notifications and providing advice. Another difference compared with the EU Directive is that neither law includes manual data.

At the moment, no other Asian countries have generic data protection legislation. Governments like those of Singapore, the Philippines, Indonesia and China are aware of the OECD guidelines and the EU Directive, but currently there are no plans in these countries to enact data protection laws.

The report is based on Mr Lau's presentation at the International Conference of Privacy & Data Protection Commissioners in Brussels, September 1997. Contact details are: Privacy Commissioner for Personal Data, Unit 2001, 20/F, Office Tower, Convention Plaza, 1 Harbour Rd, Wanchai, Hong Kong. Tel: + 852 2827 2827 Fax: + 852 2877 7026. Internet: <http://www.pco.org.hk>