

LexMundi

Data Privacy Trends and Topics 2023

Global Trends in Data Privacy in 2023



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Executive Summary

On behalf of Lex Mundi, it's a pleasure to present you with our Data Privacy Trends and Topics 2023 report.

As businesses increase their use of data to drive commercial activity, jurisdictions across the globe are strengthening regulatory frameworks and increasing controls on the collection, use and storage of personal information.

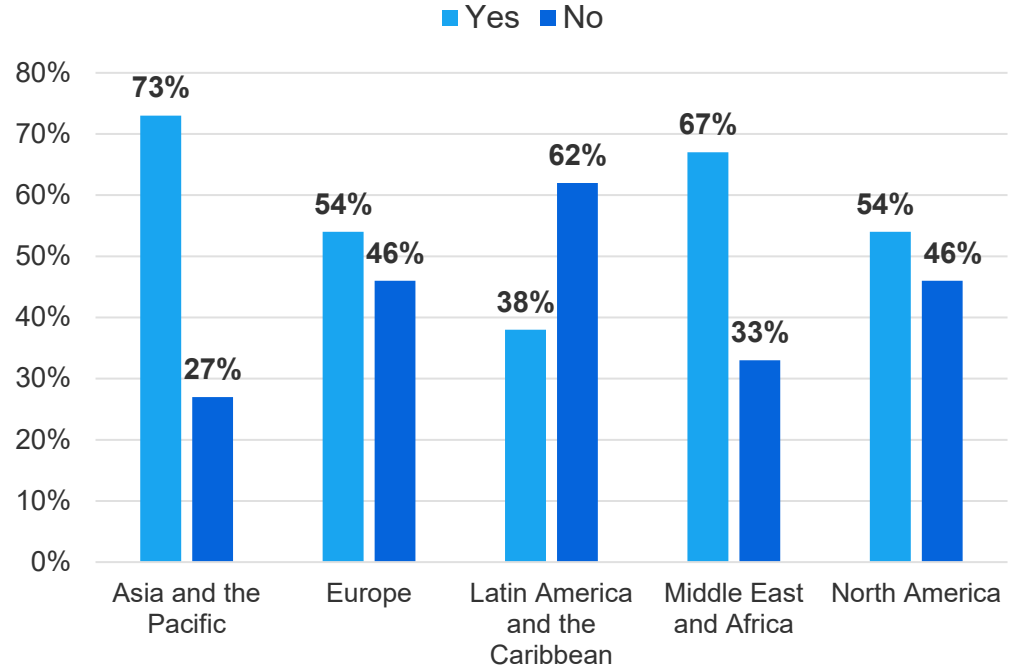
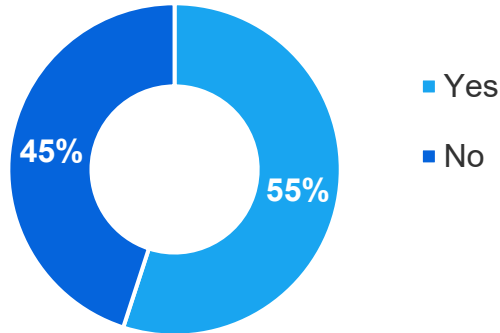
Our network of member firm lawyers provides local expertise on anticipating regulatory risk to overcome these cross-border data and cybersecurity challenges.

This report was developed based on contributions from 53 Lex Mundi member firms and identifies regulatory challenges and key developments to keep abreast of during 2023. 55% of our contributing member firms confirmed that they anticipate significant changes to the data protection landscape in their jurisdictions during 2023.

We hope you enjoy the compilation. If you have further questions with respect to particular jurisdictions (whether featured in this report or otherwise), feel free to connect with your local member firm or with the Lex Mundi team for further insights.

Global Trends in Data Privacy in 2023

Significant changes to the data protection landscape expected during 2023



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Australia

Clayton Utz



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Significant changes anticipated?

Yes. A report setting out findings of the Attorney-General's Department's review of the *Privacy Act* was provided to the Attorney General for consideration in late 2022. The review was undertaken to ensure privacy settings empower consumers, protect their data and best serve the Australian economy. The Attorney General is expected to release this report publicly, along with the Government's response, in the first half of 2023. In a Tweet on December 20, 2022, the Attorney General hinted that significant reforms can be expected given that, in his view, Australia's privacy laws are "out of date and not fit-for-purpose in our digital age". The Attorney General also commented that he will

carefully consider the report as he prepares to "overhaul" the *Privacy Act in 2023*. It is not yet clear what that overhaul will entail.

Other developments

In addition to the above, a number of significant enhancements to the *Privacy Act* came into effect on December 13, 2022. The measures include an expansion of the extraterritorial reach of the *Privacy Act*; increased penalties for serious or repeated interference with privacy; strengthening of the notifiable data breach regime; new information sharing powers for the Privacy Commissioner and Australian Communications and Media Authority; and enhanced enforcement powers for the Privacy Commissioner.



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Significant changes anticipated?

Yes. The Chinese legislation relating to various aspects such as cross-border transfer and specific rules in industrial sectors are likely to deepen and strengthen (including industries such as finance, pharmaceuticals and medical device, the internet and telecommunications).

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Hong Kong

Deacons



Machiuanna Chu

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Significant changes anticipated?

No. While Hong Kong's Privacy Commissioner for Personal Data ("PCPD") indicated in March 2022 that her office, together with the Hong Kong Government, are reviewing the *Personal Data (Privacy) Ordinance* to formulate legislative amendment proposals, as of the time of writing, no consultation paper or reform proposal have been published nor any timeline announced. For the amendment directions, please see our response below.

Other developments

The PCPD indicated that legislative amendment directions include whether to introduce mandatory data breach notification, specified data retention period, regulation of

data processors, and powers of the PCPD to impose administrative fines. In addition, following the PCPD's issuance of a guidance on data security measures for information and communications technology in August 2022, we expect data security and related risk management will continue to be a focus of in-house counsel and data professionals in the coming year.



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Significant changes anticipated?

Yes. The government finally issued a long-awaited law on data protection, namely, *Law No. 27 of 2022 on Personal Data Protection (“PDP Law”)*, which will be the overarching law for personal data protection across all sectors. The *PDP Law* introduces substantial changes to personal data protection requirements, compared to the previous regulatory regime. The *PDP Law* largely adopts various principles and provisions of the *European Union’s GDPR*, which would require undertakings in Indonesia to make significant adjustments to their current personal data processing practice (based on the previous regime). However, quite a number of provisions under the *PDP Law* require further elaboration, which would be stipulated

in future implementing regulations. Given that the *PDP Law* only provides a 2-year grace period, we anticipate that the government is expediting the issuance of the implementing regulations of the *PDP Law*.

Other developments

The *PDP Law* also mandates the establishment of a new data protection authority under the supervision of the President, which is yet to be established. Pending the issuance of the implementing regulations on the establishment of the new data protection authority, we expect that the enforcement of personal data protection requirements would be more stringent.



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Significant changes anticipated?

No. A major amendment of the Japanese data protection law (the *Act on the Protection of Personal Information, the APPI*) entered into force in 2022.

Other developments

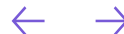
While the amendment of the *APPI* has just entered into force 2022, the practice and enforcement of the amendment will likely develop over the coming years, including 2023. In particular, the amendment has introduced the obligation to report a data breach to the authority and to the affected data subjects, while such report was not mandatory before the amendment. The actual cases of report tend to increase these days. We already

advised multiple non-Japanese international businesses that are subject to the *APPI* on whether such reporting is required in particular cases. Like the *GDPR* and *CCPA* (or *CPR*), the *APPI* may apply to businesses located outside Japan under certain circumstances, and dealing with the reporting obligation when a data breach occurs will be quite important in the case when they need to comply with the *APPI*.

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Malaysia

Skrine



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Significant changes anticipated?

Yes. There were plans to table amendments to the *PDPA* in Parliament in October 2022, but it has been delayed due to recent general elections. It is anticipated that the amendments are still in the pipeline for 2023. The key amendments to the *PDPA* include bringing the *PDPA* closer to *GDPR* standards (for example, requiring the appointment of a DPO, mandatory breach reporting requirements, etc.).

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New Zealand

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Significant changes anticipated?

Yes. The Government is considering potential changes to the notification rules when collecting personal information under the *Privacy Act 2020 (Privacy Act)*. The proposed changes will require an individual to be notified when an agency collects their personal information indirectly through a third party. Currently, the *Privacy Act* only requires an agency to notify an individual of the collection of their personal information when the agency is collecting the personal information directly from the individual concerned.

Other developments

The Privacy Commissioner is currently seeking public feedback on the regulation of biometrics in New Zealand. The Privacy Commissioner's preliminary view is that the current approach to regulating biometric information is no longer sufficient, so we expect to see some changes to this area in the near future. As these developments are in its early stages, it is unclear at this stage how the



Privacy Commissioner will implement any regulation on biometrics.

A *Digital Services Trust Framework Bill* has been introduced to Parliament. The Framework is a legislative framework for the provision of digital identity services in New Zealand and aims to create a regulatory environment which will support information sharing and data management practices for verifying a person's identity, by establishing common standards and best practice rules to be adhered to by the various players in the digital identity ecosystem.

The Government has agreed to introduce a consumer data right in New Zealand to provide a mechanism for consumers to securely share data that is held about them with trusted third parties. The first sector that the government is focusing on is the banking sector as the Government has announced that it will introduce open banking in New Zealand to empower consumers.

Pakistan

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Significant changes anticipated?

Yes. Presently, Pakistan does not have any extensive data protection legislation in place that specifically regulates matters in connection with the processing of personal data.

The *Personal Data Protection Bill 2021* has been pending before the assembly for many months. *The Bill*, once enacted, will be the main legislation regulating controllers and processors of personal data in Pakistan and will apply to any person who processes, has control over, or authorizes the processing of any personal data, provided that the data subject, data controller, or data processor (either local or foreign) is located in Pakistan.

Sri Lanka

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Significant changes anticipated?

Yes. The *Personal Data Protection Act No.9 of 2022* (“*PDPA*”) was recently enacted by the Parliament of Sri Lanka which addresses all matters pertaining to data protection. Until its enactment there was no general law in Sri Lanka that governed data protection. All provisions of the *PDPA* except for provisions of *Part IV (Use of Personal Data to Disseminate Solicited Messages)* and *Part V (Data Protection Authority)* will come into operation on such date as the relevant Minister may appoint by Order published in the *Gazette*, which shall be a date not earlier than 18 months and not later than 36 months from the date of the certificate of the speaker. Certificate of the speaker on the *PDPA* was given on

March 22, 2022 (“Speaker’s Certificate”). Accordingly, the provisions of the *PDPA* may come into force not earlier than September 2023 and not later than March 2025. The *PDPA* imposes certain obligations on companies including foreign entities which provide services in Sri Lanka to adhere to such rules and procedures specified thereunder in processing personal data of data subjects in Sri Lanka. Once the provisions of the *PDPA* come into effect, cross-border data transfers will be subject to such conditions set out thereunder.



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Significant changes anticipated?

No. The privacy law in Taiwan has undergone two significant changes in 2012 and 2016, respectively. Currently we observe no indication of any significant change in the near future.

Other developments

Establishment of personal data protection and administration system and policy to facilitate law compliance.

Thailand

Tilleke & Gibbins



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Significant changes anticipated?

Yes. The Thai *Personal Data Protection Act* has just come into effect earlier last year (June 2022). The act provides main principles for personal data protection while requiring a number of subordinate regulations to provide further clarification so that businesses can actually comply with the requirements. The sub-regulations should address, at least, on cross-border transfer, data incident management, consent requirements, DPO, and data subject rights. We also anticipate that the regulator (Personal Data Protection Committee) will become more active in enforcing the *PDPA*'s requirements - after it has just been fully established in the previous year. There are certain subordinate

regulations to be issued by the personal data protection committee in 2023.

Other developments

Other developments are expected around data breach and incident management, cross-border requirements, and DPOs. We also expect to see a notification '*Measures for Cross-Border Transfer of Personal Data*' which will, once issued, supplement the principle of cross-border transfer of personal data outside of Thailand set out in the *Personal Data Protection Act (PDPA)*.

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Europe



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Belgium

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Significant changes anticipated?

No. We expect some new guidelines by the EDPB and BDPA and case law, but no new acts are to be expected. We have had the *Belgian Privacy Act* since July 30, 2018, complementing the *GDPR* which is fully applicable within Belgian legal order. No specific changes in this regard are expected in 2023.

Other developments

- Data mining (including personal and non-personal data) cfr DSM.
- *The Belgian Act on whistleblowing (transposing EU Dir. 2019/1937)* has been published and will be applicable as of February 15, 2023 (for companies between

50-250 employees as of December 17, 2023, for some obligations). The implementation of such *Act* will have an impact on the data protection processes within the company (e.g., *ROPA* will have to be updated, specific privacy policy should be drafted, possibly a *DPIA* is required, etc.).

- Many clients are working to ensure compliance with *EU Regulation 2022/2065 (the "Digital Services Act")*, applicable as of February 17, 2024.

Czech Republic

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Significant changes anticipated?

Yes. The Czech Republic finally seems to be on its way to adopting whistleblowing legislation after several unsuccessful attempts. The bill strives to implement European legislation and go beyond, at the same time it is under relatively strong criticism from non-governmental organizations. Its final scope and the level of protection is yet to be awaited. Even though many firms are in the process of implementation already, it is understandable that many are waiting for the final wording to be able to implement protection of whistleblowers, which will have to take into consideration the data protection regulation.

Other developments

It is likely that the local data protection authority will further concentrate its inspections on cookies and unsolicited messages and calls. A new adequacy decision for the transfers to U.S. is eagerly awaited within the first half of 2023, which will make a substantial amount of international transfers significantly easier.



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Significant changes anticipated?

No. There has been no discussion in the legal landscape regarding any changes. Furthermore, the Parliament of Estonia has not initiated any drafts regarding data protection.

Other developments

A recent hot topic in Estonia 2022 has been the use of cameras for video surveillance which could also be the focus in 2023 for the Estonian Data Protection Inspectorate. In addition, in 2020 Ministry of Justice drafted a law that would allow the application of fines in administrative proceedings (currently the Estonian legal system does not allow administrative fines); however due to the fact that the draft raised questions about the

necessity and how it changes administrative proceedings, the draft law has not been finalized or submitted to the Parliament. There is no indication that it will be done anytime soon.



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Significant changes anticipated?

Yes. Yes. We expect further developments around data protection enforcement, ePrivacy regulation and cyberattacks.

Other developments

We expect to see further changes around the transfer of data outside the EEA and the use of cookies.



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Significant changes anticipated?

Yes. Digital transformation and regulation of new technologies has been high on the regulatory agenda in Greece. New rules introduced in the second half of 2022 will, effectively, start being enforced in 2023; relevant supplementary pieces of legislation, expected within the following months, will, hopefully, clarify vague areas and help organizations navigate a constantly evolving legal landscape. In this context, recently introduced regulation on Artificial Intelligence (AI), Internet of Things (IoT) technologies, distributed ledger technology (DLT) applications, etc. pose some challenging data protection and cybersecurity issues and compliance requirements that organizations will need to understand and properly address.

Other developments

Organizations falling within the scope of the newly introduced whistleblowing law (which has transposed the *EU Whistleblowing Directive*), will need to implement appropriate measures, a quite challenging exercise, considering the inefficiencies of the Greek law. Another area that will require compliance effort in 2023 is observance of rules regarding the use of AI for HR management, also for commercial and marketing practices (e.g., evaluation of employees, credit risk assessment of business partners, consumer profiling). As a first step, organizations will need to audit and identify AI-dependent tools used to make operational decisions. Following that, identifying, assessing and handling data protection risks linked with the processing operations is required for *GDPR* compliance.

Iceland

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Significant changes anticipated?

No. There are no changes foreseeable in relation to the legislation. We could see increase in cases from the Data Protection Authority and possibly higher fines - but there is nothing suggesting significant changes.

Other developments

Transfer of data outside the EEA, use of cookies.

Luxembourg

Arendt & Medernach



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Significant changes anticipated?

No. but there are other matters that might be on the horizon:

- transfers of personal data to third countries not offering an adequate level of protection,
- cybersecurity,
- risks resulting from service providers handling of personal data, and
- artificial intelligence.

Malta

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Significant changes anticipated?

No. Apart from awaiting further progress/news in relation to the pending *EU ePrivacy Regulation*, we do not anticipate any significant changes to the data protection landscape in Malta in 2023.

Other developments

None envisaged at this stage given that last changes seen where in relation to third country transfers and rights of third-party beneficiaries.



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Significant changes anticipated?

No. No major changes are expected with respect to the *GDPR*. Developments will be based on case law and supervisory authority guidance.

Other developments

There might be other developments in the following matters:

- data privacy class actions,
- artificial intelligence, and
- the *Digital Services Act/Digital Market Act*.

Portugal

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Significant changes anticipated?

Yes. At the end of 2022 we witnessed several decisions of the Portuguese DPA applying higher fines. We strongly suggest that companies expect further action from a more aggressive data protection authority.

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Significant changes anticipated?

Yes. The Government shall adopt *Guidelines for Development, Application and Use of Trustworthy and Responsible Artificial Intelligence*.

Other developments

The *Guidelines* will represent soft law defining high risk AI systems, principles and conditions to be taken into account for development, application and use of AI systems and questionnaire to check the compliance with principles and conditions. The *Law* shall define collection, i.e., transfer genetic and biomedical data from the state institutions carrying out genome sequencing and processing biomedical data and store them on online platform managed by the Office for Technologic Development and E-Government

– forming genetic and biomedical repository with an aim: i) to connect collected data with patients' health electronic records to be used by HCPs; ii) to (pseudo) anonymize personal data and to enable access to data, data sharing and manipulation by researchers and commerce to do scientific research and development of AI algorithms in biomedicine for fast diagnostic of rare diseases and assistance of prevention of human diseases. The benefits expected include the development of precision medicine and better patient treatment, early diagnostics, improved registries of diseases, increase of NGS capacities, development of genetic data standards, integration of various electronic healthcare systems, increase of the number of clinical studies conducted in Serbia, etc.



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Significant changes anticipated?

Yes. In particular in the field of compliance and whistleblowing, there are ongoing substantial changes.

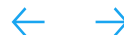
Other developments

Spain is in the process of implementing the EU Directive on compliance. This framework includes specific rules on the importance of the parties involved (denouncing party, denounced, victim, etc.)

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Switzerland

Pestalozzi



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Significant changes anticipated?

Yes. The new *Federal Data Protection Act* will enter into force on September 1, 2023.

Other developments

Following the implementation of the new *DPA*, the 26 Swiss Cantons may also initiate the revision of their *cantonal DPA data protection act*, applicable to all cantonal and communal authorities.

Latin America and the Caribbean

Argentina

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Diego Fernandez

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Significant changes anticipated?

Yes. Possible amendment to the current data protection law; possible entry into force of *Convention 108*.

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Significant changes anticipated?

No. There are two legal projects on Data Privacy since 2019 in the Congress; neither of which have been passed through for publication yet.

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Significant changes anticipated?

Yes. Late 2022, the Brazilian Data Protection Authority (ANPD) received an independent status, which will give ANPD more autonomy and independence to act. The Authority release in November 2022 its regulatory agenda for 2023-2024, which includes the enactment of several important implementing regulations such as the regulation (i) on dosimetry of penalties, (ii) report of data breaches, (iii) cross-border data flow, (iv) data subjects' rights, among others.

The National Data Protection Authority (ANPD) intends to proceed with the following matters, among others: 1. Regulation of dosimetry and application of administrative sanctions; 2. Rights of data subjects; 3. Incident reporting and notification deadline specification; 4. International transfer of personal data; 5. Data

protection impact report(DPIA); 6. Data Protection Officer; 7. Legal hypotheses for the processing of personal data; 8. Definition of high risk and large scale; 9. Anonymization and pseudonymization; 10. Processing of personal data of children and adolescents; 11. Sensitive personal data - biometric data; 12. Security, technical and administrative measures (including minimum technical security standards; 13. Artificial intelligence. Those topics are very important and any regulation and discussion about them are critical to companies.

Other Developments

We anticipate that the enactment of implementing regulations by ANPD would be of interest to in-house counsel.

Issues involving cybersecurity and prevention in general.

Chile

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Significant changes anticipated?

Yes. A general new data protection law (bill in Congress) and several new regulations on open banking.

Other Developments

New business opportunities in an open banking environment should be of interest too.

Colombia

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Significant changes anticipated?

No. There are no envisioned bills or regulatory proposals. Colombia has an up to date and comprehensive data protection regime and the government has not announced any changes in connection thereto.

Other Developments

Enforcement of existing data privacy regulations may shift in consideration of recent regulatory developments in the EU, a growing concern in cybersecurity, a new head of the data protection authority (no appointments yet, but is expected), and a surge in the use of AI-related technologies by the public at large. Data breaches will probably continue to increase.

Costa Rica

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Significant changes anticipated?

Yes. A Cybersecurity law is in process. Costa Rican Congress is currently discussing a bill that seeks to repeal the current *Data Privacy Act* and enact a new *Data Privacy Law* that is more aligned with the *EEU regulations* on this subject matter. Notwithstanding the above, it is still unclear when and if such bill will be discussed and if so, what will the final text be like.

Other Developments

Cybersecurity will be a topic of interest in the near future.

Dominican Republic

Pellerano & Herrera



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Significant changes anticipated?

No. There is a project for amending the law which perished in the last legislature and was reintroduced in January 2022, it has been in charge of a committee since April 2022. It seems that it may follow the same path as in the prior year. However, due to the digital transformation that has been taking place since the pandemic both in the private and public sector as well, it is urgent to have a true legal frame for data protection since the current legislation scope may be construed as limited to credit records.

Other Developments

Other developments or hot topics may be based upon eventual Constitutional Court or Supreme Court of Justice precedents.

Guatemala

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Paola Galich

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Significant changes anticipated?

No. Guatemala will hold general elections in 2023 and its not likely that a new law will be approved in Congress.

Other Developments

Data privacy and employer obligations will be matters of interest in the near future.

Jamaica

Myers, Fletcher & Gordon



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Significant changes anticipated?

Yes. Regulations to make Act operational are expected to be passed and come into force in 2023.

Other Developments

Beneficial Ownership Requirements will also be of interest in the upcoming months.

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Significant changes anticipated?

No. In the Congress and within the Academy and Institutions, are several efforts and initiatives to modify the law for the private sector. However, 2023 will be a year with political vision considering it will be the last year of the President. Additionally, privacy and data protection is not within the Presidents or its party an interest.

Paraguay

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Partner

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Significant changes anticipated?

No. The law enacted in 2020 has legal loopholes, as it leaves personal data in general unprotected, and refers mostly to the protection of personal credit data. For this reason, the Chamber of Deputies is currently working on a personal data protection bill. However, it must be taken into account that it is a long process to reach the enactment and publication of the law, since: (1) the Chamber of Deputies must approve the bill; (2) the Chamber of Senators must approve the bill (or may amend or even reject it, in which case the bill returns to the Chamber of Deputies); and (3) once both Chambers have approved the bill, the enactment of the law is in the hands of the Executive Branch, which, in turn, also has its

own process. We are currently in the study and drafting stage of the new bill by the Chamber of Deputies, so it is unlikely that the new law will be passed in 2023.

Uruguay

Guyer & Regules



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Significant changes anticipated?

No. As of today, we do not anticipate any significant changes to the data protection landscape in Uruguay during 2023.

Notwithstanding the aforesaid we point out that *Law No. 20,075* approved in 2022, among others, introduced amendments to *Law No. 18,331 (Data Protection Law)*. These changes include the duty to inform the data owners about: i) the existence or not of international data transfers; and ii) in the case of automated processing of personal data, the assessment criteria applied, and the technological solution or program used. *Law No. 20,075* also stated that the URCDP (the Uruguayan data protection authority) shall establish the criteria and procedures to be observed by those responsible and in charge of the automated processing of personal data. Therefore, even if this is not a significant change, we would like to point out that, it is expected that the URCDP

will issue a *Resolution* establishing these parameters. On the other hand, considering that on December 13, 2022, the European Commission issued a draft adequacy decision, kicking-off the formal process to adopt the new *Trans-Atlantic Data Privacy Framework (“DPF”)* it is expected that the URCDP also analyses this matter following the footsteps of the European Commission as done before.

Other Developments

In addition to what was said above, other hot topics of interest include the responsibilities applicable to DPOs, which measures a DPO or the person responsible of data protection matters should consider. Other interesting matter could be personal data and consumers (e.g., marketing campaigns, in which cases it is possible to contact data owners register in registries such as “do not disturb”, etc.) and the use of cookies.



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Significant changes anticipated?

No. Data privacy has not been included in the legislative agenda for this year and no significant regulations or changes were made last year neither.

Other Developments

How to embrace and adapt local data privacy scarce rules with the *GDPR* of the EU and the U.S. framework when treating personal data of clients.

LexMundi

Middle East and Africa



Nigeria

Udo Udoma & Belo-Osagie



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Significant changes anticipated?

Yes. A new data protection regulation agency was established in 2022 and the new agency is urgently working on a new data protection law for Nigeria. This will be the first substantive data protection act in Nigeria, and it is bound to generate a lot of interest in terms of its provisions and enforcement.

Other Developments

We believe that enforcement of data protection regulations and the government's attempt to regulate big data companies who collect and process the data of Nigerian citizens and residents will be topical issues this year.



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Significant changes anticipated?

No. *The Protection of Personal Information Act (POPIA)* which regulates data protection in South Africa is a fairly new piece of legislation. It came into force on July 1, 2020, and allowed a transitional period of 1 year, to June 30, 2021. *POPIA* has accordingly only really been in force for 18 months and enforcement has been fairly slow. We therefore anticipate clarification on the meaning of provisions in *POPIA* from the Information Regulator, but not significant changes to *POPIA* or the data protection landscape as such.

The data protection legislation has recently become fully enforceable. The data protection authority, the Information Regulator, is in the process of publishing guidelines on how to comply with the requirements under the new law.

Other Developments

One of the big compliance issues faced by organizations is retention periods applicable to personal information. There is a general reluctance to "press delete", and organizations are grappling with ways in which to deal with the requirement to "only retain personal information for so long as is required for the achievement of the purpose for which it was collected", subject to certain stated exceptions. Another hot topic is the linking of personal information from various sources/responsible parties (such as linking customer information to information from credit bureau in order to have more targeted marketing campaigns;) and how this might be done with due compliance with the provisions of *POPIA*.

The interplay between cybersecurity breaches and data breaches; the regulation of artificial intelligence in the context of automated decision making.

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United Arab Emirates

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Significant changes anticipated?

Yes. We are anticipating enacting regulations to supplement the new *Federal Data Protection Law*.

Towards the final quarter of 2021, the UAE issued *Federal Decree Law 45 of 2021 regarding the Protection of Personal Data*. The introduction of this law constitutes an integrated framework to ensure the confidentiality of information and protect privacy of individuals in the UAE. The law specified the introduction of an 'implementing regulation' (which is yet to be issued), which should shed some further details regarding the application and enforceability of this law.

Other Developments

- Increased clarity for the UAE.
- Managing data privacy risks through data mapping
- The role of the UAE Data Office to administer cybersecurity and data privacy

breaches.

- Middle East cultural preferences and its impact on data privacy regulators;
- The tendency of issuing fines or sanctions when comparing and contrasting with the common law data protection regulators of the UAE freezones.
- Navigating the Central Bank's consumer data protections regulations applicable to licensed financial institutions.
- The *UAE Data Protection Law* compliance requirements.
- How companies can deploy their AI to comply with the *UAE Data Privacy legal framework*.

North America



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Significant changes anticipated?

Yes. *Bill C-27 (the Digital Charter Implementation Act, 2022)* is currently pending before Canada's parliament and will replace *PIPEDA*, Canada's federal private sector privacy law. Most notably, there are potential significant penalties for non-compliance and *Bill C-27* will require each regulated organization to have a documented Privacy Management Program, which has to be provided to the Privacy Commissioner upon request. *Bill C-27* also establishes a new tribunal which will be responsible for imposing penalties.

Other Developments

- *AIDA: Bill C-27* also introduces the new "*Artificial Intelligence and Data Act*" ("*AIDA*"), which would regulate international and interprovincial trade and commerce in AI systems by introducing new requirements for the design, development, and use of AI systems,

including risk-mitigation measures to prevent harm and biased output when using AI systems. Many of the obligations under *AIDA* are to be determined by regulations, which have yet to be drafted.

- Liability where a commercial database is hacked: Ontario's Court of Appeal held in late 2022 that the tort of intrusion upon seclusion, which obviates the need for a plaintiff to prove a quantifiable loss, does not extend to "constructive intruders", meaning an organization that suffers a data breach as a result of a third-party hacker is not itself an "intruder", and is therefore not liable under the tort of intrusion upon seclusion. Negligence, breach of confidence and breach of contract are all still relevant in such circumstances, meaning organizations should take all possible steps to guard against data breaches.

USA, Federal

Womble Bond Dickinson



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Significant changes anticipated?

Yes. We anticipate more proposed legislation across states as the *CPRA* which amends the *CCPA* under California law took effect January 1, 2023; the *Virginia Consumer Data Protection Act* took effect January 1, 2023; *Colorado Privacy Act* is effective July 1, 2023; *Connecticut Data Privacy Act* is effective July 1, 2023; and *Utah Consumer Privacy Act* effective December 31, 2023. In addition, we anticipate additional states such as WA, NY, FL, and many others to propose similar privacy legislation. We also expect continued federal proposals for omnibus privacy laws. In addition, the U.S. continues to finalize the proposed data transfer arrangement with EU authorities. We also expect continued legislation around specific types of data and activities, such as biometric data and use of precise geolocation.

Other Developments

Data privacy and cybersecurity will continue to feature in media attention and as key topics for politicians. As mentioned above, the focus on sensitive data types (which are now being treated with heightened protections under the new state laws noted above) will likely continue. These new privacy laws will continue digital advertising and AdTech practices as historically deployed. More states and federal authorities will continue to allocate resources to policing and enforcing these obligations as we look to see how the California Privacy Protection Agency carries out its enforcement activities, which may set a trend for other authorities. The Federal Trade Commission has also made clear that it is fully staffed and committed to protecting consumer privacy through its broad enforcement power.

USA, California

Baker Botts L.L.P.



Matthew Baker

Partner

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Significant changes anticipated?

Yes. The *California Privacy Rights Act* takes effect January 1, 2023, and long with implementing regulations.

Other Developments

In addition, the SEC's proposed cyber disclosure rules are poised to take effect in 2023. Finally, the TSA has issued notice of proposed rulemaking for cyber regulations for the pipeline and railway industries that will start in 2023.

USA, Colorado

Davis Graham & Stubbs LLP



Chad Ergun

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Significant changes anticipated?

Yes. Stricter compliance rules, increased data audits from clients and new security regulations.

Other Developments

Data privacy regulations and country/state specific changes in data security.

USA, Connecticut

Day Pitney LLP



William (Bill) Roberts

Partner

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Significant changes anticipated?

Yes. Connecticut passed a new comprehensive consumer data privacy law that will come into effect in 2023.

Other Developments

Biometric data privacy compliance and data privacy litigation are thing issues we see growing in the next year.

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USA, Florida

Akerman LLP



Megan Costa DeLeon

Partner

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Significant changes anticipated?

Yes. There are 5 privacy laws coming into effect this year, one of which is CA which became effective Jan. 1, 2023. There are also big issues with personal data sale and sharing for targeted marketing/advertising/profiling, cookies, California AG enforcement, the regulations for the CPRA that haven't yet been finalized.

USA, Guam

Blair Sterling Johnson & Martinez P.C.



Jehan'Ad Martinez

Principal

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Significant changes anticipated?

No. There has been no enforcement of Guam data privacy law since they were promulgated. Consequently, there does not appear to be a need to update the current law.

USA, Kansas

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Partner

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Significant changes anticipated?

No. There is no indication from the Kansas legislature of changes in the data protection landscape for 2023.

Other Developments

Significant changes in data privacy legislation from other jurisdictions necessitate updated data privacy policies and practices.

USA, Massachusetts

Foley Hoag LLP



Colin Zick

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Significant changes anticipated?

No. Draft legislation does not seem to have support in the Massachusetts legislature.

Other Developments

We expect that Cyber insurance might have significant changes.

USA, Mississippi

Butler Snow LLP



Melody McAnally

Partner

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Significant changes anticipated?

Yes. A consumer privacy bill was introduced in the Mississippi Legislature in the 2022 legislative session, but it died in committee. It will likely be re-introduced in the 2023 legislative session.

USA, Missouri

Armstrong Teasdale LLP



Jeffrey Schultz

Partner

Armstrong Teasdale LLP

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Significant changes anticipated?

No. At present, no Missouri state-level changes to the data protection landscape are anticipated.

USA, Oklahoma

Crowe & Dunlevy



Anthony Hendricks

Director, Shareholder

Crowe & Dunlevy

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Significant changes anticipated?

No. Oklahoma State House has proposed a comprehensive data privacy law. However, this same bill has failed to pass three years in a row. If this bill does pass, it would be significant because it contains a first in the nation opt-in requirement.

USA, Puerto Rico

McConnell Valdés LLC



Luis A. Cáceres-Casasnovas

Income Member

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Significant changes anticipated?

No. Legislative bills in Puerto Rico covering these subjects have not advanced since they were first introduced by the Puerto Rico Legislature. We expect developments around statutory/regulatory notice requirements as a result of a data breach involving consumer personal information.

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