

Overview of Data and Privacy Protection in the ASEAN region

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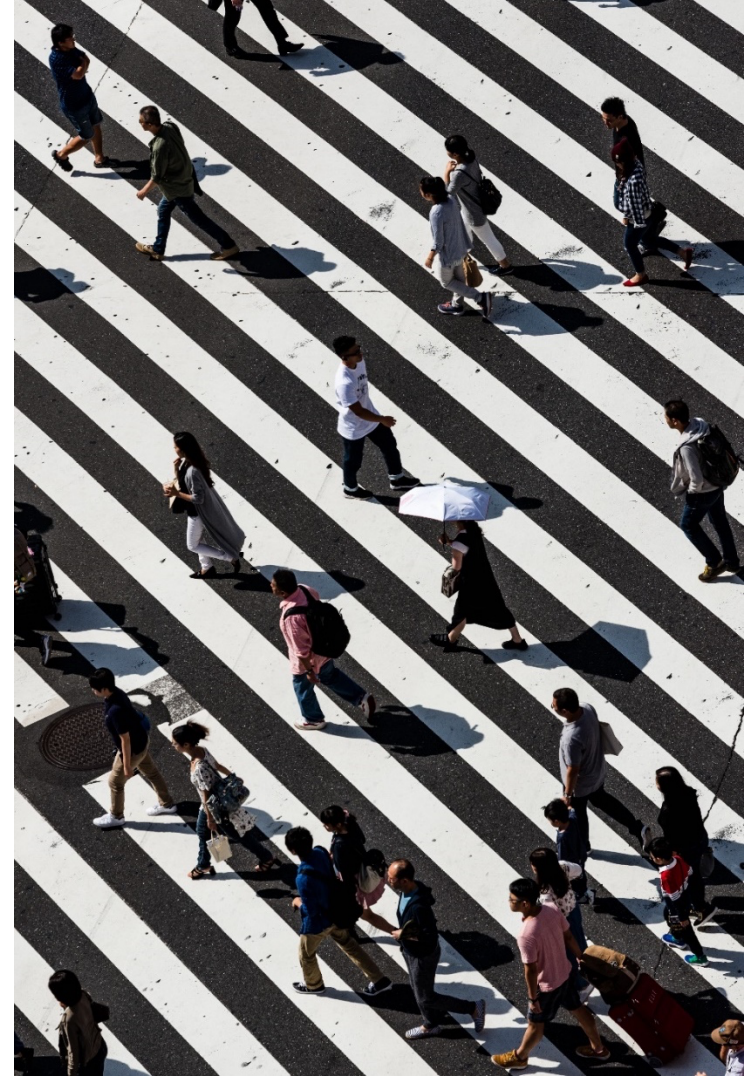
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Agenda

1. A Glance at ASEAN Member States with Data Privacy Laws
2. Cross-Border Data Transfer Provisions
3. Recent Initiatives of ASEAN on Cross-Border Data Transfer



1. A Glance at ASEAN Member States with Data Privacy Laws

ASEAN



- **ASEAN:** unlike the EU, the ASEAN Framework on Personal Data Protection (2016), is a voluntary basis, including cross-border transfer rules. Each ASEAN member state develops its own regulation. Nevertheless, most of the ASEAN member states' provisions reflect the principles of the ASEAN Framework on Personal Data Protection.

2. Cross-Border Data Transfer Provisions

Country	Regulation	Cross-border data transfer grounds	Regulator
Malaysia	Comprehensive	Adequacy protection level of destination country, consent, <u>contracts</u> , appropriate safeguards, vital interests.	Ministry of information, culture, and communication (MIC)
Philippines	Comprehensive	Accountability is placed to a data controller to ensure <u>contracts</u> or other means that provide a comparable protection level.	National privacy commission (NPC)
Singapore	Comprehensive	Comparable protection level of destination country, consent, <u>contracts</u> , binding corporate rules (BCRs)	Personal data protection commission (PDPC)
Thailand	Comprehensive	Adequacy protection level of destination country, consent, <u>contracts</u> , legal obligation, important public task, vital interests.	Office of Personal Data Protection Committee
Indonesia	Sectoral (but now drafting comprehensive law)	Report to regulator <ul style="list-style-type: none">- Banking sector, report to Bank of Indonesia- MOCI	Ministry of communication and informatics (MOCI)

Common grounds:
Contracts for cross-border data transfers

3. Recent Initiatives of ASEAN on Cross-Border Data Transfer

ASEAN Framework on Personal Data Protection (2016)

Legal force: Voluntary

Cross-border data transfers grounds

- Consent, or
- Comparable level of protection of the destination country

ASEAN Cross Border Data Flows (CBDF) Mechanism

Legal force: Voluntary

ASEAN Model Contractual Clauses (MCCs)

Approved by the 1st ASEAN Digital Ministers' Meeting (ADGMIN), January 2021.

ASEAN Certification for Cross Border Data Flows

Details will be finalised in 2021.

ASEAN Framework on Digital Data Governance (2018)

Legal force: Voluntary

Data Life Cycle & Ecosystem

Outcomes:

- Data governance throughout the data lifecycle (e.g., collection, use, access, storage)
- Adequate protection for different types of data

Initiative:
ASEAN Data
Classification
Framework

Cross Border Data Flows

Outcomes:

- Business certainty on cross border data flows
- No unnecessary restrictions on data flows

Initiative:
ASEAN Cross
Border Data Flows
Mechanism

Digitalisation and Emerging Technologies

Outcomes:

- Data capacity (infrastructure and skills) development
- Leveraging new technologies

Initiative:
ASEAN Digital
Innovation Forum

Legal and Regulatory

Outcomes:

- Harmonised legal and regulatory landscapes in ASEAN (including personal data protection)
- Development and adoption of best practices

Initiative:
ASEAN Data
Protection and
Privacy Forum

ASEAN Model Contractual Clauses (MCCs)

Two modules:

Controller-to-Processor MCCs

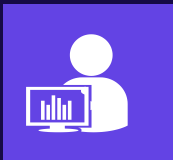
- For transfer from data controller (data exporting company) to data processor who processes data on behalf of the exporting company
- e.g. payroll services and online delivery

Controller-to-Controller MCCs

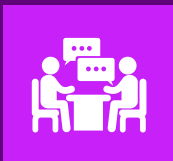
- For transfer from data exporting company to data recipient who processes data for its own purpose and has full control of data
- e.g. sale of advertising database

Key Features

ASEAN Model
Contractual Clauses
(MCCs)



Intra-ASEAN flow of personal data to support the regional digital economy and digital trade



Baseline set of clauses consistent with the ASEAN Framework on Personal Data Protection



Voluntary for ASEAN Member States



Flexible template with optional supplemental obligations

Topics	Regional Framework Comparison			
	GDPR	APEC CBPR	ASEAN Personal Data Protection Framework	ASEAN CBDF
1. Legal force	Binding	Binding on participating organisations	Non-binding	Non-binding
2. Grounds for cross-border data transfer	Free flow within EU Transfer grounds outside EU: <ul style="list-style-type: none">- Adequacy decisions- Appropriate safeguards (contractual clauses, BCR, certification)	The recipient certified by CBPR scheme	<ul style="list-style-type: none">- Consent- Comparable level of protection of the destination country	<ul style="list-style-type: none">- MCCs- Certification (details to be drafted)
3. Oversight body	EU Commission	Joint Oversight Panel	None	Oversight panel
4. Role of oversight body	Decision and recommendation on transfer (direct involvement)	Monitor, compliance, and complaint handling on accountability agent matter	None	Oversee operations and approve certification body
5. Enforcement	Power to make decision on transfer matter	Enforce certification, de-certify an accountability agent	Consultation	<ul style="list-style-type: none">- Data protection authorities for certification- Adjudication for MCCs

Thank you



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