Law & Policy Meets Data in the Cloud: Data Sovereignty Across Asia

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Chairman, Asia Cloud Computing Association
Data, Regulation, Jurisdiction and Cloud: A “New Geography” Lesson

- Cloud Data Storage in Japan...
- ...and in Singapore
- ...and the Cloud Company Headquarters in the U.S...
- ... with servers in the UK, Germany and the Netherlands
- Multinational Doing Business...
  - in Japan...
  - in Korea...
  - in Thailand...
  - in the Philippines...
  - in Malaysia...
  - in Singapore...
  - in Indonesia...
  - and the Multinational’s Headquarters in Australia
ACCA Report: Key Findings

➢ There are no prohibitions on the use of cloud services in any country studied.

Let me repeat...

There are no prohibitions on the use of cloud services in any country studied.
The Rush to regulate is leading to unclear & inconsistent laws, particularly as to Cross-Border data flow

“Many countries are... witnessing a lot of changes with many new regulations [on “cross border data transfer, taxation, data sovereignty... effective this year or in the next few years]...” (p.20) This is the “biggest hurdle.” (p. 80)

“Since [FSI] legal requirements may differ significantly from one country to another, companies... find it difficult to organize cloud services for the whole enterprise [to comply in all] relevant jurisdictions.” (p.21)

“As [Telecommunications] legal environments differ in different territories, there is a huge challenge of harmonising and satisfying requirements across these territories.” (p. 21).
ACCA Report: Roadmap to a Framework

Leading countries in Asia are ideally positioned to provide a model for a Data Sovereignty FRAMEWORK.

The report shows that Leading countries...

- "...proactively support the adoption and growth of cloud computing." (p.16)
- Have "minimal restrictions on international data transfer" (p.15)
- Have “comprehensive and mature data protection legislation in place” (p.14 & 15) and
- Have “business friendly regulations and major initiatives on cloud computing” (p.14)
A deeper look at why businesses care?

- More than ever, IT choices will be made by the business and legal teams
  - Business benefits drive
  - Risk v. Benefit analysis
  - Compliance requirements
  - Reputation
  - HR

- IT department are now sharing due-diligence and risk assessment responsibilities with the business decision-makers and legal departments
The Business Analysis:
Cross - Border Data Flows: Nothing New?

- Life in the multinational: *It's all global now*
- This has been done for decades by industry on captive systems
- As recognised by APEC, TPP and AEC: efficiencies & benefits of cloud computing are best achieved when data – information – flows freely across borders
- The audit trail is key – and outsourcing guidelines address this.
How do governments look at cloud computing?

Governments seek to protect privacy, consumer rights, and enforce laws of general applicability.

Industry regulators seek to maintain oversight.

Law enforcement, intelligence, and the legal system want to maintain access.
What are the laws that impact data in the cloud?

- Data Protection Laws (and other laws of general applicability)
- Industry-Specific Regulations
- Domestic Law Enforcement & Intelligence Access
- International Law Enforcement & Intelligence Access
- Cross-Border Data Restrictions
What are the laws that impact data in the cloud?
What are the main Data Sovereignty issues?

- Domestic Regulatory Compliance: Confidentiality, availability, retention, audit
- Jurisdiction claimed by other countries
- Data leakage from the organization (risks to privacy)
- Liability, remedies, warranties, insurance
- Consistency of laws across jurisdictions as applied to data
Anecdotally: Governments are revising rules but... 
Little Harmony in a Web of Laws

- **2013 Philippines**: Recognizing cloud will help smaller banks, Bangko Sentral ng Pilipinas (BSP) new IT regulatory framework allows banks to use cloud computing; BSP recognizes some types of bank data appropriate for public cloud, some only for private cloud.

- **2012 Singapore**: Data stored offshore must be protected by law comparable to Singapore’s – but you can seek an exemption from the government. Banking regulations allow use of cloud computing.

- **India 2011**: “Privacy Rules” revised in 2012 to exempt “data outsourcing.”

- **2012 Philippines**: Data Privacy Act applies to extraterritorial data storage if data is about a Philippine citizen/resident, but not to residents of foreign jurisdictions.

- **2012 Australia**: Businesses must take reasonable steps to destroy or permanently de-identify personal information that is no longer needed. Cloud customer held “strictly liable” for violations by cloud provider.

- **EU and elsewhere**: Looking to enact Data Purging laws, sometimes described as “right to be forgotten.”
Harmonization: Steps to Improve Asia’s Regulatory Environment

- *Distinguish truth from myths & misunderstandings*
- Understand the customer’s regulatory challenges
- Understand the **business and technology**
- Understand the need for **regulatory consistency across the region**

ACCA can contribute to a better understanding, and ultimately, to better laws and regulations.
Objective: Understanding, Explaining & Improving Asia’s Regulatory Landscape

- Develop a factual understanding of the regulatory landscape for 14 counties
- Recommendations to bring each country closer to the Ideal
  - Australia
  - China
  - Hong Kong
  - India
  - Indonesia
  - Japan
  - Malaysia
  - New Zealand
  - Philippines
  - Singapore
  - South Korea
  - Taiwan
  - Thailand
  - Vietnam
Data Sovereignty Research

A major global research firm
A major regional law firm
In-country resources

14 Countries

700 man hours

68 Questions

300 page SUMMARY of responses

100 page report.
The “Ideal State” for Cloud Computing

Cloud Access: Regulations support the use of cloud computing.

Data Safety: Data is safe from access and liability regulations.

International consistency: Regulations are clear, well understood, reasonable to comply with, and aligned to global norms.

Cross Border Movement: Consumers can leverage cloud providers from other jurisdictions.

Regulatory Stability and Enforcement: Legal environment is predictable, fair, and aligned with international regulations.
An Emerging Digital Divide of Leaders and Followers

Asia’s 14 countries fall into two groups: “Leaders” and “Followers”

Relative cross border movement score
(Size of bubble indicates relative average of data safety and cloud access scores.)
### Distinguishing Leaders from Followers

<table>
<thead>
<tr>
<th>Factor</th>
<th>Leaders</th>
<th>Followers</th>
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<tbody>
<tr>
<td>Data protection law</td>
<td>Clear data protection law with reasonable requirements that correspond to globally accepted best-practices</td>
<td>No formal data protection law</td>
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<tr>
<td>Protected data elements</td>
<td>Personal Identifiable Information (PII) is defined and subject to regulations consistent with international or regional guidelines (such as APEC and OECD)</td>
<td>Inconsistent or not clearly defined</td>
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<tr>
<td>Applicability of cloud computing regulations</td>
<td>Clearly understood what laws affect cloud computing users and providers; in addition, laws are technology neutral and do not discriminate between technical options, except where justified</td>
<td>Unclear what applies (i.e., telecommunications laws) or laws that restrict cloud usage</td>
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<tr>
<td>Law transparency</td>
<td>Laws are introduced in a transparent manner with public input</td>
<td>Little consultation or advance notice provided</td>
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<tr>
<td>Censorship</td>
<td>No filtering or censoring requirements by Internet Service Provider or Cloud Service Providers</td>
<td>Mandatory filtering and / or censoring requirements</td>
</tr>
<tr>
<td>Transfer of data outside of jurisdiction</td>
<td>Can be accomplished with reasonable controls</td>
<td>Not clear or involves onerous requirements</td>
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<td>Effective agency (or regulator)</td>
<td>Enforcement conducted in fair and impartial manner</td>
<td>Ad-hoc enforcement; varying enforcement between different agencies of the same government; regulators have high degree of discretion over enforcement decisions and regulatory interpretation, with little accountability or public scrutiny</td>
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<tr>
<td>Product preference</td>
<td>No country specific technical requirements that would require changes to the standard product</td>
<td>Technical restrictions that may require country-specific changes to standard product</td>
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<tr>
<td>Localization requirements</td>
<td>No discrimination between local and foreign service provider</td>
<td>Foreign Cloud service providers may be subject to additional requirements and / or restrictions than local providers</td>
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Stay competitive

The Global Competitiveness Index
2013–2014

160+
Partner Institutes
15,000
Business Executives
5,600+
Institutional organizations and data points
114
Indicators
12
Indexes
148
Businesses
99%
Products
Since
1979

Competitiveness

The set of factors, policies and institutions that determine the level of productivity of a country, taking into account its level of development.

The 12 Pillars of Competitiveness

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<tr>
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Learn more at: www.weforum.org/gcr. Get in touch: gcr@weforum.org. Or call: +41 (0)22 809 03 03.
ACCA Recommendations

- End the *rush to regulate*: thoughtfully *rewrite* laws that are unclear & inconsistent

- Potential for Leadership: The best ideas in Asia can become the FRAMEWORK for Data Sovereignty
Final Thoughts

- Simplifying *Data Sovereignty*
- “Ideal” State
- Road map for regulators
- Toward a Framework
- Eliminating Confusion and mis-perceptions
- It’s a good news story that we’ll make great
Asia Cloud Computing Association

Mission: to accelerate cloud-computing adoption across the region of Asia Pacific by engaging stakeholders, providing tools to remove barriers and demonstrating the benefits of adoption.

Vision: become the leading influencing industry voice on cloud-computing promotion and governance to business, government and citizens in Asia

DRIVING ADOPTION

- **Policy Working Group**
  - Cloud Readiness Index Public Policy Newsletter

- **Data Sovereignty Working Group**
  - Data Sovereignty Study and Scorecard

- **SME Working Group**
  - SME Cloud Index
  - SME Resource Centre

- **Assessment Working Group**
  - Cloud Assessment Tool Service Provider Index

- **Advocacy Stakeholder Engagement**
Come join us and help...

- Shape Asia’s cloud future
- Collaborate with leading companies
- Magnify your influence and visibility

Contact Us -

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