

ALLEN & OVERY

Data protection and privacy

2021



Why data protection has become a crucial and complex topic for companies

A risk approach

No one doubts the value of data. Unlike the usual rules of supply and demand, the formula for data is that the more data a company collects, the more valuable that data becomes (assuming the data holder is able to interrogate or monetise this valuable resource to full effect).

As a result gathering, holding and using data comes with real risks that are multiplying as the volume of data being collected grows – not least the risk of illegal access and processing. These are risks that can seriously damage a company’s reputation and call into question the way it behaves towards its customers and employees.

For this reason, it is not surprising that companies, their customers and their employees are demanding stronger legal and technical measures to ensure the highest level of protection for the data that is collected and processed.

A compliance issue

In the digital age, companies have to keep pace with an explosion of new systems and technologies that are changing the way they do business. This creates growing complexity for companies at a time when they increasingly have to comply with strict data protection laws that provide only high level principles for them to work to. The rate at which new data protection laws are being enacted across the world further complicates the picture. With the potential for significant penalties in many jurisdictions, companies have no choice but to tackle this legal uncertainty head on.

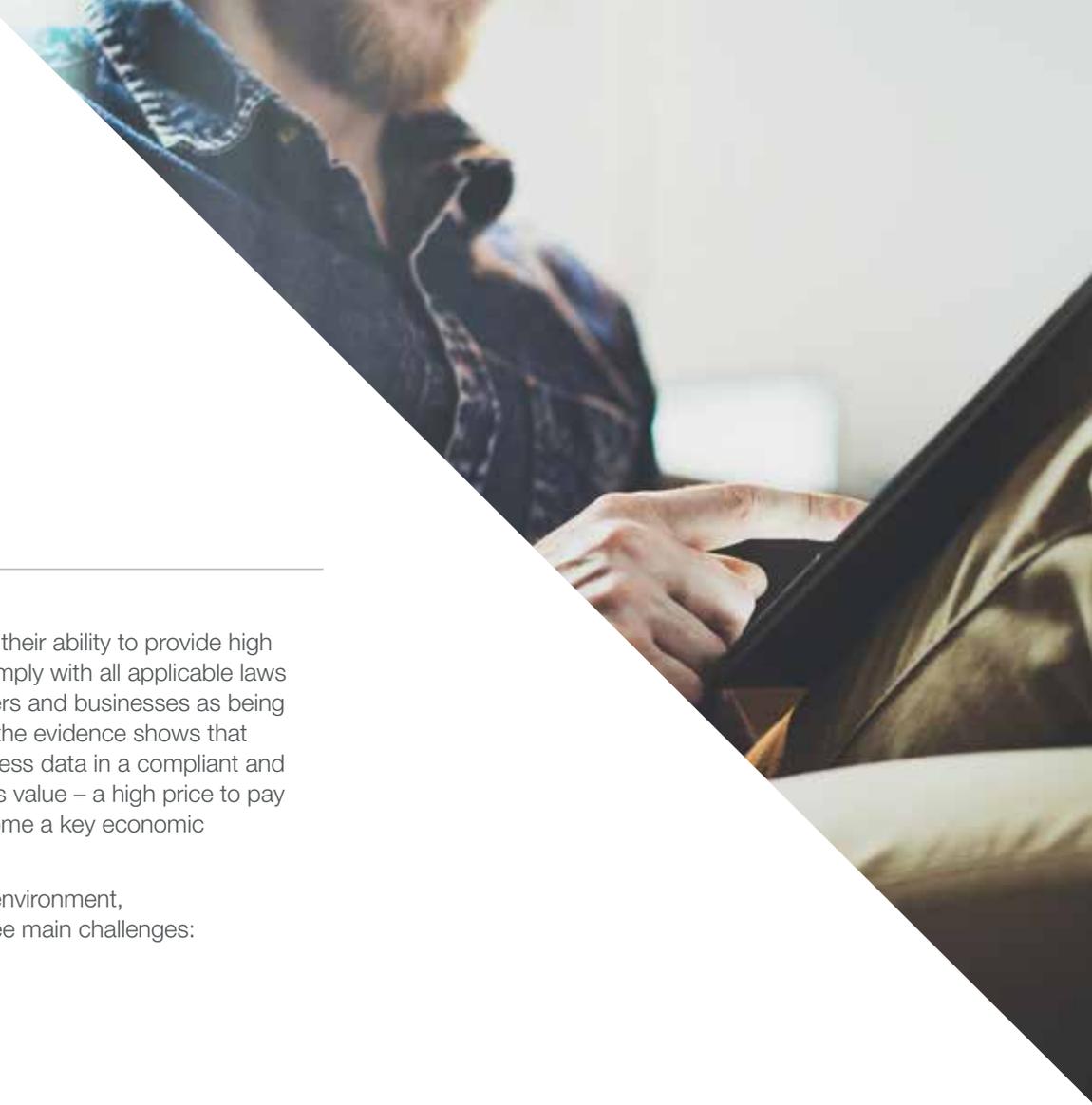
Given that the vast majority of data processing has an international dimension, it is particularly important that companies understand the restrictions they face on transferring data across borders. This creates a legal uncertainty which companies need to resolve.

“Working with them is delightful. They are highly professional, deliver immaculate client service and have a deep knowledge of data protection technicalities.”

Chambers Global 2019 (Data protection)

“Allen & Overy is well resourced, and it has a significant depth of knowledge across its entire team.”

Chambers Global 2020



A competitive argument

Companies that demonstrate their ability to provide high levels of data security and comply with all applicable laws will be seen by both consumers and businesses as being more trustworthy. Indeed, all the evidence shows that when a company fails to process data in a compliant and secure way, that data loses its value – a high price to pay at a time when data has become a key economic and commercial resource.

In a complex and globalised environment, companies therefore face three main challenges:

Achieving a high level of security for the personal data they process

Complying with all applicable laws as they constantly evolve

Harnessing innovation, and not letting compliance procedures hold back development

Weekly data and cyber update

We have a weekly client update which tracks GDPR, e-Privacy, cybersecurity and other data privacy developments in and outside the EU. If you would like to receive this weekly update, please email AODataProtection@allenovery.com and we will be happy to add any of your team members to the distribution list.

Why choose Allen & Overy's data protection practice?

Allen & Overy's international network of data protection practitioners provides clients with practical, business-oriented support and legal advice. We recognise that data protection lies at the crossroads where security, IT, innovation and the law meet. We fully understand that data protection is an important operational issue, so we address our clients' concerns in a pragmatic and hands-on way.

Our expertise in this field is wide ranging and we have the industry knowledge to meet the needs of clients working in very different sectors, whether financial services, life sciences, industrial and manufacturing, telecommunications or retail and consumer goods.

We share our knowledge with clients through tailored seminars and bespoke training, and often produce articles, consultation responses and other research for clients and press. We also continue to develop innovative products in service delivery. Examples include Rulefinder, a multi-jurisdictional subscription product, which assists financial institutions in complying with laws on cross-border data transfers; and the first data protection "app" for iPad.

Thanks to our unrivalled international network of 40+ offices we can also provide real cross-border support to our clients. In addition, our strong connections with the leading data protection authorities mean we can support our clients in all their dealings with local regulators.

Rulefinder CROSS BORDER DATA TRANSFER

Rulefinder Data Privacy is an online subscription service from our affiliate business aosphere LLP. Subscribers to the service have access to practical information on the legal requirements that apply when an organisation handles data about individuals. It analyses a range of scenarios common to in-house legal and compliance teams, covering topics such as consent, privacy notices, assessments, data transfer rules, requirements for service providers, plus breach response. The content is managed by a senior – and dedicated – team of aosphere lawyers who work closely with the A&O international network and other leading local counsel to source market leading expertise. The content for each jurisdiction is harmonised and presented online in a range of formats and levels of details – from comprehensive legal surveys to colour-coded summaries.

Key features include a proprietary "territorial scope view" to make sense of which rulebooks apply to your fact pattern, an EU GDPR baseline report prepared by A&O practice group experts, U.S. state as well as federal analysis, daily monitoring and email alerts service, plus sanctions tracking. For financial institutions, the service also covers bank confidentiality and outsourcing content in a sector specific module, expertise we have building on since 2013.

Rulefinder Data Privacy can help your organisation as a cost efficient alternative to instructing bespoke multi-jurisdictional surveys, as a shared resource for your global teams, and as a horizon scanning monitoring service. For more information and to request a free trial visit www.aosphere.com/ao/dp



Representative experience

A leading pharma and consumer goods business on all aspects of data privacy and GDPR compliance. This instruction covers a large number of matters and projects.

A leading car manufacturer on the regulatory and privacy aspects of a global project to develop and commercialise 'connected cars'. We advised on the integration of telematics technology (technology that records a vehicle's trajectory, acceleration, manoeuvres, braking, etc.) and the use of the data collected from such technologies, for the purposes of artificial intelligence (AI) research & development.

A U.S.-headquartered global investment and retail bank on a comprehensive GDPR compliance assessment, including carrying out detailed investigations, analysis and risk assessment on all compliance steps proposed to be taken by each relevant business line within the organisation and providing practical advice on enhancements that could be made to the compliance programme.

An online auction and shopping website on the drafting, filing and negotiation with EU data protection authorities of Binding Corporate Rules allowing worldwide transfers of personal data among group companies in all EU jurisdictions.

A Japanese headquartered global brewing and distilling group, on compliance with the EU General Data Protection Regulation (GDPR).

A major media organisation on dealing with large numbers of subject access requests.

A global bank on a range of digital/data initiatives including their use of cookies across Europe and their approach to Adtech.

A French banking industry group on contractual provisions in technology supply contracts in the context of cybersecurity risk.

A leading software and IT services company on the legal requirements in China, Hong Kong and Japan relating to data protection and privacy issues and restrictions on the cross-border transfer of data.

A provider of actuarial products on data protection issues associated with using healthcare data in a data analytics product.

A FTSE 100 company in the immediate aftermath of discovering an inadvertent data breach involving the accidental disclosure of the personal details in an email attachment. Our advice included providing advice in respect of its communications with the ICO, preparing its internal and external communications (both written and oral) and the changes to their plans following the ICO's decision to take no further action.

A leading technology company on assessing compliance of its vendor selection and management with the requirements under the EU Data Protection Regulation.

A large U.S.-based financial institution on a global outsourcing project, which involved a multi-billion dollar outsourcing of the provision of certain technology, telecoms and network products and services, including a survey of data privacy/bank secrecy and similar laws across over 40 jurisdictions.

A global corporation in relation to a loss of sensitive customer data, as a result of failings by its technology outsourcing service provider, including advice on appropriate notifications to the data protection and industry regulators and on an internal investigation.

A Chinese technology and financial services firm on a number of data protection issues including the implementation of the GDPR, data retention policies and transfer of data to third countries. We advised the client on whether and to what extent its business operations in Europe may be subject to GDPR and how to approach GDPR compliance in the context of a much broader business.

A retailer on a project involving employees and contractors' personal data which requires the retailer to send personal data belonging to its employees from its international sourcing business to the UK. The project involves data collected from the retailer's sourcing hubs situated in various jurisdictions, including Hong Kong, Turkey, Sri Lanka, Cambodia, Bangladesh, and Romania, Vietnam and Pakistan.

A leading pharma business in relation to the international roll-out of a customer portal used by retailer optometrists. We will be advising the clients on the pharma regulatory, data privacy, consumer protection and e-commerce aspects of the new portal.

A major Asian airline company on the implementation of its GDPR compliance program.

Special focus on...



Data Protection Compliance programmes

With regulators placing an increasing importance on accountability, having a robust data protection compliance programme is becoming a priority for many companies. We have the experience to design compliance programmes that meet the varying demands of data protection regimes across multiple jurisdictions.

The number of countries with stand-alone data protection laws continues to grow. For example, the Asia Pacific region has seen rapid development of legislation, with countries such as Malaysia, the Philippines and Singapore adopting umbrella privacy regulations. Our lawyers monitor developments in the law and can help you adopt an approach that is current, compliant and in line with your day-to-day business needs.



Binding Corporate Rules (BCRs)

Companies are spending time and resources on preparation of EU model clauses to enable them to transfer data outside of the EU. BCRs may be a more efficient alternative to consider.

Contrary to popular opinion, we have found that approval of BCRs by the EU Data Protection Authorities, when they are well prepared and documented, can be a smooth and trouble-free process.

BCRs provide added value as they give you a comprehensive approach to data protection within your organisation, bringing strong guarantees on the level of personal data protection you provide to customers, employees and also Data Protection Authorities. BCRs are designed to create a real culture of data protection within an organisation. Going further than simple principles, they create procedures to ensure effective implementation.



Cybersecurity/Data Breach

Companies identify new security threats every day. At the same time, obligations to notify data breaches continue to grow stronger. Companies need both to better protect their assets and better prepare themselves to handle data breaches and other crisis situations.

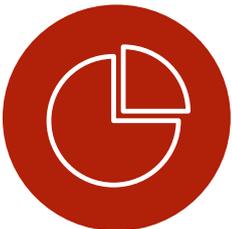
Allen & Overy can help you prepare for any potential breaches and we're here to help you put things right if and when a breach occurs.



Enforcement

Data Protection Authorities have beefed up control and audit processes. This trend responds to growing demands from stakeholders in recent years. It is now reflected in the EU's General Data Protection Regulation which switches the point of view from theoretical to a more factual approach.

We also handle a broad range of investigations, class actions and group litigation across a wide range of areas and sectors all across the EU as well as globally. This means we are well suited to assist you if a case is initiated.



Big data and the Internet of Things

Opportunities for data collection multiply exponentially as more and more objects in our digital world become connected. Companies increasingly analyse these vast data sets to find competitive advantage.

We help clients to plan big data projects to ensure compliant data collection and processing. We also help our clients to navigate the challenges data monetisation projects can present under existing data protection frameworks.



Ad tech

In recognition of the growing need for ad-tech support from our clients, we have dedicated experts who foster and share industry knowledge and expertise across our offices and legal disciplines. As many of our clients operate across borders, we support them by being able to combine our talents and resources to provide solutions in almost any country, at any time.

Few firms can deliver the combination of experience and resource that is needed to handle the most important ad tech matters.

Our team benefits from experience acquired not only in private practice but also in-house at leading technology companies and on secondments to corporates and regulatory bodies.

This means we provide relevant industry-focused advice, delivered quickly to ensure that we add value from day one. So, irrespective of the location, the size, or the complexity of the matter, you can be confident that we have the right team in the right place.

Following industry trends

At Allen & Overy we understand that each sector has its own particular data protection hot spots, while some issues are of common interest to all stakeholders. For example:

Telecoms media and technology

- Managing data breaches (focus on notification of data breaches)
- Retention of communications data
- Interception of communications
- Data requests from regulators/law enforcement
- Special purpose exemptions
- User generated content
- Impact of the Google “Right to be forgotten” case

Infrastructure and transport

- Connected cars
- Cyber security
- Big data

Hotels and leisure

- Loyalty schemes
- Data transfers
- Roles and responsibilities

Financial institutions

- Data security
- Big data for risk management
- Credit incidents
- Data retention
- Mobile payments
- Online banking
- Mobile apps
- Regulator requests

Retail and consumer

- Location-based marketing
- Facial recognition technologies
- Behavioural advertising and social media

Life sciences

- E-Health
- Anonymisation
- Cybersecurity rules for medical devices
- Transparency
- Clinical trials
- Health data hosting

Industrials and manufacturing

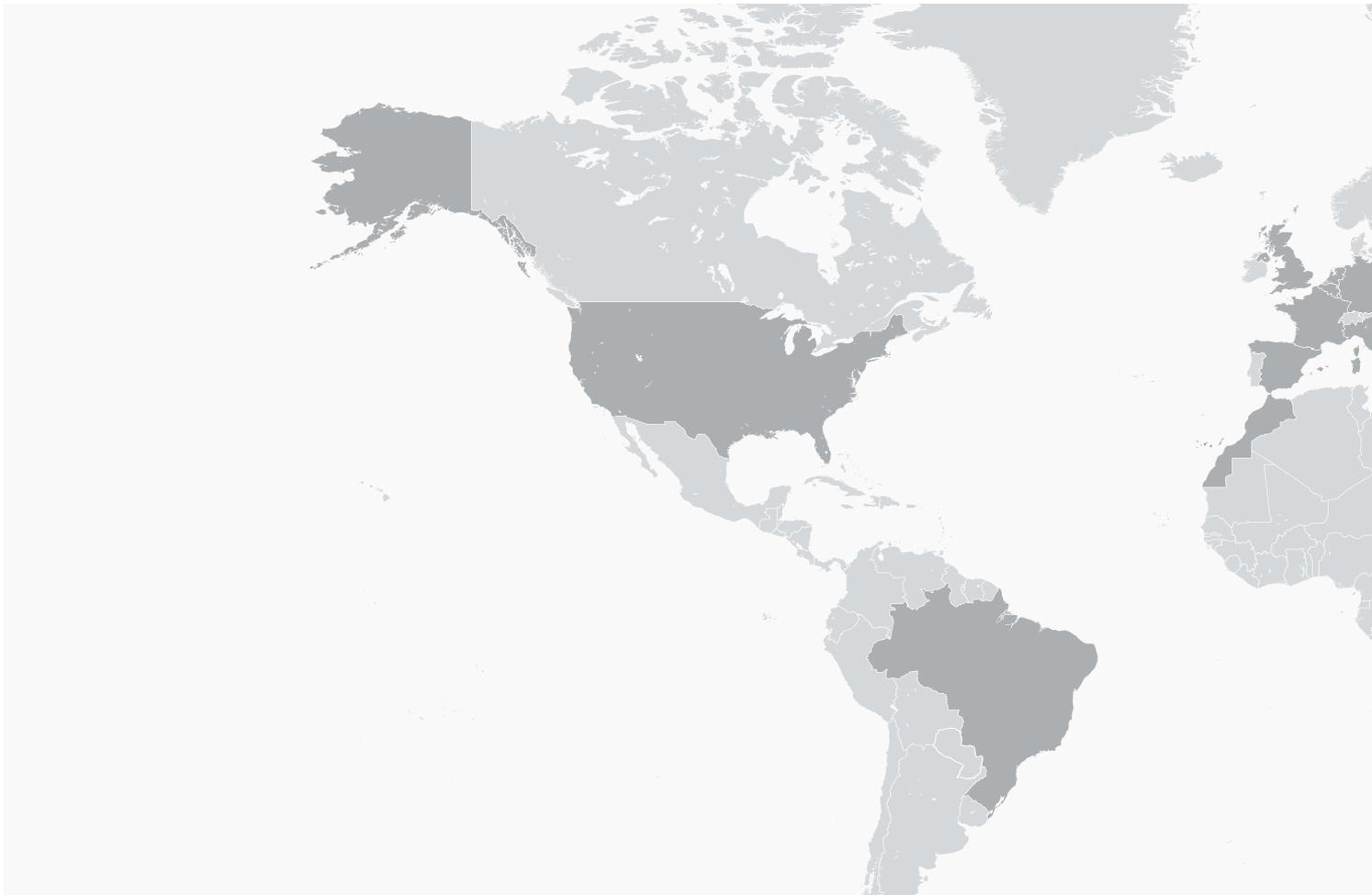
- Internet of Things
- Big data

Clients say the firm is “very competent, creative and pragmatic,” adding: “They have really good tools available on cross-border data transfers.”

Chambers Global, 2018 (Data protection)



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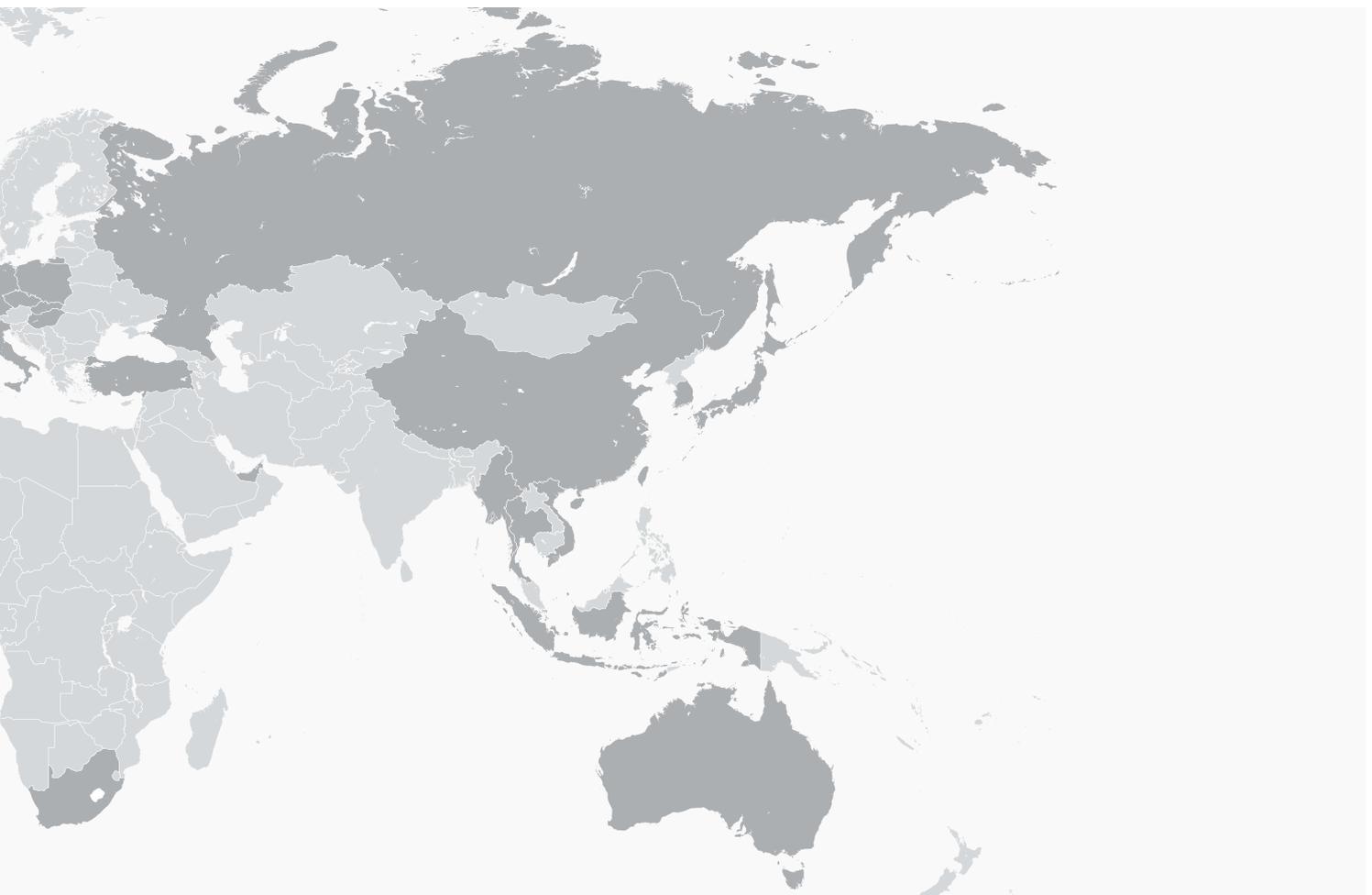
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“As an international player, they bring a whole range of seamless legal services to the table,” and clients praise “accessibility to partners at all times and ease of communicating.”

Chambers Global 2018 (Data protection)

“Allen & Overy has wall-to-wall competence in all areas of providing advice and practical guidance. It is responsive and practical and has the perspective of the many different multinationals that it advises, and therefore can be very strategic.”

Legal 500 2020 Data protection, Privacy and Cybersecurity



For more information, please contact:

GLOBAL PRESENCE

Allen & Overy is an international legal practice with approximately 5,500 people, including some 550 partners, working in over 40 offices worldwide.

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