

ALLEN & OVERY



Data protection and privacy

2020

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)

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:



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 44 offices in 31 countries 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 Cross Border Data Transfer helps institutions comply with restrictions and requirements affecting transfers of data from one jurisdiction to another. Our unique colour-coded template provides a standardised approach to the analysis of recurring questions and is structured to enable users to find information quickly and easily.

Based on surveys completed by local counsel and showing data protection, bank confidentiality and outsourcing laws in a single view, the product represents a significant time and cost saving opportunity compared with obtaining bespoke surveys.

With over 200 questions addressed on screen, Rulefinder Cross Border Data Transfer helps to analyse each element of a transfer – from the type of data affected, the circumstances in which the restrictions apply, the types of transferor subject to the restriction, compliance measures and exemptions. Factsheets guide you through a range of compliance actions – from the process of notifying or obtaining consent from a data subject or regulator to putting in place data transfer agreements or Binding Corporate Rules (BCRs). We also offer a GDPR (General Data Protection Regulation) Tracker which shows the current status of draft law, legislation, guidance and consultations in 28 countries (both in the EU and those which are implementing essentially equivalent legislation). For more information or to watch a demo film go to www.aosphere.com

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. Over the last 12 months, we have advised the client on over 30 data privacy matters.

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, breaking, 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 leading Swiss-based global pharmaceutical company on the privacy aspects of its BYOD policy.

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 global financial services group on the data protection aspects of a biometric based mobile authentication system in approximately 30 jurisdictions.

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



Enforcement



Big data and the
Internet of Things

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.

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.

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

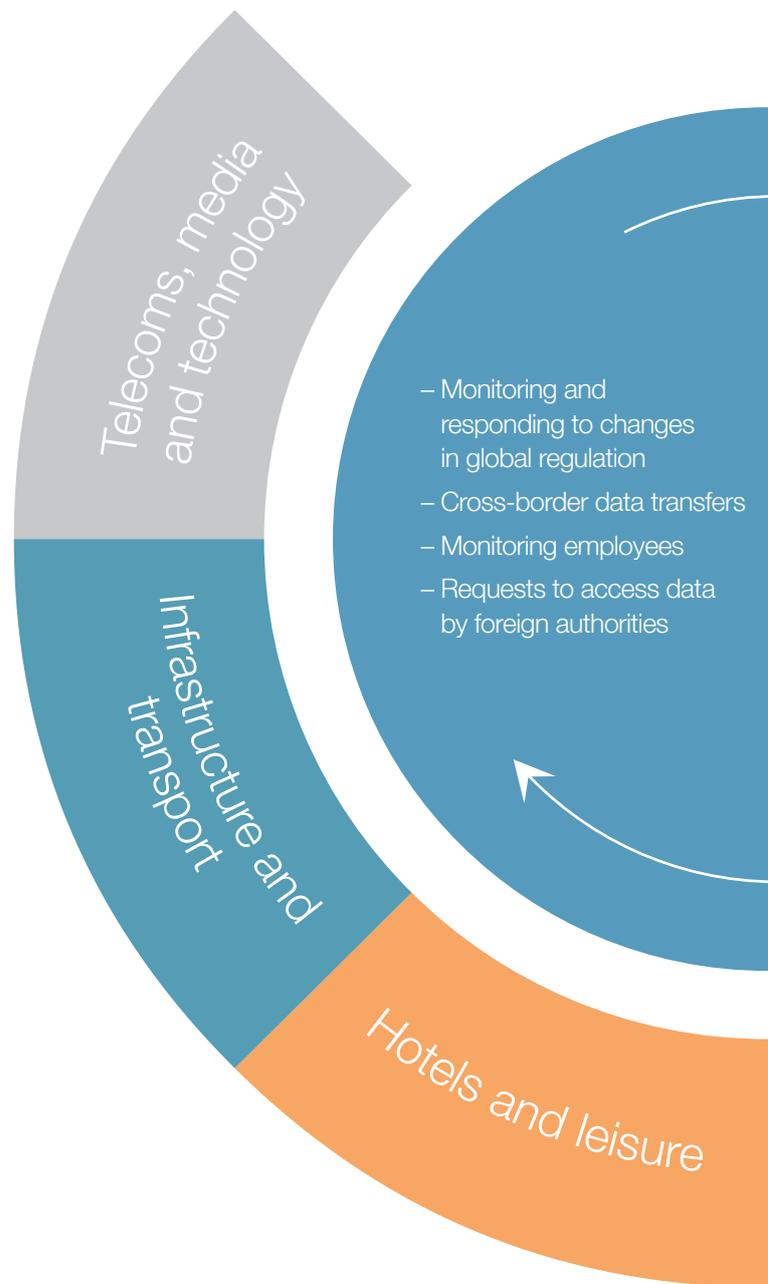
- Managing data breaches (focus on notification of data breaches)
- Retention of communications data
- Interception of communications
- Data requests from regulators/law enforcement
- Special purpose exemptions
- User generated content
- Impact of the Google “Right to be forgotten” case

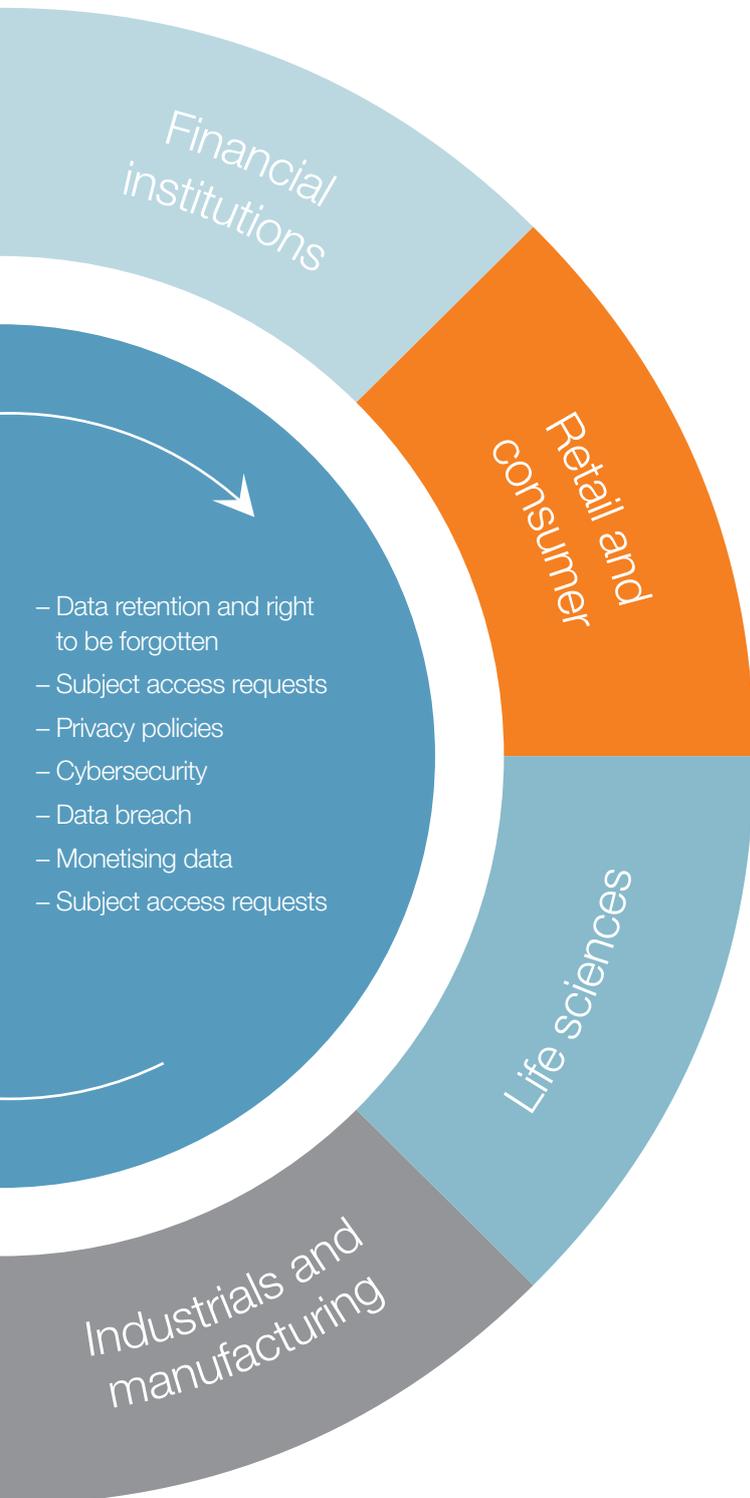
Infrastructure and transport

- Connected cars
- Cyber security
- Big data

Hotels and leisure

- Loyalty schemes
- Data transfers
- Roles and responsibilities





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)

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

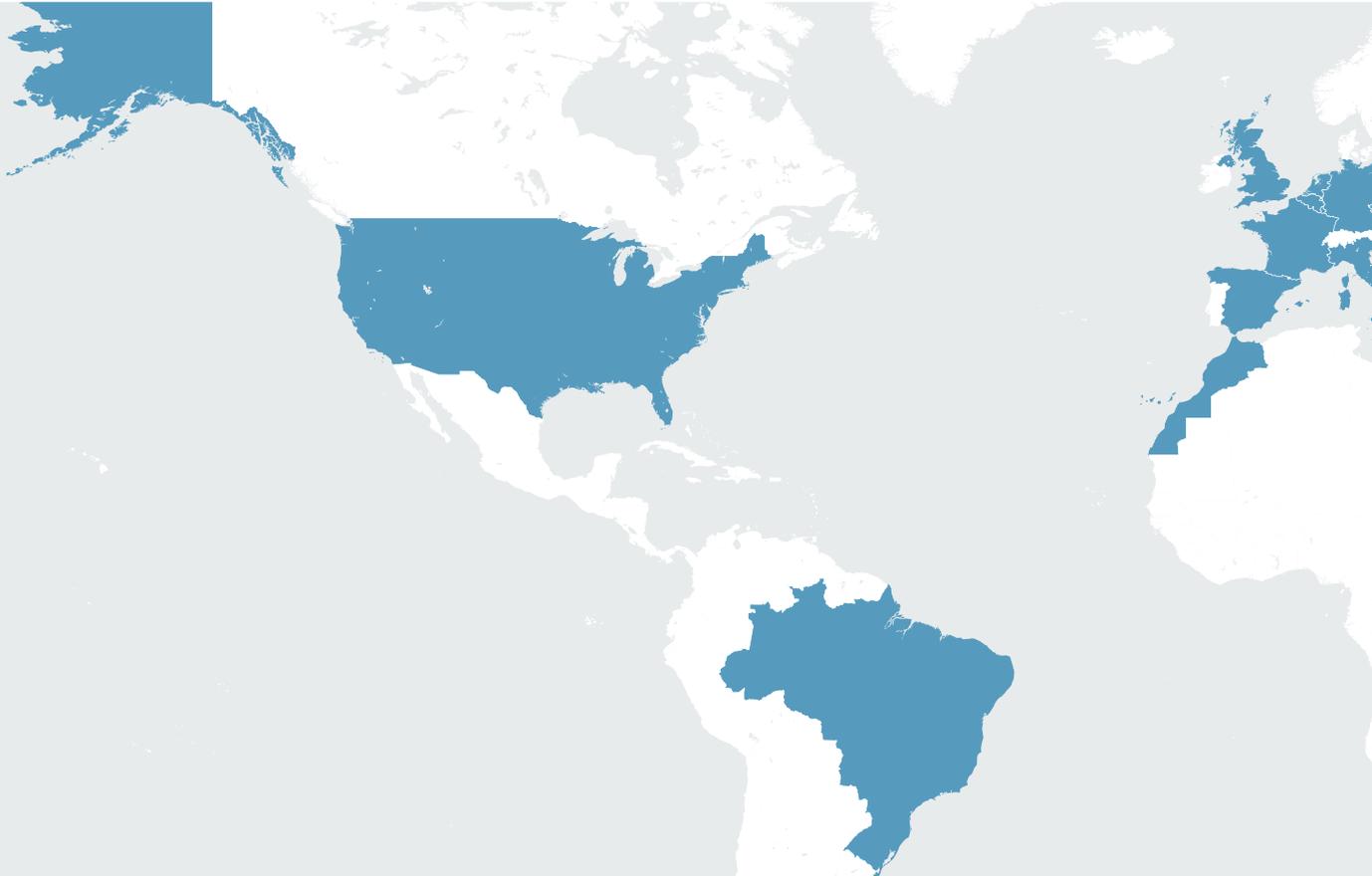
Life sciences

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

Industrials and manufacturing

- Internet of Things
- Big data

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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)

GLOBAL PRESENCE

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Antwerp	Casablanca	Jakarta (associated office)	Paris	Tokyo
Bangkok	Dubai	Johannesburg	Perth	Warsaw
Barcelona	Düsseldorf	London	Prague	Washington, D.C.
Beijing	Frankfurt	Luxembourg	Rome	Yangon
Belfast	Hamburg	Madrid	São Paulo	
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