



ASIAN BUSINESS LAW INSTITUTE

PROJECT
ON THE CONVERGENCE OF REGULATIONS ON CROSS-BORDER
DATA TRANSFERS IN ASIA

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WHAT IS ABLI?

The [Asian Business Law Institute \(ABLI\)](#) is a permanent institute based in Singapore that initiates, conducts and facilitates research with a view to providing **practical guidance in the field of Asian legal development** and **promoting the convergence of Asian business laws**.

ABLI was launched on 21 January 2016 in conjunction with [the International Conference on 'Doing Business Across Asia – Legal Convergence in an Asian Century'](#). The conference brought together 500 participants and speakers including senior judges, lawyers, CEOs, policy-makers and academics from the region and beyond.

The mission of ABLI is to remove unnecessary or undesirable differences between Asian legal systems that pose obstacles to free and seamless trade. ABLI has an **Asian-centric focus**, a **polycentric and practice-oriented identity**, and a **projects-based strategy for promoting convergence**.

Since its inception, ABLI's initiative has attracted significant press and media coverage, as well as great interest from stakeholders in all the fields where it has expressed its intention to initiate projects of legal convergence.

The long term strategic direction of ABLI in accordance with its aims is set by the **Board of Governors** chaired by the Honourable the **Chief Justice Sundaresh Menon** of the Supreme Court of Singapore. The Board has authority over the projects commissioned and adopted by ABLI and also bears the responsibility for its overall work output. It comprises fourteen influential members drawn from the judiciary, academia and practitioners from jurisdictions including Singapore, China, India and Australia.

ABLI's Secretariat is responsible for implementing the strategies defined by and decisions taken by the Board of Governors. In that capacity, it submits project proposals to the Board, helps identify experts to participate in projects, attends to project management and takes all steps necessary to achieve project objectives.

Each project is assigned a **Project Lead**, who is responsible, along with ABLI's Secretariat, for preparing a detailed project proposal for approval by the Board of Governors, including identifying experts who ABLI should approach to assist with the project.

More information about ABLI, the [philosophy](#) which has presided to its launch, its organizational [structure](#), the composition of the [Board of Governors](#), as well as the [projects](#) currently being undertaken by ABLI can be found on **ABLI's website** <http://abli.asia>

A VISION: THE CONVERGENCE OF BUSINESS LAWS IN ASIA

The projects led by ABLI aim at addressing key problems resulting from the **considerable heterogeneity that exists among Asian legal systems**.

This diversity is a significant barrier to developing cross-border trade in the region due to inconsistent regulations and standards, uncertainty about the foreign legal and regulatory frameworks and legal process, the ability to enforce legal rights in the region, additional layers of complexity and costs of enforcement and from unknown and unpredictable legal exposure.

In that context, the debate today in Asia should move from *whether* efforts should be expended in promoting the convergence of business laws to *how* such convergence can be achieved.

For certain areas of law, the harmonisation of business laws may not be attainable for some time at least where national imperatives diverge or where the costs of harmonisation outweigh the benefits. Nonetheless, where harmonisation is desirable, possible and practicable, it should be undertaken while taking into account the idiosyncrasies and the sensitivities of the domestic legal systems which have to implement the harmonised law.

In this perspective, the **following core tasks** have been assigned to ABLI:

- To evaluate and stimulate the development of Asian law, legal policy, and practice, and make proposals for the further convergence of business laws among Asian countries and regions;
- To study Asian approaches regarding business laws and practice in drafting legal instruments, restatements of law or model rules;
- To conduct and facilitate pan-Asian research, to draft, evaluate or improve principles and rules which are common to the Asian legal systems; and
- To provide a forum, for discussion and cooperation, between the business community and the legal fraternity including, inter alia judges, lawyers, academics and other legal professionals who take an active interest in Asian business law development.

ABLI's projects focus on **targeted research and practical solutions in relation to key legal issues** identified by stakeholders in more than one of the countries covered in each project and help to resolve differences when no clear pathway towards conformity exists through other channels.

By helping to foster trust, unlock the potential of the Asian region and bring with it greater trade and investment opportunities, these efforts will contribute to benefit Asian nations and communities.

WHY A DATA PRIVACY PROJECT?

On 12 June 2017, ABLI's Board of Governors approved the launch of a project dedicated to the **convergence of the provisions of cross-border data flows in a wide selection of Asian jurisdictions**, with the dual objective of upholding privacy and data protection rights to foster consumer trust, while offering concrete solutions that have the potential to facilitate trade in the region.

In fact, as Chief Justice Menon highlighted in his [speech](#) at the launch of ABLI, while data protection and privacy laws have become a common feature of the legal landscape in Asia over the past six years, significant differences exist between these laws. At the same time, other Asian countries have moved in the direction of adopting comprehensive data protection laws, whilst others have had bills pending for years, with no predictable outcome.

This complex environment is a source of business concern, in a context where enforcement is taking off, penalties for non-compliance are increasing and privacy regulators are setting up regional and international networks to support joint enforcement initiatives.

ABLI's project seeks to address these concerns by focusing on common key issues identified by stakeholders in the public and private sectors. **This project articulates with regional initiatives** to develop regional data protection principles to build a trusted digital ecosystem in Asia.

The decision to focus ABLI's project on the **regulation of international data transfers in a selection of Asian jurisdictions** is based on the consistent feedback provided by regional players in the public and private sectors.

Indeed, this area is highly contrasted in Asia. Some key jurisdictions have put in place restrictions on cross-border flows of data in the form of **data localisation** obligations, specifically in sectors deemed sensitive for their sovereignty or economy. Meanwhile, when jurisdictions do allow cross-border data transfers to take place, they commonly do so under **conditions that vary greatly from one jurisdiction to another**.

Furthermore, **various instruments exist in these jurisdictions to comply** with cross-border data transfers requirements (e.g. contracts, certification and trustmarks, CBPRs, binding corporate rules, "adequacy" decisions, etc.), but these instruments are either not replicated, or their implementation might vary or be uncertain in the laws of other jurisdictions. Furthermore, **no mechanism of mutual recognition** exists to facilitate multi-jurisdictional compliance and **no Asia-wide institution or body** exists that can adopt binding compliance standards in the region.

These factors constitute **hurdles for cross-border transactions** to develop, digital business to grow and for international data to securely flow in the region. ABLI's Data Privacy Project is dedicated to clarify the landscape and contribute to overcome these hurdles.

TARGETED OUTCOMES

ABLI's Data Privacy project aims to make recommendations for the convergence of provisions on cross-border data transfers and of their implementation in the Asian region.

The drafting of common rules and standards in this area aims to assist companies in their compliance efforts, governments and regulators in the development of consistent policies in cross-border data flows and to offer a **referential for Asian jurisdictions** that are considering putting cross-border controls in place. These standards would thus be a first step to support legal convergence in the field of data privacy in the region.

The **jurisdictions covered in the study** are:

- Jurisdictions represented on ABLI's Board of Governors: Australia, China, India, Singapore;
- Other Asian jurisdictions with cross-border data controls in place: Hong Kong, Japan, Macau, Malaysia, New Zealand, Philippines, Korea, and
- ASEAN jurisdictions which are considering putting such controls in place: Vietnam, Indonesia, Thailand.

The first phase of the project is the drafting of Jurisdictional Reports, under the lead of Jurisdictional Reporters, to achieve a comprehensive mapping of local requirements on cross-border data flows, including data localisation obligations, and their implementation in these jurisdictions. The fourteen reports will focus on the challenges which these requirements create for companies operating cross-border in Asia.

The outcome of this exercise will be published in the first term of 2018 in the form of a **compendium of Jurisdictional Reports**, together with a provisional list of key issues to be considered in the second phase of the project.

In this second phase, the Jurisdictional Reporters and a wider Experts Committee will contribute jointly to the drafting of concrete recommendations for the convergence of rules and standards on cross-border data transfers and of their implementation in the region. These recommendations can then be used as a **set of common rules and compliance standards in this area of law in Asia**.

The results of this two-year project will be published in the form of a global compendium during the second half of 2018.



WHO IS INVOLVED?

ABLI is proud that the following [seventeen high-level data privacy experts](#) are acting as **Jurisdictional Reporters** on this Data Privacy Project:

- **Peter LEONARD**, Consultant, Gilbert + Tobin (Australia)
- **FAN Wei (Susie)**, Center for Data Trust and Transparency, Founder and CEO (China)
- **Mark PARSONS**, Partner, Hogan Lovells (Hong Kong)
- **Elonnai HICKOK** and **Amber SINHA**, Director and Researcher, Centre for Internet and Society (India)
- **Justi KUSUMAH** and **Danny KOBRATA**, K&K Advocates (Indonesia)
- **Kaori ISHII** and **Fumio SHIMPO**, Professors at the Universities of Tsukuba and Keio (Japan)
- **Kwang Bae PARK**, Partner, Lee & Ko (Korea)
- **Graça SARAIVA**, Associate General Counsel, Venetian Macau Limited (Macau)
- **Abu Bakar MUNIR**, Professor of Law, University of Malaya (Malaysia)
- **Katrine EVANS**, Senior Associate, Hayman Lawyers (New Zealand)
- **JJ DISINI**, Managing Partner, Disini & Disini Law Office (Philippines)
- **Ken CHIA**, Principal, Baker & McKenzie - Wong & Leow (Singapore)
- **David DUNCAN**, Consultant, Tilleke & Gibbins (Thailand)
- **Waewpen PIEMWICHAI**, Registered Foreign Attorney, Tilleke & Gibbins (Vietnam)

ABLI is further honored that **Privacy and Data Protection Commissioners** or **Governments** have agreed to cooperate with the Jurisdictional Reporters by providing input on the interpretation and the implementation of these requirements in a large majority of these jurisdictions.

Furthermore, in recognition of the efforts of ABLI to contribute to the development of internationally comparable metrics in relation to data protection and privacy, the Secretariat of the **International Conference of Data Protection and Privacy Commissioners** has granted ABLI access to parts of the first [Census](#) which it has ran between the Conference members, and which are relevant to the project.

In accordance with its **polycentric and practice-oriented identity**, ABLI is keen to get feedback from a wide cross-section of relevant stakeholders in Asia. Thus, other data privacy experts will be invited to join the Experts Committee based on their capacity to strengthen the significance of the Project.

Jurisdictional Reporters, Commissioners, Government Officials, Members of the Experts Committee and representatives of ABLI's governance structure will convene in Singapore on **7 February 2018** to discuss the preliminary findings of ABLI's Data Privacy Project and agree to future steps.

To be informed on the developments of the project, send an email to Dr. Clarisse Girot, ABLI's Research Fellow and Project Lead, at: Clarisse_girot@abli.asia.