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CONDUCTING A COMPLIANT INTERNATIONAL CROSS-BORDER BUSINESS: GDPR AND MORE

The proliferation of personal data protection legislation worldwide has created a jigsaw puzzle of requirements that vary across jurisdictions. The author focuses on the rules in the European Union (“GDPR”), Japan, and Canada. She then turns to the challenges arising from data localization regimes and closes with strategies for cross-border compliance.

By Linda L. Fuerst *

Over the last several years, personal data protection legislation has proliferated worldwide.¹ Any corporate entity that collects or uses personal information about individuals in another country, that offers goods or services to individuals in other jurisdictions, or that operates a website in other countries, must now consider the application of data privacy laws in multiple jurisdictions and develop strategies for compliance.

The implementation of General Data Protection Regulation (“GDPR”)² in the European Union in May 2018 marked a tectonic change in the way data protection and privacy would be regulated and enforced. It also prompted a recent flurry of legislative activity both in European Economic Area (“EEA”) and non-EEA countries resulting in a divergent, patchwork quilt of requirements and standards.

Even within the EU itself, there is substantial variance:

“[W]ithin Europe, data privacy law and practices vary considerably between common law jurisdictions such as Ireland, England, and Wales, and the civil law jurisdictions found throughout mainland Europe. Globally, although regional data privacy alliances may employ variants of the same privacy standards, there is vastly different interpretation and enactment from state to state.”³

This divergence in approach has resulted in a jigsaw puzzle of data protection legislation of outrageous complexity around the world, significantly increasing the cost of compliance by financial institutions with cross-border or global operations, and with it the risk of substantial penalties for non-compliance. The issue is

¹ The US remains an outlier in this regard, without a comprehensive data privacy legislation.

² General Data Protection Regulation, Regulation (EU) 2016/679. (<http://data.europa.eu/eli/reg/2016/679/oj>).

³ Conor R. Crowley and Denise E. Backhouse, Privacy Law Arbitrage, The Sedona Conference 2014, p. 4. [*Privacy Law Arbitrage*].

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