

**WELCOME ADDRESS AT ASIAN BUSINESS LAW INSTITUTE DATA
PRIVACY FORUM**

ABLI DATA PRIVACY FORUM

Singapore, 7 February 2018

The Honourable the Chief Justice Sundaresh Menon

Supreme Court of Singapore

Hong Kong Privacy Commissioner Stephen Wong

New Zealand Privacy Commissioner John Edward

Philippines Deputy Privacy Commissioner Ivy Patdu

Singapore Data Protection Commissioner Tan Kiat How

Professor Yeo Tiong Min

Professor Simon Chesterman

Ladies and gentlemen

1. Welcome to the Asian Business Law Institute's Data Privacy Forum. When I spoke at the launch of the ABLI some two years ago, I described data privacy as an area that was "ripe for policy and legal review and reform."¹ If anything, the last two years have shown that such review and reform is urgently required. 2017 has the dubious distinction of being the year with the greatest number of incidents involving unauthorised or illegal access of confidential or protected data. Breaches at multinational companies like Uber,² Deloitte,³ Equifax,⁴ and Verizon,⁵ among

others, were reported extensively and discussed in the media. Perhaps as a result, the subject of data privacy has for the first time, come to the forefront of public consciousness and has even ascended to the top of the political agenda. Thus, many countries have announced intentions to adopt more stringent cybersecurity laws and to introduce data breach notification requirements in their laws.⁶ These developments have been accompanied by equally significant changes to the regulatory architecture governing the cross border flow of data.

2. A few examples will suffice to illustrate this point. In the past few months, the Chinese authorities have taken enforcement action pursuant to its newly-passed data protection and cybersecurity law, which introduced restrictions on the transfer of data to and from China.⁷ The latest draft regulations and standards have been met with anxiety in the business community, which fears the onset of onerous data localisation and security assessment requirements.⁸

3. And in India, on 24 August 2017, a nine-judge panel of the Indian Supreme Court unanimously held, overturning two of its earlier decisions, that the right to privacy is a fundamental right protected under the Indian Constitution.⁹ This has led the Indian Government to revive its efforts to pass a comprehensive Data Protection Act.¹⁰ On 28 November 2017, the Ministry of Electronics and Information Technology released a mammoth White Paper on the subject and has solicited public feedback on the form the legislation should take.¹¹

4. We should also have regard to what is happening in Europe. On 25 May 2018, the European General Data Protection Regulation, which was passed in April 2016, will come into effect. While it is undoubtedly an important piece of legislation that advances the global agenda on data protection, the Regulation has far-reaching extra-territorial effects and provides for fines of up to S\$30m (or up to four percent of the annual turnover of a company) in the event of non-compliance.¹² Business leaders who have been surveyed have said that they foresee that they will come under great pressure, not just from European regulators, but their business counterparts in Europe, to adhere to the requirements imposed under the Regulation.¹³

5. Closer to home, change is also afoot. On 10 November 2017, the APEC Ministers released a joint statement calling for the development of “appropriate consumer protection and privacy rules”, and recognising the importance of the so-called APEC Cross-Border Privacy Rules (or CBPR) System, which Japan is already part of and which Singapore, Korea and Australia have announced they will join.¹⁴ The APEC Ministers also called for enhanced cooperation in this area, including through the promotion of capacity building activities.¹⁵ Asia might be a relative newcomer to the field of data protection, but it is clear that the tide of change, which has gathered pace in the last year, has also reached this continent. Whether this results in greater fragmentation in the regulatory environment, to the detriment of business, or in greater convergence and harmonisation, remains to be seen. And this sets the context for why we have come together today for a Forum

that is themed “Towards a shared legal ecosystem for international data flows in Asia”.

6. At the supranational level, some work has already been done to encourage greater alignment in national laws. Over the past 5 years, the OECD,¹⁶ APEC,¹⁷ and ASEAN¹⁸ have all released statements of principle recognising the importance of data protection and privacy. While such broad statements of principles are useful, what remains to be done is the hard and prosaic work of sifting through the patchwork of national laws and regulations to identify points of commonality and areas where reform is required.

7. This is where I think ABLI comes in, with a unique opportunity to influence the shape of future developments. The impetus for the Institute’s formation was the recognition that differences in the legal regimes of the countries in the region can stand as a serious impediment to business. The idea was to create a permanent research body with a pronounced practice orientation that would conduct and facilitate research on Asian law, with a view towards promoting greater convergence of our substantive business laws.¹⁹ While it is headquartered in Singapore, ABLI is a neutral body that reports to a multi-national board of governors and holds a truly pan-Asian outlook.

8. From its inception, the subject of data privacy has been on its agenda. When the Board of Governors considered this in July last year, it was decided that the ABLI would train its sights specifically on the regulation of international data

transfers, which have a direct and immediate impact on business. To that end, the Institute set itself two principal tasks – 2 “Rs”, if you will. First, it sought to research and study the state of the existing law. Second, it set out to make suitable recommendations for future change.

9. ABLI is working on preparing a compendium of jurisdictional reports on the regulation of international data transfers prepared by ABLI’s jurisdictional reporters. This compendium, which will soon be published as the second volume in the ABLI Legal Convergence Series, is a comprehensive survey of the legal landscape as it relates to cross-border data flows and data localisation obligations in 14 jurisdictions. These reports are a truly impressive piece of scholarship, and their publication will mark the close of the first, descriptive, phase of the ABLI’s Data Privacy Project.

10. This forum opens the second, prescriptive, phase of the ABLI’s project. Building on the work of the jurisdictional reporters and the ABLI Data Privacy Secretariat, the organisers have identified five key themes as requiring in-depth discussion. These five themes will be discussed at the various sessions of this forum, and I am confident that the conversations that take place today will lay the groundwork for the development of concrete recommendations for the convergence of rules and standards on cross-border data transfers. I am given to understand that ABLI expects to release its report covering this second phase of the project within a year, and I firmly believe that this work will lay the foundation for the

development of a more coherent data protection framework in Asia and beyond. As I said at its launch two years ago, the Institute exists to put forward practical solutions that will appeal to policymakers and legal practitioners.²⁰ For those of you from overseas, particularly those from jurisdictions who are working on drafting your own data privacy legislation, I commend the work of the Institute to you, and would strongly encourage you to reach out to see how it can be a resource to you.

11. The vision of this forum, which is to help in the development of a “shared legal ecosystem for international data flows in Asia” is an ambitious one; but we draw confidence from the fact that it is a shared enterprise. I am therefore heartened to see such a strong and diverse group of persons gathered here today. Among others, we have representatives from data protection commissions; government officials; partners of law firms; academics; and members of industry. This is precisely the sort of event which I – and the other founding partners of the ABLI – had envisioned the Institute would organise: events that foster discussion and cooperation between governments as well as members of the business, legal, and academic communities. Thank you all very much for being a part of this common project.

12. In closing, I wish to acknowledge the contributions of all who have made today possible. Thanks are due, first and foremost, to the ABLI’s jurisdictional reporters who have so generously agreed to give up their time to be a part of this project. I also acknowledge the contribution of the data protection and privacy

commissioners who have provided invaluable input to the jurisdictional reporters. Their participation has greatly increased the stature of the project. Special thanks should go to Personal Data Protection Commission of Singapore, which I am given to understand has worked very closely with ABLI to make all of this possible. Last, but certainly not least, I commend Dr Clarisse Girot and the ABLI team, who have managed this Project from its inception with tact and ability.

13. When I spoke at the launch of the ABLI some two years ago, I said that the vision was for the Institute to be a “permanent research institution, which, at its heart, is stimulating the drive towards thoughtful legal convergence in the region.”²¹ I am delighted to see that in just two short years, ABLI is already well on its way to achieving that goal. The report on data protection laws which will be published soon, follows closely on the heels of the ABLI’s first compendium on the recognition and enforcement of foreign judgments. Both of these reports represent immense achievements, and I cannot wait to see what the ABLI will achieve in the months and years to come.

14. Thank you all very much. I wish this forum every success.

¹ Sundaresh Menon, “Doing Business Across Asia: Legal Convergence in An Asian Century” (Opening address delivered at the launch of the Asian Business Law Institute on 21 January 2016), <<https://www.supremecourt.gov.sg/news/speeches/chief-justice-sundaresh-menon--doing-business-across-asia--legal-convergence-in-an-asian-century>> (accessed on 17 January 2018) (“ABLI Launch Speech”).

² Kevin Kwang, “380,000 Singapore users affected by massive data breach in 2016: Uber”, *Channel News Asia* (15 December 2017), <<https://www.channelnewsasia.com/news/singapore/380-000-singapore-users-affected-by-massive-data-breach-in-2016-9502046>> (accessed on 17 January 2018).

³ Nick Hopkins, “Deloitte hit by cyber-attack revealing clients’ secret emails”, *The Guardian* (25 September 2017), <<https://www.theguardian.com/business/2017/sep/25/deloitte-hit-by-cyber-attack-revealing-clients-secret-emails>> (accessed on 17 January 2018).

⁴ Tara Siegel Bernard, Tiffany Hsu, Nicole Perlroth and Ron Lieber, “Equifax says cyberattack may have affected 143 million in the U.S.”, *New York Times* (7 September 2017), <<https://www.nytimes.com/2017/09/07/business/equifax-cyberattack.html>> (accessed on 17 January 2018).

⁵ Selena Larson, “Verizon data of 6 million users leaked”, *CNN* (12 July 2017), <<http://money.cnn.com/2017/07/12/technology/verizon-data-leaked-online/index.html>> (accessed 17 January 2018).

⁶ See, eg, Singapore (<https://www.channelnewsasia.com/news/singapore/singapore-s-draft-cybersecurity-bill-tweaked-to-include-public-9399378>) and the United States (<https://www.reuters.com/article/us-usa-cybersecurity-disclosure-idUSKBN0U02RS20151217>).

⁷ Norton Rose Fulbright, “China’s Cyber Security Law: enforcement actions are on the way” <<http://www.nortonrosefulbright.com/knowledge/publications/158099/chinas-cyber-security-law-enforcement-actions-are-on-the-way>> (accessed on 17 January 2018).

⁸ Yuan Ying, “China’s cyber security law rattles multinationals”, *Financial Times* (30 May 2017), <<https://www.ft.com/content/b302269c-44ff-11e7-8519-9f94ee97d996>> (accessed 17 January 2018).

⁹ *Justice K S Puttaswamy (retd) and another v Union of India and others* (Writ Petition (Civil) No 494 of 2012).

¹⁰ Aayush Ailawadi, “India gears up for a data protection law”, *Bloomberg* (28 November 2017), <<https://www.bloomberqint.com/technology/2017/11/27/india-gears-up-for-a-data-protection-law>> (accessed on 17 January 2018).

¹¹ Mugdha Variyar and Surabhi Agarwal, “Government releases white paper on data protection law”, *The Economic Times* (27 November 2017), <<https://economictimes.indiatimes.com/tech/internet/government-releases-white-paper-on-data-protection-law/articleshow/61823239.cms>> (accessed on 17 January 2018).

¹² Website of the GDPR, <<https://www.eugdpr.org/key-changes.html>>

¹³ “Why Singapore companies need to comply with the GDPR”, *Networks Asia* (30 May 2017), <<https://www.networksasiasia.net/article/why-singapore-companies-need-comply-gdpr.1496113860>> (accessed on 17 January 2018)

¹⁴ <https://www.ag.gov.au/Consultations/Pages/APEC-cross-border-privacy-rules-public-consultation.aspx> and [https://www.pdpc.gov.sg/-/media/Files/PDPC/PDF-Files/Press-Room/2017/pdps2017-media-release---\(260717\).pdf](https://www.pdpc.gov.sg/-/media/Files/PDPC/PDF-Files/Press-Room/2017/pdps2017-media-release---(260717).pdf).

¹⁵ Joint Ministerial Statement issued at 2017 APEC Ministerial Meeting, <https://www.apec.org/Meeting-Papers/Annual-Ministerial-Meetings/2017/2017_amm> (accessed 17 January 2018).

¹⁶ The OECD Privacy Framework (2013), <
https://www.oecd.org/sti/ieconomy/oecd_privacy_framework.pdf> (accessed 17 January 2018).

¹⁷ APEC Privacy Framework 2015, <
[https://www.apec.org/Publications/2017/08/APEC-Privacy-Framework-\(2015\)](https://www.apec.org/Publications/2017/08/APEC-Privacy-Framework-(2015))> (accessed on 17 January 2018).

¹⁸ ASEAN Framework on Personal Data Protection, <
<http://asean.org/storage/2012/05/10-ASEAN-Framework-on-PDP.pdf>> (accessed on 17 January 2018).

¹⁹ See, generally, ABLI Launch Speech at paras 5–17.

²⁰ See ABLI Launch Speech at para 28.

²¹ See ABLI Launch Speech at para 4.