SyCip Salazar Hernandez & Gatmaitan

Legal Bulletin

Technology, Media & Telecoms

Data Privacy Act of 2012

What it's about

The Data Privacy Act (Republic Act No. 10173) seeks to protect the confidentiality of "personal information." The latter is defined as "any information whether recorded in material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual." The law imposes certain obligations on "personal information controllers" and those who "process" personal information. It also provides for penal and monetary sanctions for violations of its provisions. It took effect on 8 September 2012.

Key provisions

- Personal information controllers are persons who control the collection, holding, processing or use of personal information, while processors are those to whom processing has been outsourced. Most companies would be considered a controller. For example, employers gather information about their staff, as do service companies like banks, insurance companies, and utilities. BPOs are personal information processors.
- The law does not apply to the processing of certain types of information, such as particular data about government officers, and information processed for journalistic or research

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Cybercrime Prevention Act of 2012

What it's about

The Cybercrime Prevention Act (Republic Act No. 10175) penalizes "cybercrimes"— acts that fall into any of these major categories:

a) offenses against the confidentiality, integrity and availability of computer data and systems (*e.g.*, illegal access, data interference);

b) computer-related offenses (*e.g.*, computer-related forgery and fraud);

c) content-related offenses (*e.g.*, cybersex).

The law took effect on 3 November 2012. However, several petitions assailing the constitutionality of the law have been filed before the Philippines Supreme Court. The latter

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SyCipLaw Updates

Asia Pacific Legal 500 and IFLR1000 2013 Rankings

SyCip Salazar Hernandez & Gatmaitan is once again ranked as a top tier firm by IFLR1000 and Asia Pacific Legal 500 for 2013. Highlighted practices include banking and capital markets, dispute resolution, immigration, intellectual property, mergers and acquisitions, project finance, projects and energy, real estate and construction, restructuring and insolvency, and technology, media and telecommunications (TMT). Other recommended practices of the firm are aviation, employment, shipping and tax. Several SyCipLaw partners were also listed as Leading Lawyers and recommended for their areas of practice.

View the Asia Pacific Legal 500 2013 website at www.legal500.com.

View the IFLR1000 2013/23rd edition website at www.iflr1000.com.

Data Privacy Act of 2012

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purposes. It also does not apply to personal information collected from residents of foreign jurisdictions in accordance with the laws of those jurisdictions, and which is being processed in the Philippines.

- Collection and processing must be conducted in accordance with general guidelines based on "the principles of transparency, legitimate purpose and proportionality." Also, processing is permitted only if one of certain specific conditions are present. These conditions include consent, necessity under the contract with the data subject, and necessity for the protection of the data subject's interests (*e.g.*, protection of the subject's health).
- Controllers can subcontract processing of personal information but continue to be responsible for ensuring that proper safeguards are in place. Safeguard measures must include "safeguards to protect [the] computer network against accidental, unlawful or unauthorized usage," establishing a security policy, and regular monitoring for security breaches. The law provides for a notification requirement in case of a breach in security.
- The law requires the creation of a National Privacy Commission that will implement the provisions of the Data Privacy Act. To date, however, the Commission has yet to be organized.
- Stricter requirements need to be observed for processing "sensitive personal information." In fact, processing of this type of information is prohibited except for certain specific instances enumerated in the law. "Sensitive personal information" is personal information:

  a) about an individual's race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations;

  b) about an individual's health, education, genetic or sexual life, or any proceeding for any offense committed or alleged to have been committed by such a person, the disposal of such proceedings, or the sentence of any court in such proceedings;

  c) issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and

  d) specifically established by an executive order or an act of Congress to be kept classified.

Who should be interested

Most companies control and process personal information, including those that act as employers. But companies that have a BPO business or use BPOs, as well as companies that routinely retain and process personal information about their clients, such as financial services companies, should be particularly interested in this law.

Of interest

The Data Privacy Act has extra-territorial application. It applies even to acts or practices done by a non-resident outside the Philippines provided:

a) the processing relates to personal information about a Philippine citizen or resident;

b) the entity has a link with the Philippines and the entity is processing personal information in the Philippines or even if the processing is done outside the Philippines, for as long as it is about Philippine citizens or residents; or

c) the entity has other links to the Philippines, such as when the entity carries on business in the Philippines or the information was collected or held by an entity in the Philippines. ■

Cybercrime Prevention Act of 2012

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issued a temporary restraining order enjoining the implementation of the new law, which order is effective until 6 February 2013. Petitioners are seeking an extension of the order.

Key Provisions

- Other acts penalized under the Revised Penal Code and special laws, if committed "with the use of information and communications technologies," are covered by the Cybercrime Prevention Act and are penalized with a penalty that is one degree higher than the penalty provided for under the Revised Penal Code or the pertinent special law for that particular act. The Cybercrime Prevention Act also specifically makes libel a cybercrime, if committed "through a computer system or any other similar means which may be devised in the future."
- The Philippine National Police and the Philippine National Bureau of Investigation may be authorized, with due cause, to "collect or record by technical or electronic means traffic data in real-time associated with specified communications transmitted by means of a computer system."
- The Department of Justice may, upon a *prima facie* showing that computer data is violative of the Cybercrime Prevention Act, issue an order to restrict or block access to such computer data.
- The law creates:
    a) the Office of Cybercrime within the Philippine Department of Justice as "the central authority in all matters related to international mutual assistance and extradition; and
    b) the Cybercrime Investigation and Coordinating Center, under the administrative supervision of the Office of the President, "for policy coordination among concerned agencies and for the formulation and enforcement of the national cybersecurity plan."

  It also requires the designation of special cybercrime courts with judges specially trained to handle cybercrime cases.

Who Should be Interested

The Cybercrime Prevention Act should be of particular interest to entities that host or run internet search engines, blog spots, websites, and essentially, any entity that provides content or gives access to content tat is accessed by using computers and communications systems.

Of interest

The Cybercrime Prevention Act gives Philippine courts jurisdiction over any violation of the Cybercrime Prevention Act, even if committed outside the Philippines, if:

a) the violation was committed by a Filipino national;

b) if any of the elements was committed within the Philippines;

c) if any of the elements was committed with the use of any computer system that is wholly or partially situated in the Philippines;

d) by the violation, damage is caused to a natural or juridical person who, at the time of the commission of the violation, was in the Philippines. ■

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SyCipLaw Free Resources

The ICLG to: Telecoms, Media and Internet Laws and Regulations 2013

The International Comparative Legal Guide to: Telecoms, Media and Internet Laws and Regulations 2013 includes information on telecoms, radio spectrum, data retention and interception, distribution of audio-visual media, and Internet infrastructure in 34 jurisdictions. The Philippine section, contributed by SyCipLaw partner Rose Marie M. King-Dominguez and associate Ruben P. Acebedo II. is available for download from the SyCipLaw website.

Issues & Priorities for Senior In-house Worldwide

The World Law Group's report, "Global Agenda: Issues & Priorities for Senior In-house Counsel Worldwide", is a unique report that highlights, among others, current key challenges faced by chief legal officers, general counsel and other in-house law department leaders in some of the world's largest companies, as well as action plans they've found most effective to meet these challenges.

To access resources, please visit the SyCipLaw website (www.syciplaw.com/artbull.asp).

SyCip Salazar Hernandez & Gatmaitan

SyCipLaw is Shortlisted for 2013 Chambers and IFLR Awards

SyCip Salazar Hernandez & Gatmaitan has been nominated once again for Chambers Asia-Pacific Awards for Excellence's Philippine Law Firm of the Year award and IFLR Asia Awards' National Law Firm of the Year for the Philippines. The firm brought home both awards last year. It also received the Chambers Asia-Pacific Awards for Excellence in 2010 and the IFLR Asia Award in 2000-2003 and 2006-2011.

Winners of the IFLR Asia Awards will be announced at the awards ceremony on 28 February 2013 at the Island Shangri-La, Hong Kong.

Winners of the Chambers Asia-Pacific Awards for Excellence will be announced online (www.chambersandpartners.com/Awards/Asia) on 1 March 2013.

To receive updates from the firm by email, subscribe to the SyCipLaw e-bulletin at http://eepurl.com/s_aXn.

Case Law

Gamboa v. Teves, et al.: Developments in Foreign Ownership Restrictions

The Philippine Supreme Court has issued a decision that may have a significant impact on how local nationality requirements (*i.e.*, constitutional and statutory provisions requiring minimum Filipino ownership in certain industries) must be construed and applied. Enterprises such as telecommunications, media, advertising and land ownership are subject to such nationality requirements.

The case of *Gamboa v. Teves, et al.* (G.R. No. 176579, 28 June 2011) involved a petition that questioned foreign ownership levels in the common shares of Philippine Long Distance Telephone Company, a corporation engaged in telecommunications and therefore covered by Article XII, Section 11 of the Constitutional; this provision imposes a 40% equity cap on the foreign ownership in the "capital" of public utilities. It has been PLDT's position that the term "capital" refers to the outstanding capital stock, such that foreigners can own more than 40% of a corporation's voting shares for as long as foreign ownership of total outstanding shares (*i.e.*, voting and non-voting shares) do not exceed 40%. PLDT's capital structure pre-Gamboa decision reflected this position.

The Supreme Court held that the term "capital," as used in the article "refers only to shares of stock entitled to vote in the election of directors." The ruling in *Gamboa* also contained statements, which, while arguably *obiter dicta*, may, if implemented, further restrict possible foreign interest in nationalized and partly-nationalized industries. These include a statement that the 60-40 Filipino-foreign ownership requirement "must apply separately to each class of shares, whether common preferred non-voting, preferred voting, or any other class of shares."

The Philippine Securities and Exchange Commission is in the process of drafting a circular intended to set out foreign investment guidelines that are in line to the *Gamboa* ruling. The agency had conducted public hearings on an initial draft and has advised that it may issue the circular in mid-2013. ■

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About SyCip Salazar Hernandez & Gatmaitan

Founded in 1945, SyCip Salazar Hernandez & Gatmaitan is one of the most established and largest law firms in the Philippines. Well-known for its strong corporate and commercial practice, it has extensive experience in telecommunications and media law. The firm has assisted clients in their investments in the local telecommunication industry. Its work has included assistance to leader syndicates for the financing of local exchange roll-outs, due diligence of local telecommunications companies, and obtaining of opinions from the National Telecommunications Commission on specific issues. It has assisted and advised clients on various telecoms regulations including those on frequency allocations and IP services. The firm represented the Philippine Long Distance Telephone Company (PLDT) in its 2011 acquisition of about 51.55% of Digitel valued at PhP69.2 billion. PLDT is the leading telecommunications provider in the Philippines.

The firm's combined expertise in telecommunications law, media, advertising, intellectual property, e-commerce, data privacy, and their related issues make SyCipLaw uniquely able to help clients understand and deal with interdisciplinary and cross-jurisdiction concerns, and issues relating to convergence and the latest technological breakthroughs.

Publisher's Note: *The Legal Bulletin on Technology, Media and Telecoms is published by SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) as part of its services to its clients and is not intended for public circulation to non-clients. It is intended to provide general information on legal topics current at the time of printing. Its contents do not constitute legal advice and should in no circumstances be relied upon as such. Specific legal advice should be sought in particular matters. Reproduction of this Bulletin or any portion thereof is not authorized without the prior written consent of SyCipLaw.*