

UPDATE

# Cayman introduces Data Protection Law

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The Data Protection Bill, 2016 was passed by the Cayman Islands' Legislative Assembly on 27 March 2017 and gazetted as the Data Protection Law, 2017 on 5 June 2017. It has not yet come into force. This update summarises the key features of the Data Protection Law, 2017 and identifies what to expect next.

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## Introduction

The Data Protection Law, 2017 (the **Law**) is the first of its kind in the Cayman Islands. It is intended to meet the 'adequacy' requirement of the European Data Protection Directive (the **Directive**).<sup>1</sup> Under the Directive, personal data can only be transferred to countries outside the EU/EEA that ensure an adequate level of protection. The European Commission has the power to determine whether a country meets this requirement. Such recognition would enable the free flow of data between EU/EEA countries and the Cayman Islands which would enhance the Islands' reputation and competitiveness in European markets.

Domestic data protection legislation was also viewed by Government as necessary and indeed urgent following the coming into force of the Bill of Rights in the Cayman Islands on 6 November 2012, and in particular section 9 of the Bill of Rights which provides for the protection of family and private life.

This update summarises the key features of the Law. However, express reference should be made to the Law in its entirety for a comprehensive understanding of its provisions. There are for example a number of exemptions to certain of the general rules established in the Law. It is also likely that regulations and codes of practice will be introduced in due course to supplement the Law.

## Processing personal data and the rights of the individual

The Law provides for the protection of 'personal data' and will apply to 'data controllers' that are established in the Islands, or that process data in the Islands.

A person will be a 'data controller' for the purposes of the Law if they are involved in determining the purposes, conditions and manner in which personal data is processed. Data controllers not established in the Islands will be required to nominate a local representative established in the Islands who will also be subject to the obligations of a data controller.

The Law identifies eight key principles of data protection:

1. Personal data must be processed fairly and can only be processed if specific conditions set out in the Law are met.

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<sup>1</sup> Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

2. Personal data must be obtained only for specified lawful purposes and must not be processed in any manner incompatible with that purpose or purposes.
3. Personal data must be adequate, relevant and not excessive in relation to those purposes.
4. Personal data must be accurate and kept up-to-date.
5. Personal data processed for any purpose must not be kept for longer than is necessary for that purpose.
6. Personal data must be processed in accordance with the rights of data subjects under the Law.
7. Appropriate technical and organisational measures must be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. Personal data must not be transferred to a country or territory unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

'Data subjects', ie living individuals, are given a number of rights in relation to their personal data, including the right to be informed, upon request, of whether their personal data is being processed, the right to be provided with a description of their personal data, its source and to whom it may be disclosed, and the right to require a data controller to cease processing, or to not begin processing, their personal data.

### **Compliance**

The Law imposes strict timeframes on data controllers to comply with valid requests from data subjects for information about their personal data and requests to cease processing their personal data. Data controllers will also be required to promptly notify both the data subject and the Ombudsman (see below) of any personal data breaches.

It is understood that the recently created office of the Ombudsman will be responsible for the Law.<sup>2</sup> The principle functions of the Ombudsman will include ruling on complaints, monitoring, investigating and reporting on compliance by data controllers with their obligations and intervening and delivering opinions and orders related to data processing operations.

The Ombudsman will have the power to issue information orders, requiring 'any person to provide such information as the [Ombudsman] may reasonably consider appropriate', and enforcement orders, requiring a data controller to take or refrain from taking specified steps or to refrain from processing personal data of a specific description or for a specified purpose, manner or time. The Ombudsman may also impose monetary penalty orders of up to CI\$250,000.

Persons who fail to comply with an information order, enforcement order or monetary penalty order will commit an offence and be liable on conviction to a fine of CI\$100,000 and/or to imprisonment for a term of five years.

Officers of body corporates, or any person purporting to act in such a capacity, or if the body corporate is managed by its members, any member, may also be held liable and punished alongside the body corporate for any offence under the Law if the offence is proved to have been committed 'with the consent or connivance of, or to be attributable to, any neglect on the part of' such person.

### **Next steps**

It remains unclear when the Law and any supplemental regulations and/or Codes of Practice will come into force. However, what is clear is that the statutory framework for data protection will be technical, with significant ramifications for non-compliance. Anyone in the public and private sectors that collects, organises, stores, alters, uses, discloses or destroys personal data should therefore pay close attention to future developments. It is likely that there will be an implementation period (we expect in the region

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<sup>2</sup> The Law states that the Information Commissioner appointed under the Freedom of Information Law (2015 Revision) (the **FOI Law**) will be responsible for the Law. However, the FOI Law was amended on 26 April 2017 so as to replace the Information Commissioner with the recently created office of the Ombudsman under the Ombudsman Law, 2017.

of 12 months) beginning with phased registration of data controllers and ending with a period of training and guidance.

Future data controllers should ensure that key personnel are aware of these imminent changes and would also be well advised to undertake an early audit of their current personal data practices in order to identify as early as possible where the deficiencies lie and what changes will need to be made.

It remains to be seen whether the level of protection provided by the Law will be sufficient to attract recognition from the European Commission. The Commission has so far recognised other offshore jurisdictions such as Guernsey, Isle of Man and Jersey as providing adequate protection. We will provide a further update in due course in this respect.

## Contacts

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[Document Reference]