

Joint Foreign Chambers of the Philippines



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CANADIAN



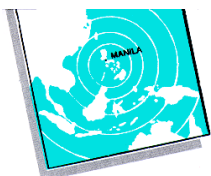
EUROPEAN



JAPANESE



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PAMURI

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Philippine Association of Multinational Companies Regional Headquarters, Inc.

July 15, 2011

Hon. Edgardo J. Angara
Chairman
Committee on Science and Technology
Philippine Senate
Pasay City

Dear Chairman Angara:

We commend you and the members of the Committee on Science and Technology for moving ahead with the Data Privacy bill, one of the priority issues that needs to be addressed to enhance the competitiveness of the Philippines as a BPO destination.

Further to the statement we gave during the Committee's hearing on June 6, we would like to submit our proposed amendments, which we respectfully ask you and the Committee to consider. The amendments are based specifically on House Bill 4115 that was already approved on Third Reading at the House of Representatives.

1. Section 3 (I) – Sensitive Personal Information

Recommended action: Delete from the list marital status, age, education, proceedings for offenses committed by such persons (and disposal of such proceedings or the sentence in court) and the entire subsection (3) which talks of issuances by government agencies.

Comment: A review of the EU Directive as well as a couple of other country Data Privacy (DP) laws shows that none of the above information is classified as "sensitive personal information". We accordingly recommend that we align HB 4115 with these other laws as international best practice, considering that the information is widely used for commercial and non-commercial purposes, and in many cases to establish the validity of transactions and contracts (e.g. to establish whether spousal consent is required for transfer of properties or establish that one has reached the age of majority and has the capacity to enter into contracts). It is further noted

that information regarding proceedings for offenses may also be obtained from public databases or authorized government agencies, and is significant in consideration of employment, commercial, and other licensing requirements.

SSS, driver's licenses, IBP, PTR, SEC, DTI licenses and permits, to name a few, are also used in a variety of transactions and in most cases, to establish identity, capacity, and authority. Some of this information is already available in public databases or may be obtained from authorized government agencies provided one has a legitimate interest and purpose. To prevent processing of this data except in the cases provided in Section 11 would be unduly burdensome and would defeat the purpose for which those licenses/permits were given in the first place. It would also be consistent with Section 4(c), which already excludes from the scope of the Act "information relating to any discretionary benefit of a financial nature such as the granting of a license or permit given by the government to an individual...."

We take note that the counterpart Senate bill includes marital status and age apparently to avoid acts of discrimination. However, there are already laws that penalize discrimination based on marital status or age.

2. Section 4 – Scope

Recommended action: Amend to read as follows:

"This Act applies to the processing of all types of personal information IN THE PHILIPPINES and to any natural and juridical person involved in personal information processing IN THE PHILIPPINES, Including those personal information controllers and processors who, although not found or established in the Philippines, use equipment that are located in the Philippines. This Act does not apply to the following: xxx

Add another sub-section to read as follows:

(f) INFORMATION ORIGINALLY COLLECTED OUTSIDE OF THE PHILIPPINES BY DATA CONTROLLERS AND/OR PROCESSORS AND PROCESSED IN ACCORDANCE WITH THE DATA PRIVACY LAWS OF THE RELEVANT FOREIGN JURISDICTIONS-

3. Section 5 – Extraterritorial application

Recommended action: Delete the entire section to make it consistent with the Senate bill.

4. Section 9 (e)

Recommended action: Amend to read as follows:

“(e) Retained only for as long as necessary for the fulfillment of the purposes for which the data was obtained, OR FOR THE ESTABLISHMENT, EXERCISE OR DEFENCE OF LEGAL CLAIMS, OR FOR LEGITIMATE BUSINESS PURPOSES, or as provided by law.

Comment: Under the bill, personal information is required to be stored and used only for as long as necessary to achieve the purpose for which it was processed, after which the personal information shall be deleted or blocked from a personal information base. However, under Philippine law, for instance (and probably in other jurisdictions) the period for prescription of actions is 10 years, and thus it may be necessary to retain the information for at least that period of time to address claims or queries about previous transactions. We thus suggest that the provision be expanded to allow for such storage for compliance and/or litigation purposes. An additional exception “for legitimate business purposes” is necessary to cover the need to keep for archival and records or audit purposes.

5. Section 10 (a)

Recommended action: Amend to read as follows:

“(a) The data subject has given his or her unambiguous consent, [specific to the purpose which must be given in writing, or through any other similar means of express consent according to the circumstances.

Comment: “Consent of the data subject” is already a defined term, and explicitly allows electronic means to provide consent.

Add a new sub-section (f) as follows, consistent with the EU Directive:

“(F) THE PROCESSING IS NECESSARY FOR THE PURPOSES OF THE

LEGITIMATE INTERESTS PURSUED BY THE CONTROLLER OR BY A THIRD PARTY OR PARTIES TO WHOM THE DATA ARE DISCLOSED, EXCEPT WHERE SUCH INTERESTS ARE OVERRIDDEN BY FUNDAMENTAL RIGHTS AND FREEDOMS OF THE DATA SUBJECT WHICH REQUIRE PROTECTION UNDER THE PHILIPPINE CONSTITUTION.”

6. Section 11 (f)

Recommended action: Amend to read as follows:

“The processing concerns such personal information as is necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, OR THE ESTABLISHMENT, EXERCISE OR DEFENSE OF LEGAL CLAIMS, OR WHEN PROVIDED TO GOVERNMENT OR PUBLIC AUTHORITY.’

7. Section 12

Recommended action: Amend to read as follows:

“xxx Provided, That the personal information controller shall be responsible for ensuring that proper safeguards are in place to ensure the confidentiality of the personal information processed, prevent its use for unauthorized purposes, and generally comply with the requirements of this Act and other laws for processing of personal information. The personal information processor shall comply with all the requirements IMPOSED BY THE PERSONAL INFORMATION CONTROLLER, AND of this Act and other applicable laws, BUT MAY RELY ON THE CONTROLLER’S CONFIRMATION THAT SECTIONS 9, 10 AND 11 OF THIS ACT HAVE BEEN COMPLIED WITH.

8. Section 13

Recommended action: Delete the entire provision.

Comment: Access to information may also be required after the purpose is achieved, for a variety of reasons, such as the pursuit of legal claims and establishment of defenses.

9. Section 15

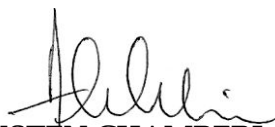
Recommended action: paragraph following (5) should be amended to read as follows:

“xxx or when the collection and processing are for obvious purposes, INCLUDING WHEN IT IS NECESSARY FOR THE PERFORMANCE OF OR IN RELATION TO A CONTRACT OR SERVICE, OR WHEN NECESSARY OR DESIRABLE IN THE CONTEXT OF AN EMPLOYMENT RELATIONSHIP CONTRACTS, BETWEEN THE COLLECTOR AND THE DATA SUBJECT, OR WHEN THE INFORMATION IS BEING COLLECTED AND PROCESSED AS A RESULT OF A LEGAL OBLIGATION.”

Comment: Delete the entire sub-section (c) for being too onerous, especially given the limited conditions for processing in the first place. The names and addresses of recipients, manner by which data is processed, date when personal information was last accessed, for instance, are quite difficult to provide especially for the big companies and high transaction volumes that our BPO sector typically service. This will result in a burden rather than the purported benefit it will give to the outsourcing and BPO industry in the Philippines.

Mr. Chairman, thank you again for considering our views.

With best regards,



AUSTEN CHAMBERLAIN
President

American Chamber of Commerce
of the Philippines, Inc.



JOHN CASEY
President

Australian-New Zealand Chamber
of Commerce of the Philippines, Inc.



JULIAN PAYNE
President

Canadian Chamber of Commerce
of the Philippines, Inc.



HUBERT D'ABOVILLE
President

European Chamber of Commerce
of the Philippines, Inc.



N OBUYA ICHIKI

President


Japanese Chamber of Commerce
& Industry of the Philippines, Inc.



EUN GAP CHANG

President

Korean Chamber of Commerce
of the Philippines, Inc.



SHAMEEM QURASHI

President

Philippine Association of Multinational Companies
Regional Headquarters, Inc.