

## **CABLE AND WIRELESS (CAYMAN ISLANDS) LIMITED'S COMMENTS ON THE DRAFT DATA PROTECTION BILL, 2012**

2 November 2012

Cable and Wireless (Cayman Islands) Limited, trading as LIME (hereinafter referred to as "LIME") is pleased to respond to the Data Protection Working Group's questions and request for comments on the Cayman Islands Data Protection Bill 2012 (hereinafter referred to as "the Bill"). The following are LIME's responses to the questions posed by the Data Protection Working Group and LIME's additional comments on the Bill. LIME reserves the right to provide further comments on the Bill at a later date.

**Q: Many new and different types of individual rights and protections are included throughout the draft Bill. Are these rights and protections granted to individuals sufficient? If not, what additional rights and protections would you recommend?**

A: Generally, LIME feels that the rights and protections granted to individuals are sufficient in so far as the protection of personal data is concerned.

**Q: Are the limited exemptions in Part 4 of the draft Bill appropriate? Are there any other exemptions which you consider to be essential in order to protect Cayman's key industries? Bear in mind that any such exemptions must still allow the legislative regime to meet internationally accepted data protection standards.**

A: LIME submits that the exemptions in Part 4 of the draft Bill are appropriate.

**Q: Will oversight and enforcement powers in Parts 5 and 6 of the draft Bill be adequate to ensure compliance with the Law and meet the stated objectives? If not, what changes would you recommend?**

A: LIME submits that oversight and enforcement powers are adequate to ensure compliance with the law, save and except in the area of transfers to third countries.

The eighth data protection principle provides that personal data shall 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.” The question arises however as regards how the Information Commissioner will monitor a data controller as to his assessment of the adequacy of the level of protection in third countries to which they transfer data. There are no mechanisms for oversight and enforcement as regards this principle. Accordingly, LIME recommends that the Information Commissioner may wish to consider publishing a list of countries that provide an adequate level of protection for the rights and freedoms of data subjects as regards the processing of personal data.

**Q: Does the draft legislation cause you any concerns not covered above? If so, please explain them, giving as much detail as you can.**

**A:** Outlined hereunder are LIME’s additional concerns as regards the draft legislation:

#### **The independence of the Commissioner**

Section 42 (2) provides that in the exercise of his powers, the Commissioner shall be independent and not be subject to the direction or control of any other person or authority, yet section 35(3) of the *Freedom of Information Law, 2007* provides that the Commissioner may be removed at any time by the Governor in Cabinet.

LIME recommends that the granting of a greater level of security of tenure to the Commissioner should be considered.

#### **Seventh Principle-Appropriate technical and organisational measures**

The seventh principle contained in Schedule I of the Bill provides that “appropriate technical and organisational measures shall be taken against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.”

It is submitted that the term “appropriate technical and organisational measures” is vague. What standards will a firm use to measure whether its technical and organisational measures are appropriate?

LIME recommends that the Information Commissioner publish general guidelines as regards appropriate technical and organisational measures.

## **Definitions of “data subject” and “sensitive data”**

The definitions of “data subject” and “sensitive data” appear to relate to human beings, thereby exempting legal entities from the protections afforded by the draft Bill. LIME requests clarity on whether the provisions of the Bill afford protection to legal entities’ data.

## **Protection of sensitive personal data**

The eight core data protection principles apply to the protection of personal data, but little is said in the legislation about the protection of sensitive personal data. It is submitted that the Bill’s protection of sensitive personal data is deficient.

## **Compensation**

Section 14 provides that an individual who suffers damage by reason of any contravention by a data controller of any requirement of this law has a cause of action for compensation from the data controller for that damage.

It is submitted that damage should be limited to direct damages, as opposed to consequential or indirect damages.

## **Enforcement of the Bill**

Enforcement of the Bill is likely to be difficult as damages are often intangible, it may be difficult to assign a value to any damages, and determining responsibilities is complex.<sup>1</sup>

If non-compliance with the Act is unlikely to have serious consequences, or if enforcement is difficult, there is little or no incentive for data controllers to comply with data protection provisions.

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<sup>1</sup> Review of the European Data Protection Directive, Neil Robinson et al.

### **Compliance with international best practice**

The European Commission has recently proposed a major reform of the 1995 Data Protection Directive. Therefore, the Data Protection Working Group should be mindful that it is basing its rules on standards which are evolving, and it should ensure that the Cayman Islands data protection rules continue to comply with international best practice.

### **Conclusion**

The Bill is a step forward for the Cayman Islands. In the hands of a Commissioner committed to data protection, much will be able to be achieved.