

CIPL Project: Boards and Data

2022 Project Plan

Are Board's ready for the data driven digital businesses which are driving our economies?

EXECUTIVE SUMMARY:

Board's need to urgently re-skill to address the risks and opportunities of data in the digital based economies of today and tomorrow. Our world is transitioning from industrial based economies to digital based economies, and data and innovation are driving this transformation. One of the core missions of corporate leadership is to ensure oversight and accountability for the organization. Businesses are increasingly recognising that data is a key capital asset of their organisations, but are they equipped to not just manage the risks but also realise the opportunities of data? Data is becoming one of the most important resources of the 21st century, affecting how industries, nations and societies develop in both the local and global ecosystem. Data is the key enabler for ensuring transparent, consistent and accountable ESG reporting and objectives.

To further explore this issue, the Centre for Information Policy Leadership (CIPL) hosted a roundtable event with the Singapore Personal Data Protection Commission (PDPC) and the Singapore Institute of Directors (SID) to discuss elevating data privacy as a priority for corporate leadership, including at board level. Representatives from CIPL, PDPC, SID, Singapore-based companies and multinational organizations participated in the discussion and exchanged views on how privacy teams and professionals can drive data privacy accountability internally to ensure responsible and beneficial use of data, and how organizations and their leadership can move beyond viewing data privacy as a legal compliance cost and burden, and instead look at it as a competitive advantage and a business enabler.

The Roundtable Report at Appendix 1 provides a summary of the takeaways and highlights key actions that senior leadership should be thinking about with respect to data, from a privacy lens, and outlines areas of focus for the future.

Essentially, data, particularly the opportunities and risks associated with it, have scaled exponentially, but our governance and tools for addressing data strategically and in an accountable and trustworthy way, are lagging behind. Boards need to understand and embrace this reality.

Along with the new possibilities and potentials of data come legal, technology, social and customer risks and challenges, including increasing data privacy requirements. The pace of digital transformation of our economies and societies is exceeding that of the development of experience-based policy and legislation, raising significant challenges when it comes to managing data risks in a quickly evolving global and digitised world.

Currently, Board visibility of data is siloed into cyber/data security, technology/digital transformation, legal/regulatory risk (including privacy) and reporting. While the business views data as a business asset, this is not reflected in the approach of the Board as an holistic approach to data governance and strategy, nor from an accounting perspective.

This executive briefing outlines why Board's need to include data strategy and governance as a key agenda item for corporate boards and CEOs. It also sets out the need for Boards to re-skill and re-focus on data as critical to the survival and growth of businesses as our economies, societies and

businesses embrace digital transformation in an increasingly inter-connected world which relies on data to power AI, enable innovation, safeguard societies, and facilitate business growth.

CONTEXT

In the digital age, every organisation, whether private, public or not-for-profit is a “data business”. The data driven economy is fundamentally different from what has come before, and we need to revisit our accounting methodologies, economic models, policy and legislation to address the risks and enable the leveraging of the opportunities of the digital transformation taking place around us.

Even before the pandemic, 92% of businesses surveyed by McKinsey believed that their business models would have to embrace digitisation¹ and digital transformation², and the global pandemic has only accelerated that imperative. Digital transformation is no longer an option, but has become essential for corporate survival, and therefore a top priority for Boards.

The digital economy is the size of the GDP of a G7 country and the growth of the digital economy is six times faster than major emerging markets. The reality is that all aspects of our social, economic and political interactions are being “datafied” as a result of digitally connected individuals and machines. We are moving from the fourth industrial revolution with its focus on technology to the fifth industrial revolution with the wholly new dynamic of smart societies.

Effective *data strategy and data governance* is critical to realising the opportunities and identifying and managing the risks associated with the digitisation and digital transformation of data at scale which is powering our economies, training our AI and shaping our societies.

The data ecosystem is being shaped by the growing divergence in legal and regulatory approaches to data (both personal and non-personal data), increasing localisation, data sovereignty ambitions, cyber and data security threats, the challenges posed by international transfer restrictions and requirements, and the politicisation of data, to name but a few.

Current accounting standards also need to change to properly take account of and value the data assets of a business. A clear understanding of what data a company holds is essential to understanding how data can be used to generate value for a business, its customers and suppliers.

This includes data in all its forms whether physical or digital data, meta data, derived data, voice or image data, etc. Understanding how a company obtains data, what is the type of data, how data is used to generate value, where and with whom data is shared, and what are the risks and obligations associated with data, will enable firms to better navigate the digitisation and digital transformation which is occurring within businesses, along their supply chain and is increasingly demanded by customers.

Privacy laws are increasingly restricting the ability to use and share data, imposing geographical compliance requirements on the borderless reality of data, a unique asset which can be copied, held in multiple places at the same time, and accessed simultaneously, and the scale and volume of processing of data which is driving digitisation and digital transformation.

¹ Digitisation – converting information, whether written, audio, visual etc. into a machine readable format.

² Digital transformation - using digital technologies to change or create new business processes, culture, and customer experiences to meet changing business and market requirements.

Having a clear data strategy and strong data governance framework will enable business to use data to add value for its customers, suppliers and staff. Given that the Board's key purpose "*is to ensure the company's prosperity by collectively directing the company's affairs, while meeting the appropriate interests of its shareholders and relevant stakeholders*" (Standards for the Board, IoD), navigating strategic data focussed business decisions needs to be Board led, and not delegated to IT or Compliance.

Are today's Boards confident in their responses to some of the key data questions?

- Is your Board data enabled/skilled/ready?
- Do you see data still being treated/understood in siloes?
- Do you have an holistic data strategy which incorporates data governance?
- Do you understand the geopolitical impacts on data?
- Do you understand how your data impacts your sector, economy and trade?

As companies focus on identifying and sharing their ESG credentials and objectives, do they understand how this is data led? i.e. transparency, reporting, validation, demonstrating shareholder value etc.

The approach to data needs to change from a siloed to an holistic approach. The new reality is that technology is the enabler, data is the driver and innovation is the differentiator. As organisations embrace an innovation, data and tech-first mindset, spend and focus will shift from IT maintenance to data innovation across all aspects of their business.

An holistic approach to data will open opportunities for innovation and leadership, but the new risks need to be managed with robust data governance across all current business silos to build trust, transparency and accountability. This must be owned by the C-suite and led by the Board.

CIPL PROJECT AND DELIVERABLES

The project objectives are to enable CIPL members to:

- Articulate why data is a corporate Board level issue, and to break down the siloes between privacy, technology, risk, security etc. to ensure that data is viewed holistically;
- Be the convener which brings together all the data strands into an holistic approach to data to ensure that Boards recognise data as a strategic and governance imperative for business;
- To identify key questions for Boards to focus on and to enable them to upskill their data strategy and governance skills;
- To exchange information on best practices and key data priorities for Boards to focus on;
- To enable Boards to take a strategic, ethical and accountable approach to data; and
- To enable Boards and organisations to identify and leverage the opportunities of data and to better identify and manage the risks from an accountability and governance perspective.

PROJECT ACTIVITIES AND TIMELINE

Note that the work plan below is subject to changes to adapt to key relevant external developments and to accommodate inputs of CIPL members.

Key Project Activities	Timeline
Scoping call with group of key CIPL members to introduce the project and gather initial inputs to guide roundtable discussions	March 2022
Two Industry roundtables with project participants, key CIPL members to: <ul style="list-style-type: none"> • Gather further inputs on the Project articulation and drafting of the white paper on Data and Boards. Focus on specific topics such a developing legal liability and tax and accounting issues; • Identify examples of Boards which are already treating Data as a Strategic and Governance issue and leverage the learnings; • Discuss strategy for external and international engagement on the topic with IOD and others; and • Consider any challenges which need to be overcome i.e. how will CPO's/DPO's lead and articulate this transformation. 	March/April 2022
Share the project scoping with selected Chairs of Boards to test the project and obtain feedback through one-to-one meetings and introductions provided by members.	April/May 2022
Revise draft Project following feedback into a proposal for Boards on Data and publish at a launch event with all CIPL members together with a round table discussion to explore and discuss the issues.	April 2022
Create a playbook for CPO's to present the CIPL Project to their Boards, including potential joint meetings	May 2022
Follow-up event with the IOD in the UK and Singapore to present outcomes of the Project and other interested parties	June 2022

PROJECT TEAM AND MORE INFORMATION

Bojana Bellamy, CIPL's President and **Vivienne Artz**, Data Strategy and Privacy Policy Advisor to CIPL will be the main points of contact for this project.

[tbc - CIPL team and CIPL members with Board reporting/roles]

CIPL is excited to continue our work in this special project. To learn more about participating in this initiative, please contact Michelle Marcoot at mmarcoot@HuntonAK.com.

Appendix 1

From the Backroom to the Boardroom: Elevating Data Privacy as a Priority for Corporate Leadership

Roundtable Report

January 2022

In September 2021, the Centre for Information Policy Leadership (CIPL)³, Singapore Personal Data Protection Commission (PDPC) and Singapore Institute of Directors (SID)⁴ hosted a roundtable to discuss elevating data privacy as a priority for corporate leadership, including at board level. Representatives from CIPL, PDPC, SID, Singapore-based companies and multinational organizations participated in the discussion and exchanged views on how privacy teams and professionals can drive data privacy accountability internally to ensure responsible and beneficial use of data, and how organizations and their leadership can move beyond viewing data privacy as a legal compliance cost and look at it as a competitive advantage and a business enabler.

This Roundtable Report provides a summary of takeaways from the roundtable, highlights key actions that senior leadership should be thinking about with respect to privacy and outlines areas of focus for the future.

Takeaways and Key Actions for Senior Leadership

- **Privacy as a driver of trust:** Since the introduction of GDPR and increased public policy discussions surrounding privacy, we have seen a material transition in organizations towards building trust, which is, in itself, a board-level issue. This has been driven not only by new legislation but changing customer expectations. This shift will help enable privacy to find its own place on board-level agendas, beyond the big data companies, rather than being categorized as a sub-topic of risk management discussions.
- **Privacy as a competitive advantage:** Board level conversations around trust also focus on privacy as a competitive advantage in the marketplace. Organizations are facing increased pressure from regulators and customers in relation to how they manage data and senior leadership discussions are centering on how organizations can compete with and set themselves apart from their peers in the data protection domain.

³ CIPL is a global privacy and data policy think tank in the law firm of Hunton Andrews Kurth LLP and is financially supported by the law firm and 85 member companies that are leaders in key sectors of the global economy. CIPL's mission is to engage in thought leadership and develop best practices that ensure both effective privacy protections and the responsible use of personal information in the modern information age. CIPL's work facilitates constructive engagement between business leaders, privacy and security professionals, regulators and policymakers around the world. For more information, please see CIPL's website at <http://www.informationpolicycentre.com/>.

⁴ SID is the national association of company directors and promotes the professional development of directors and corporate leaders. The institute works closely with authorities, regulators and a network of members and professionals, such as accountants and lawyers, to identify ways to uphold and enhance the highest standards of corporate governance and ethical conduct in Singapore. For more information, please see SID's website at <https://www.sid.org.sg/>.

- **Privacy as part of the ESG framework:** There is an increasing recognition among organizations that privacy goes beyond corporate compliance and is an integral part of corporate digital responsibility. Moreover, while the traditional understanding of privacy can be considered to fall under the “governance” element of the Environmental, Social and Governance (ESG) framework, data functions as an enabler of all the elements because ESG objectives can only be achieved by collecting, reporting and protecting the data.
- **Data and its link to corporate strategy:** The value of data is becoming clearer to organizations and most companies are making significant investments in data processing, even by choosing to provide free services to customers. To utilize this valuable asset to the maximum, organizations are required to integrate and implement decisions that can only be derived through board of directors’ involvement. In other words, data use has become integrally linked to corporate strategy.
- **Investing in the corporate data strategy:** Boards should continue to invest in the organization’s data strategy by seeking to improve quality of data analysis and data strategists and considering innovative data uses, investing in relevant skills to harness the data to make informed decisions (e.g., new talent acquisition and improving existing skills) and implementing accountable data protection practices.
- **Privacy as a demonstrator of good corporate citizenship:** In the context of innovation, forward-looking boards embrace privacy in the organization’s product cycle and prioritize it as a chance to demonstrate good corporate citizenship, which is a key component of strengthening trustworthiness and public confidence.
- **Privacy discussions at board-level (starting point):** A typical starting point is consideration by the board of the health of the privacy program, which enables an understanding of where the organization is in its privacy journey, the level of maturity, and to what extent its capabilities are future-proof.
- **Privacy discussions at board-level (who should be in the room):** The board structure should seek the relevant expertise and talent from a member who fully understands the data. To enable an informed discussion, the presentation of data and privacy issues at board level requires both a degree of technical understanding from the board’s side (to enable executives to evaluate the risks and opportunities) as well as an ability to present matters before the decision-making forum without undue complexity from the privacy team’s side (to facilitate the translation of technical knowledge to basic explanations). The corporate governance structure previously witnessed a similar shift with the advent of emerging technologies, where technical engineering concepts had to be communicated appropriately at board level to underline the risks and opportunities presented by such technologies.
- **The role of the DPO/CPO:** The modernized data protection structure of many organizations has the potential to pave the way for privacy considerations at board-level, especially through leading roles and responsibilities of data protection officers (DPOs) or chief privacy officers (CPOs). To be

successful, designated individuals must embrace contemporary skills and perspectives from comprehending organizational and technical complexity to guiding with a business mindset.

- Data protection and innovation are two sides of the same coin. While they can appear as conflicting objectives to some, effective DPOs and CPOs enable safeguarding of data in ways that enable the organization to confidently harness the data and present both the data opportunity and compliance strategy to the board to enhance both interests.
 - To further ensure effectiveness, the DPO/CPO role also requires constant and productive communication with government affairs teams and to translate such communications into bottom line recommendations and priorities for the board to consider to enable the identification of an appropriate company direction.
 - Other relevant skills for DPOs/CPOs when it comes to advising the board are: (1) the ability to proactively and horizontally scan privacy legal frameworks worldwide and articulate their impacts on the business (*i.e.*, a future-thinking ability to forecast trends and directions of privacy laws, rather than merely understanding them); (2) the capability to bridge the gap between regulatory perspectives and technological realities through co-structuring and co-designing the organization's technological evolution; and (3) the competence to advise on how to meet expectations of customers and other external stakeholders when it comes to evolving data privacy obligations.
- **The role of data protection authorities:** Regulatory actions can contribute to the elevation of privacy to board level within organizations. For example:
 - Publishing new guidance on the interpretability of data protection rules and shifting the rhetoric from consent (linked to compliance) to accountability (linked to corporate strategy).
 - Amending outdated data protection rules to reflect modern data processing realities and issues, such as the introduction of legitimate interest as a legal ground for processing which can enable more responsible uses of data while ensuring a high level of privacy protection.
 - Encouraging the creation of self-regulatory accountability schemes, codes of conduct and certifications which privacy professionals can advocate for and promote to the board (e.g., Singapore's Data Protection Trustmark or APEC Cross Border Privacy Rules (CBPR)).
 - Publishing the decisions of investigations and remediation orders to enable other organizations to understand regulatory expectations around privacy and communicate them to the board.

Areas of Future Focus

- **Exploring privacy as a factor in investment:** Privacy is increasingly being viewed as an underlying and driving factor of investment decision-making. A lack of commitment to privacy can impact an

organization's success and those that invest in privacy during pre-seed and seed funding processes are likely to receive better investment outcomes. Privacy is an increasingly material due diligence topic for organizations, particularly in the context of breaches, and undisclosed potential liabilities can impact the sale price.

- **Increasing board focus on data strategy:** A focus on data strategy at board level is urgent and critical but the majority of companies are still developing their understanding on how to articulate and shape this for board level attention. Data has traditionally been linked with other board-level discussions (e.g., litigation and cybersecurity risk) but forward-looking boards embrace the risks and opportunities associated with data as a separate framework in their discussions, rather than as a segmented analysis.
- **Geopolitics and data sovereignty:** How privacy legislation is shaped is a fundamental response to an increase in politicization of data. In that regard, boards have to consider how geopolitical risk is shifting. Linked to this issue, future-looking boards must understand the concept of “data sovereignty”, the impact of data localization, and the evolution of overlapping legal areas with privacy, including competition and tax.
- **Privacy's increasing role as part of the ESG framework:** Privacy naturally fits within the ESG framework and future-looking boards recognize that it is not only part of governance, but is also part of the environmental and social elements of the framework, and an increasing priority for shareholders and customers alike .

Conclusion

It is incumbent on boards to recognize both the risks and opportunities of data for their organizations, and to become familiar with the increasingly global reality of privacy requirements as well as the trends toward increased data sovereignty, localization and the politicization of data. Data is an essential element of enabling firms to achieve their ESG objectives, and boards need to better understand the challenges and innovations that data presents to the organization, and to be able to devise and articulate their data and privacy strategy.

Appendix 2:

An overview of key data challenges:

Technical

Is cloud the stepping stone to edge computing? The internet of things is here to stay but are we ready for truly integrated smart societies?

Legal

From a legal and regulatory perspective, we are seeing increased litigation and fines which are data related from privacy regulators, competition authorities, and others. Class actions and mass arbitrations are likely to increase (i.e. TikTok settling VIPA and VPPA claims on a classwide basis)

M&A

Warranties with regard to data, particularly breaches, is an increasingly significant issue in transactions, and can adversely impact pricing eg Marriott. Transparent and robust data governance practices are a must for all companies

Cookies

Cookie legislation is changing not just in the EU with the proposed ePrivacy Regulation but also in the US and other jurisdictions, creating a fundamental change to digital marketing and adtech – is your company ready to address these changes?

AI, Innovation, Facial recognition, Biometrics, etc

New technologies are proliferating and laws, such as the EU AI Regulation, are trying to catch up. How firms manage the risks and pre-empt the challenges will be the differentiator

Digital Identity

Identify verification is an increasing priority for the on-line world for children as well as adults, and business is being encouraged to find privacy compliant solutions

Data Transfers and Localisation

With the EU and China further restricting data transfers, and the rise of data localisation measures, how will firms manage global data sets?

Ethics and Culture

With over 200 ethical standards and guidelines promulgated globally, firms need to assess how they are set up to address data ethics, not just in AI, but also as a corporate culture in relation to data.

Cybersecurity and Data Security

Data breaches continue to be a significant issue for firms, impacting not just the data, but incurring fines, adverse publicity, loss of customer trust, compromise of confidentiality and trade secrets etc.

Data laws and regulations

With 2/3 countries now with laws protecting data, both personal and non-personal, the patchwork of compliance is increasing complex and risky. How do companies operate globally or across jurisdictions and still comply with a myriad of different requirements and often inconsistent obligations? Will the national, business, consumer interest or fundamental rights approach lead?

Data Governance vs Compliance

With those firms who have created robust data governance programs, adopting a neutral stance to specific legal frameworks, be able to better navigate evolving data laws than those which have focussed on specific compliance measures?