

# NIEDERER KRAFT & FREY

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## Changing times in Data Privacy: what does this mean for your company?

ACC – Workshop 23 March 2017  
Clara-Ann Gordon & Dr. András Gurovits

NKF

# Agenda and Roundtables

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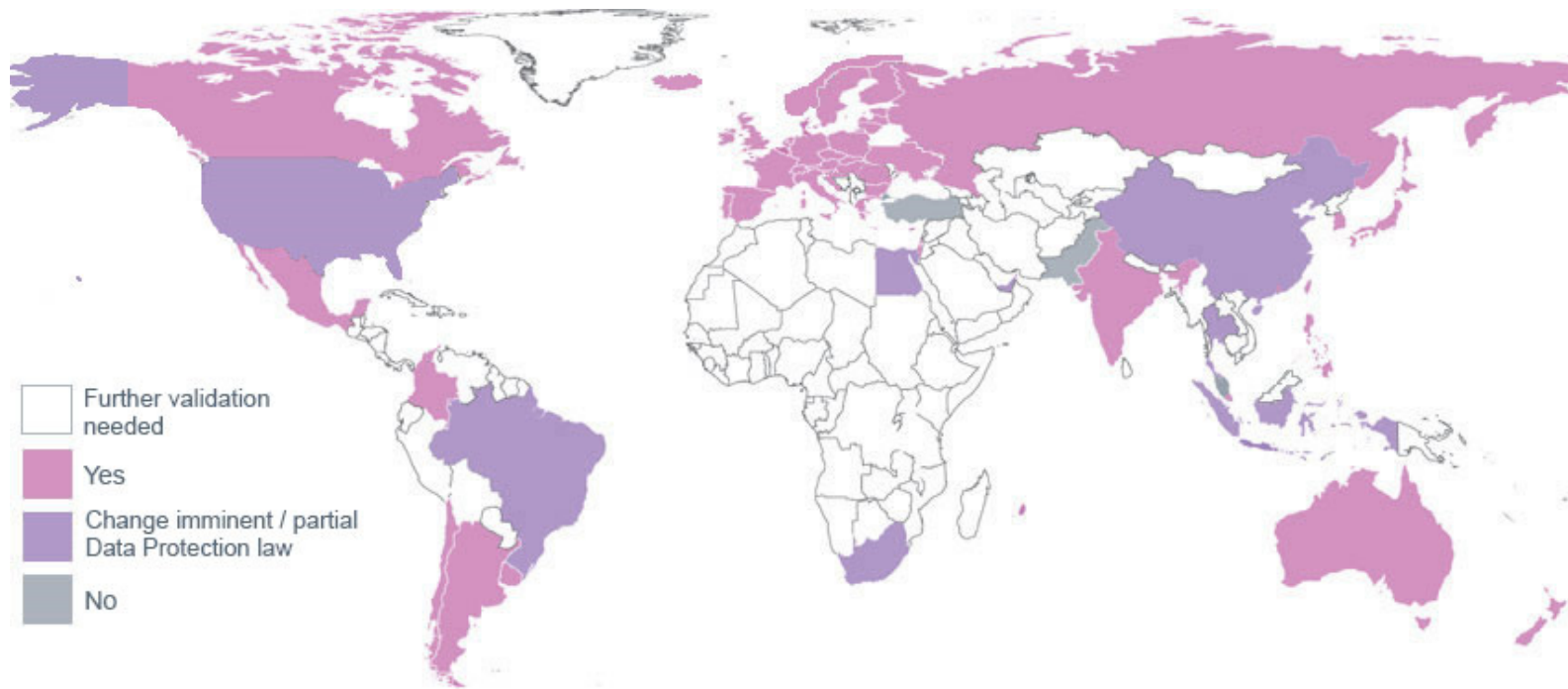
## ■ Agenda

- Short Intro on data protection in general and revision of Swiss Data Protection Act
- 2 rounds of roundtable discussions
- Wrap-up
- Drinks & Networking

## ■ How does the Roundtable concept work?

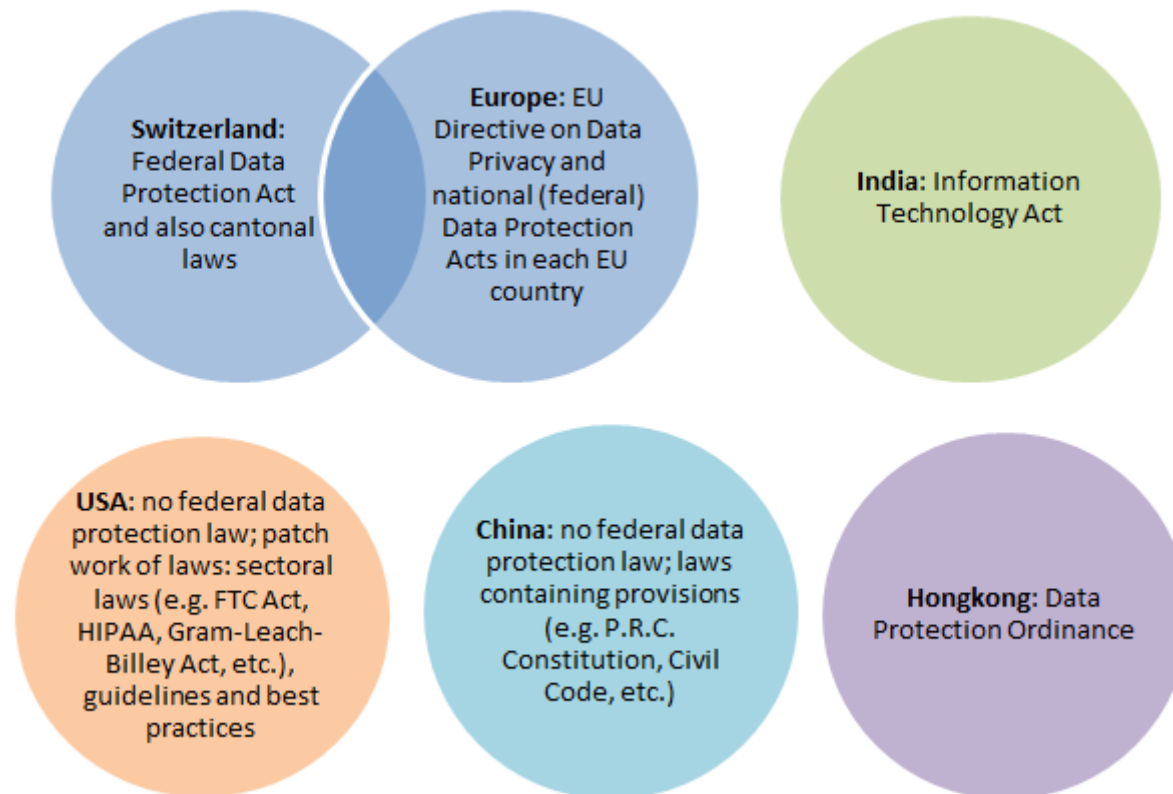
- Roundtables no. 1 and 3: “The DPO’s role under the Revised Act and GDPR”
- Roundtables no. 2 and 4: “Revision of the Swiss Data Protection Act – what is new and which measures are Companies taking”
- 1<sup>st</sup> round: table moderators will kick off with a case study
- Interactive: discussion among the table participants: their experience, questions, etc.
- After 30 minutes the moderators swap the tables – participants stay seated – 2<sup>nd</sup> round with the other topic

# Which countries have Data Protection Laws?

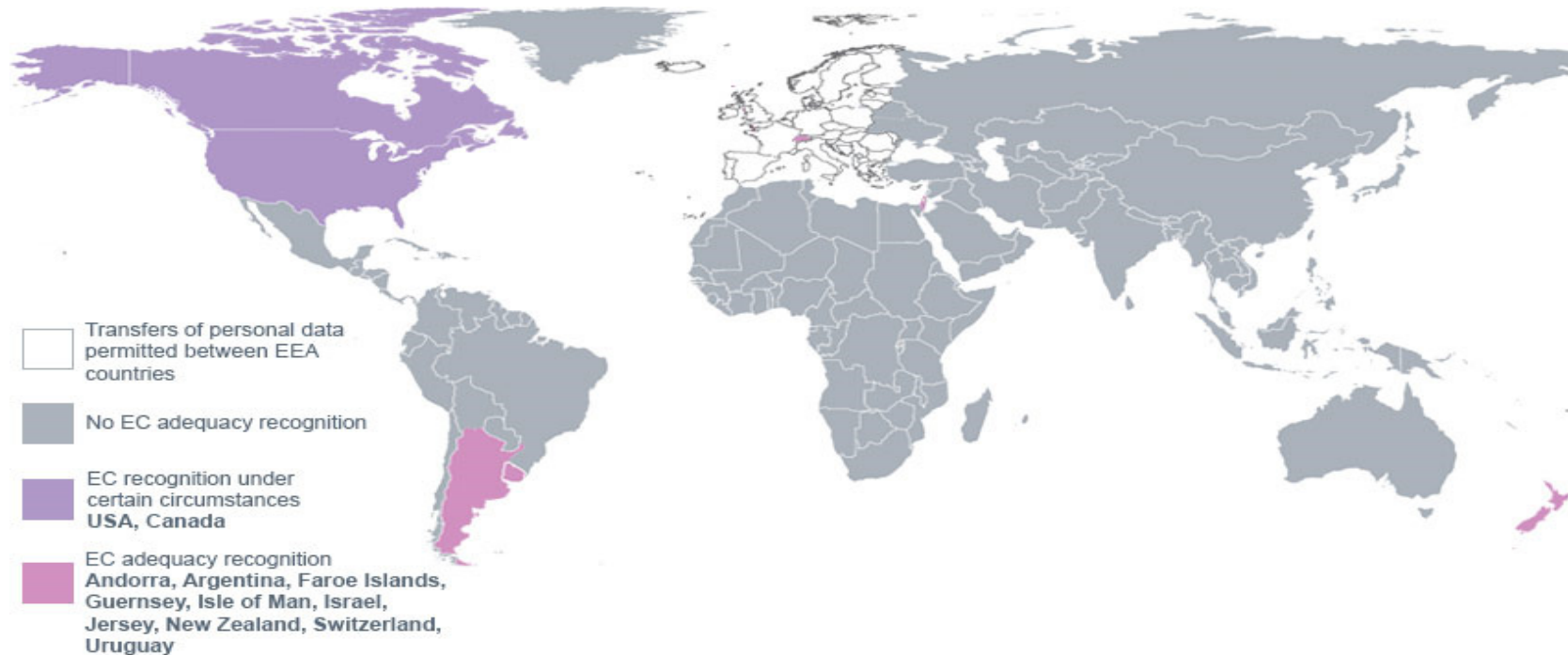


# Different Data Protection Regimes World-Wide

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# Countries with Appropriate Data Protection Level



# Revision of the Swiss Data Protection Act

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## ■ Reasons for the revision of the Swiss Data Protection Act

- Ratification of convention 108 (ETS No. 108) by Switzerland
- Adaptions to the provisions of the GDPR – to achieve recognition from European Union as country with adequate data protection level

## ■ Time Table for revised Swiss Data Protection Act

- 21 December 2016: publication of preliminary draft
- 4 April 2017: expiry deadline of consultation process
- Summer 2017?: White Paper (*Botschaft*) to the Parliament
- Autumn session /Winter session 2017?: Discussion of draft act and ordinances
- Summer 2018? Passing of the revised act
- January 2019? Entry into force of revised act

## ■ GDPR

- 25 May 2018: Entry into force

## ■ Other Developments:

- EU-US Privacy Shield: in place since 11 January 2017
- Swiss-US Privacy Shield: starting 12 April 2017

# The Key Changes I

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## ■ **General remarks**

- No absolute change of paradigm
- Swiss Finish (rules surpassing the GDPR ) should be avoided
- Various points of criticism

## ■ **Scope of application**

- Protection of personal data from legal entities has been abolished
- No longer personality profiles but new profiling

## ■ **Consent**

- Not only express – but new also unambiguous

## ■ **Cross-border disclosure**

- More complicated and cumbersome
- No longer only notification requirements, but approval requirements within deadline of 6 months for Binding Corporate Rules (BCR) and standard contractual clauses (SCC)
- Data processor also subject to approval requirements

# The Key Changes II

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## ■ **Increased duties of information and disclosure**

- New duty to inform data subjects of controller/processor identity and contact details processed data and categories
- Right of access increased by retention period and free of charge
- Duty to inform and the right to have a say in automatized decisions

## ■ **Duty to pass on information**

- New notification duty also to third parties in case of correction, deletion or destruction of personal data which was previously disclosed to such third parties

## ■ **Technical measures to secure data protection**

- data protection through technology (privacy by design)
- privacy-friendly default settings (privacy by default)
- impact assessment of data protection (privacy impact assessments)

## ■ **Data breach notices**

- obligation to report breaches of data protection provisions or loss of data
- severe penalties



# The Key Changes III

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## ■ **Extended controller duties**

- Assure compliance of data processor with data security and new warranty to ensure protection of rights of data subjects
- Prior consent when involving sub-processors

## ■ **Recommendations of good practice**

- Approval of processing practice by Swiss DPA
- “Good Practice” guideline from the Swiss DPA

## ■ **Supervision and sanctions**

- Introduction of administrative sanctions for Swiss DPA
- Severe penalties: CHF 500'000 in case of intent, CHF 250'000 in case of negligence
- Major criticism: sanctions aim only at directors and employees. Fine imposed on entity of only CHF 100'000, if liable director or employee cannot be determined

# What was not adopted from the GDPR?

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## ■ Not adopted from the GDPR:

- Regulations concerning internal data protection officer (DPO)
- Processing of data relating to children
- Right to be forgotten
- Right of data portability
- Obligation to consult with data protection authorities
- etc.

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