“Adequate level of data protection” in third countries post-Schrems and under the General Data Protection Regulation

This paper will examine what constitutes an “adequate level of protection” by third countries for the purposes of the EU data protection directive (95/46/EC) in the wake of the decision of the European Court of Justice in *Maximillian Schrems v Data Protection Commissioner (Ireland)*, Case C-362-14 (6 October 2015), as well as the position under the EU General Data Protection Regulation (27 April 2016). The paper will survey the subject retrospectively, prospectively, and across the relatively small number of third countries (which includes New Zealand) that have already achieved adequacy status.

The paper poses a few questions for consideration:

- What is the nature of a European Commission decision that a state has satisfied the standard of “adequacy”?
- Are states that are currently considered “adequate” likely to retain their adequacy status in the wake of the Schrems decision?
- Are states that are currently considered “adequate” likely to retain their adequacy status under the GDPR, which comes into force on 25 May 2018 and appears to have raised the bar on what constitutes “adequacy”?
- What will the adequacy regime under the GDPR mean for countries in the Asia-Pacific region generally?
- How important is it to achieve adequacy status – does it really matter?