

Legal Update

Singapore

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ADSAN LAW

DATA PROTECTION

Overview

The Personal Data Protection Act 2012 (“PDPA”) governs the collection, use and disclosure of personal data by organisations.¹ It establishes the Personal Data Protection Commission (“PDPC”) to enforce the PDPA and is intended to be a baseline law applicable to all organisations in Singapore except for public sector and exempted organisations.

Key Requirements of the PDPA

Coverage of the PDPA

“Personal data” refers to data, whether true or not, about an individual who can be identified from that data, or from that data and other information to which the organisation has or is likely to have access.² The PDPA has extra-territorial effect and applies to “organisations” including any individual, company, association or body of persons, corporate or unincorporated, whether or not formed or recognised under Singapore law, or resident or having an office or a place of business in Singapore.³ However, most of the requirements of the PDPA (except for those concerning the protection and retention of personal data) do

¹ Personal Data Protection Act (No. 26 of 2012)

² PDPA, s 2

³ PDPA, s 2

not apply to a “data intermediary” in respect of its processing of personal data for another organisation under a written contract.⁴

General Compliance

An organisation is required to designate and disclose the contract information of the individual responsible for ensuring compliance with the PDPA.⁵ It is also required to develop, implement and communicate to its staff its compliance policies and develop a process to respond to complaints arising under the PDPA.⁶

Consent

An individual’s consent must be obtained before an organisation can collect, use or disclose personal data, unless otherwise permitted by the PDPA or other written law.⁷ Consent may be deemed to be provided where the individual voluntarily provides the personal data to the organisation and it is reasonable for the individual to do so.⁸ The individual may withdraw her express or deemed consent and the organisation would be required to stop collecting, using or disclosing her personal data after informing the individual of the likely consequences of the withdrawal of consent.⁹

In the latest amendments to the PDPA passed on 2 November 2020, the circumstances in which consent is deemed to be given have been broadened to include:

- Where the disclosure of personal data is reasonably necessary to conclude or perform a contract.¹⁰
- Where the organisation has assessed that the collection, use or disclosure is unlikely to have an adverse effect on the individual and informed the individual of its intention and purpose of doing so (in addition to other prescribed requirements), and the individual has not opted out after being given a reasonable period to do so.¹¹

Purpose

An organisation may collect, use or disclose personal data only after informing the individual of the purposes of doing so, which must be as a reasonable person would consider appropriate in the circumstances.¹² If the individual requests, the organisation must provide the contact information of a person who can answer the individual’s questions about the collection, use or disclosure of the personal data.¹³

⁴ PDPA, s 4(2)

⁵ PDPA, s 11

⁶ PDPA, s 12

⁷ PDPA, s 13

⁸ PDPA, s 15(1)

⁹ PDPA, s 16

¹⁰ Personal Data Protection (Amendment) Act 2020 (No 40 of 2020), s 6 (“PDPA Act 2020”)

¹¹ PDPA Act 2020, s 7

¹² PDPA, ss 18, 20

¹³ PDPA, s 20(1)(c)

Accuracy and Protection

An organisation must make reasonable efforts to ensure that personal data collected is accurate and complete if the personal data is likely to be used to make a decision that affects the particular individual or is likely to be disclosed to another organisation.¹⁴ It must safeguard personal data in its possession or control by making reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal or similar risks.¹⁵

Retention

Organisations may not retain personal data indefinitely and must destroy or anonymise documents containing personal data as soon as it is reasonable to assume that the purpose for which the data was collected is no longer being served, and retention is no longer necessary for legal or business purposes.¹⁶

Access and Correction

Individuals may request an organisation for access to their personal data in its possession or control and information about the use or disclosure of such data in the prior year, unless otherwise provided in the PDPA.¹⁷ Individuals may also request the organisation to correct any inaccurate data unless there are reasonable grounds not to do so.¹⁸

Transfer of Data Outside Singapore

Organisations are not allowed to transfer personal data outside of Singapore except in accordance with the prescribed requirements of the PDPA. Before such transfers, the transferring organisation must ensure that it continues to comply with the PDPA while the personal data remains in its possession or control, and to ensure that the recipient is bound by legally enforceable obligations providing a standard of protection to the personal data that is at least comparable with the PDPA.¹⁹ To provide individuals with greater autonomy over their personal data and facilitate more innovative and intensive use of personal data, the latest amendments to the PDPA permit an individual to give a porting organisation a data porting request for the transmission of applicable data about the individual to a receiving organisation outside Singapore, subject to the prescribed requirements.²⁰

DNC Registers

Under the PDPA, the PDPC maintains Do Not Call (“DNC”) Registers that are intended to allow individuals to opt out of receiving telemarketing messages via voice calls, text messages (including SMS / MMS) and

¹⁴ PDPA, s 23

¹⁵ PDPA, s 24

¹⁶ PDPA, s 25

¹⁷ PDPA, s 21

¹⁸ PDPA, s 22

¹⁹ PDPA, s 26(1); Personal Data Protection Regulations 2014 (No. S 362), Part III

²⁰ PDPA Act 2020, s 14

facsimile by registering their Singapore phone numbers.²¹ It is an offence for any person to send such messages to a Singapore telephone number unless that person has checked that the telephone number is not registered on the relevant DNC Register unless the subscriber or user has given clear and unambiguous consent to the sending of the message as evidenced in written or other form.²² Further, such messages must include clear and accurate information of the individual or organisation who sent the message and the relevant contact information and other prescribed requirements.²³

Enforcement

The PDPC has the powers to issue guidelines and regulations, give directions to remedy non-compliance, review complaints and conduct investigations.²⁴ Criminal and/or civil sanctions may be imposed for non-compliance with the PDPA. The latest amendments to the PDPA permit the PDPC to impose financial penalties of up to:

- in the case of an individual, \$200,000 or 5% of the annual turnover of the person in Singapore whose annual turnover exceeds \$20 million; or
- in the case of an organisation, 10% of the annual turnover in Singapore of the organisation whose annual turnover exceeds \$10 million, or in any other case \$1 million.²⁵

Any person who suffers loss or damage as a result of a contravention of the PDPA also has a right of action to claim damages or other relief in court.²⁶

Conclusion

Organisations should take note of the recent amendments to the PDPA passed by the Singapore Parliament, which take into account business developments and technological advances. In particular, in the event of a data breach, the amendments make it mandatory for organisations to conduct an assessment in a reasonable and expeditious manner whether the data breach is likely to result in significant harm to an affected individual or be of a significant scale, and notify the PDPC within 3 days and each individual affected accordingly.²⁷

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²¹ PDPA, s 39

²² PDPA, s 43

²³ PDPA, s 44(1)

²⁴ PDPA, ss 29, 49(1), 50(1), 65(1)

²⁵ PDPA Act 2020, s 24

²⁶ PDPA Act 2020, s 23

²⁷ PDPA Act 2020, s 13

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