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## COVID-19: Further Postponement of Implementation Deadline for Personal Data Protection Act

On 8 May 2021, the Royal Decree Prescribing an Entity and Business in which the Data Controller is Exempted from the Personal Data Protection Act B.E. 2562 (No. 2) B.E. 2564 was published in the Government Gazette. As a result, the previous one-year long postponement of the effective date of key operative provisions of the Personal Data Protection Act B.E. 2562 (2019) ("**PDPA**") have been further postponed from 1 June 2021 to **1 June 2022** ("**New Effective Date**").

The rationale for the further postponement is the severity of the COVID-19 pandemic and its significant impact on entities and businesses in both the private and public sectors across the country, which has delayed the PDPA readiness of many. When combined with the need to utilise advanced technology to implement the PDPA provisions, it was deemed reasonable to extend the period of enforcement of full implementation of the PDPA until 1 June 2022.

We have provided below a brief overview of key provisions of the PDPA.

### Personal Data Protection Act

The long-awaited PDPA was published in the Royal Gazette on 27 May 2019 and certain key provisions became effective the next day. These provisions, set out in Chapters 1 and 4 of the PDPA, provide for the establishment of the following regulatory bodies:

- the **Personal Data Protection Commission** ("**PDPC**"), whose duties and powers include preparing a master plan for the promotion and protection of personal data, and interpreting and determining issues arising from the enforcement of the PDPA; and
- the **Office of Personal Data Protection Commission** ("**PDPC's Office**"), which will be a government agency with the status of a juristic person. Its role will be to promote and support the development of personal data protection.

**Contribution Note:** This Client Update was written with contributions from Senior Associates Jantapa Erjongmanee and Pasiri Taypongsak, and Associates Benjarong Roongmaneekul, Praonapha Rakchartcharoen and Pattarapond Duangkaewwutthikrai.

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(We note that, during the period when the PDPC's Office has not yet been duly set up, the Office of the Permanent Secretary of the Ministry of Digital Economy and Society would be required to perform the duties in accordance with the PDPA.) As at 10 May 2021, the PDPC has not yet been established.

Provisions under Chapter 2, Chapter 3, Chapter 5, Chapter 6, Chapter 7 and Section 95 of the PDPA were required to become effective by 1 June 2021, and must now do so on the New Effective Date.

## Definitions

"Personal Data" means information relating to a natural person which is directly or indirectly identifiable to such natural person, excluding information of a deceased person.

"[Personal] Data Controller" means a natural person or juristic person who has power and duty to determine the collection, use, or disclosure of personal data.

"[Personal] Data Processor" means a natural person or juristic person who performs the collection, use, or disclosure of personal data according to the order or on behalf of the Data Controller. A natural person or juristic person who performs those functions shall not be a Data Controller.

"Commission" means the Personal Data Protection Commission.

## Data Protection Officer

In general, the appointment of a Data Protection Officer ("**DPO**") is not required, except in the following circumstances:

- (1) the Data Controller or the Data Processor is a public authority as prescribed and notified by the PDPC;
- (2) the activities of the Data Controller or the Data Processor in the collection, use, or disclosure of the personal data require regular monitoring of the personal data or the system, due to having a large number of personal data as prescribed and notified by the PDPC;
- (3) the core activity of the Data Controller or the Data Processor is the collection, use, or disclosure of Sensitive Personal Data.

We recommend monitoring the PDPC notifications/guidelines on this issue.

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## **Processing Personal Data with Consent**

Currently, there is no general requirement to obtain consent from the Data Subject for the collection, use, or disclosure of personal data. Where the personal data is provided based on consent, such personal data must not be processed in a manner that is different from the purpose previously notified to the Data Subject.

With effect from the New Effective Date, the PDPA requires the consent of the Data Subject prior to or at the time of such collection, use, or disclosure, except where consent is not required under the PDPA (see section below) or pursuant to any other laws.

## **Processing Personal Data without Consent**

With effect from the New Effective Date, the PDPA requires that use or disclosure of personal data without the consent of the Data Subject can be conducted for personal data collected according to the legal basis specified in Section 24 or Section 26 of the PDPA (e.g. for the purpose of performance of a contract, or where there is a legitimate interest).

According to Section 24 of the PDPA, collection of personal data can be conducted without the consent of the Data Subject where:

- (1) it is for the achievement of a purpose relating to the preparation of historical documents or archives for public interest, or for a purpose relating to research or statistics, in which the suitable measures to safeguard the Data Subject's rights and freedoms have been put in place and are in accordance with the notification as prescribed by the PDPC;
- (2) it is for preventing or suppressing danger to a person's life, body or health;
- (3) it is necessary for the performance of a contract to which the Data Subject is a party, or in order to take steps at the request of the Data Subject prior to entering into a contract;
- (4) it is necessary for the performance of a task carried out in the public interest by the Data Controller, or it is necessary for the exercise of official authority vested in the Data Controller;
- (5) it is necessary for legitimate interests of the Data Controller or any other persons or juristic persons other than the Data Controller, except where such interests are overridden by the fundamental rights of the Data Subject of his or her personal data;
- (6) it is necessary for the compliance with a law to which the Data Controller is subject.

Stricter grounds in Section 26 of the PDPA apply to the collection of Sensitive Personal Data (i.e. personal data pertaining to racial, ethnic origin, political opinions, cult, religious or philosophical beliefs, sexual behavior, criminal records, health data, disability, trade union information, genetic data, biometric data, or of any data which may affect the Data Subject in the same manner).

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## Breach Notification

With effect from the New Effective Date, the PDPA imposes an obligation on the Data Controller to notify the PDPC's Office and – in certain circumstances – the Data Subject regarding a personal data breach.

- Notification to the PDPC's Office: the Data Controller must notify the PDPC's Office of any personal data breach without delay and, where feasible, within 72 hours after having become aware of it, unless such personal data breach is unlikely to result in a risk to the rights and freedoms of the relevant persons.
- Notification to the Data Subject: If the personal data breach is likely to result in a high risk to the rights and freedoms of the relevant persons, the Data Controller must also notify the personal data breach and the remedial measures to the Data Subject without delay.

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