
General – COVID-19

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.

General – COVID-19

(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.

General – COVID-19

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).

General – COVID-19

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.

For more articles and updates from our teams across the region on COVID-19 and related legal issues, please visit [Rajah & Tann Asia's COVID-19 Resource Centre](#).

Contacts



Sui Lin Teoh
Partner

D (66) 2656 1991
F (66) 2656 0833
sui.lin.teoh@rajahtann.com



Melisa Uremovic
Partner

D (66) 2656 1991
F (66) 2656 0833
melisa.u@rajahtann.com



Piroon Saengpakdee
Partner

D (66) 2656 1991
F (66) 2656 0833
piroon.s@rajahtann.com



Saroj Jongsaritwang
Partner

D (66) 2656 1991
F (66) 2656 0833
saroj.jongsariwang@rajahtann.com



Supawat Srirungruang
Partner

D (66) 2656 1991
F (66) 2656 0833
supawat.s@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



R&T Asia (Thailand) Limited is a full service Thai law firm which has the expertise and resources, both international and local, to assist and support you on a wide range of legal services, including representation in the Thai courts, in international and domestic arbitration, contentious and non-contentious banking matters, foreign direct investment, general corporate and commercial matters for foreign and local investors (i.e. establishment of companies, branch offices and representative offices and handling applications for miscellaneous licenses, permits and approvals).

R&T Asia (Thailand) Limited is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by R&T Asia (Thailand) Limited and subject to copyright protection under the laws of Thailand and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of R&T Asia (Thailand) Limited.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in R&T Asia (Thailand) Limited.