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THAILAND

Newsletter

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Thailand – Supplementary Laws Under the Thai Personal Data Protection Act Issued

Introduction

The Thai Personal Data Protection Act came into force on 1 June 2022 (the "**PDPA**"). The PDPA, which is comparable to the EU's General Data Protection Regulation (the "**GDPR**"), institutes new regulations on how organizations handle personal data. Although the PDPA provides general guidelines, supplementary regulations are being drafted to provide clarification and further details on the requirements of the PDPA. On 20 June 2022, the Personal Data Protection Commission ("**PDPC**") announced the first set of supplementary laws under the PDPA in the Royal Gazette.

The four supplementary laws (collectively, the "**PDPA Notifications**") include exemptions for certain small and medium-sized enterprises, responsibilities of data processors on storage and safeguarding activities, and administration of penalties for violations of the PDPA. As compliance with the PDPA and the PDPA Notifications may impact business operations, it is vital that operators are aware of how the PDPA and the PDPA notifications may impact their businesses. This briefing will discuss important aspects of the PDPA Notifications.

Overview of the supplementary laws under the PDPA

Under the PDPA, a data controller is defined as an entity that determines how, and the purpose for which such personal data is processed. A data processor is defined as the entity that performs the processing of data on the controller's behalf. In some cases, depending on the business and data processing activities, an organization may be both a data controller and data processor. The PDPA provides requirements for data controllers in respect to personal data processing, storage, and safeguards, but did not provide requirements for data processors. The PDPA Notifications provide further details and clarification on the duties of both data controllers and processors.

1) Exemption from record processing activities of personal data controllers in small and medium-sized enterprises

This notification (the “**SME Notification**”) exempts data controllers that are small and medium-sized enterprises (“**SMEs**”), defined under the Small and Medium-sized Enterprise Promotions Act (“**SMEs Act**”), from the requirement to prepare a record of processing activities (“**ROPA**”) under Section 39 of the PDPA, with some exemptions. Note that a ROPA is a record of data processing activities.

Under the SMEs Act, an SME is defined as follows:

Size of Enterprise	Type of Business	Number of employees	Annual income
Small-sized enterprise	Manufacturing business	Not more than 50 employees	Not more than 100 million Baht
	Provision of service, wholesale, and resale	Not more than 30 employees	Not more than 50 million Baht
Medium-sized enterprise	Manufacturing business	51 – 200 employees	100 million – 500 million Baht
	Provision of service, wholesale, and resale	31 – 100 employees	50 million – 300 million Baht

If an organization falls within the definitions above, and would otherwise be considered a data controller, that business is generally exempt from preparation of a ROPA as required under the PDPA. If an SME carries out any services involving the collection of computer traffic data (except for internet cafes), if processing of personal data carries a risk that could affect the rights and freedoms of the data subjects, or if an SME has to process personal data regularly, then the SME will not fall under the exemption in the SME Notification and must prepare a ROPA.

2) Preparation and storage of ROPAs by a personal data processor

This notification (the “**ROPA Preparation and Storage Notification**”) provides clarification on what information must be included in a ROPA by a personal data processor. Note that certain information that is required in a personal data processor’s ROPA may not be the same as those required in a personal data controller’s ROPA, such as information regarding the name and details of the data controller. Because of this discrepancy in information requirements, and because an entity may be considered both a data processor and/or a data controller depending on the data processing activity, ROPA forms should be reviewed to ensure that all required information for both data processors and data controllers comply with this notification and the PDPA.

3) Security safeguard measures for personal data controllers

This notification (the “**Notification on Security and Safeguard Measures**”) sets the minimum security measures for data controllers in processing personal data regardless of the form (e.g., documents, electronic data, or other forms). The required security measures consist of three key elements, as follows:

- a) the confidentiality of the personal data;
- b) integrity of the personal data; and
- c) availability of personal data.

These elements are known as the "CIA triad" among security professionals. Moreover, the security safeguard measures must include both organizational and technical measures and may also include necessary physical measures. Such security measures must also take into account the risk level according to the nature and purpose of processing personal data and the potential opportunity of, occurrence of, and effects from the event of a personal data breach.

The main security measures relating to "access control" remain unchanged from the previous notification issued by the Ministry of Digital Economy and Society.

Furthermore, under the Notification on Security and Safeguard Measures, the data controller must require their data processor to provide the proper safeguard measures. As such, requirements under this notification are applicable to both personal data controllers and processors.

4) Rules on consideration of issuance of administrative penalties

This notification (the "**Notification on Administrative Penalties**") relates to the enforcement of penalties and sets the criteria for how administrative penalties, as determined by the "Expert Committee" (appointed under the PDPA), are used. In short, the Expert Committee will consider and apply administrative penalties on a data controller, or data processor based on the level of seriousness of such offence. Offences are separated into two groups, serious and non-serious offences. Under the Notification on Administrative Penalties, the Expert Committee is empowered to levy administrative penalties as follows:

a) Serious offenses

The Expert Committee can impose administrative fines on a data controller and/or data processor. In addition, administrative fines can be imposed on offenders who fail to comply with an order from the Expert Committee to remedy a violation. Such orders include remedying, stopping, suspending, or seizing related processing activities.

b) Non-serious offenses

The Expert Committee may issue orders to remedy, stop, suspend, or seize related processing activities, or it may carry out any other acts to stop/minimize the damage within a specific time.

Conclusion

With the exception of the ROPA Preparation and Storage Notification, the three other PDPA Notifications were effective the day after publication in the Royal Gazette on 20 June 2022. The ROPA Preparation and Storage Notification will become effective 180 days after its publication. The PDPA Notifications are just the beginning in the development of supplementary regulations designed to bolster the PDPA. The PDPC plans to announce another set of laws soon to reduce uncertainties for operators. Drafts of these laws (such as the draft notification regarding Data Protection Officers) are expected to be published for hearings in early July 2022.

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