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THAILAND

Newsletter

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Newest PDPA Guidelines Issued by PDPC

On 7 September 2022, the Personal Data Protection Commission ("**PDPC**") announced (i) Guidelines on procedures for requesting consent from data subjects under the PDPA (the "**Consent Guideline**"); and (ii) Guidelines on procedures for giving notice of the purpose and details relating to the collection of personal data from data subjects under the PDPA (the "**Notification Guideline**"). These two guidelines aim to clarify and set out the standards for the consent and notification requirements so that all data controllers and relevant parties have a better understanding of how to duly comply with the Personal Data Protection Act B.E. 2019 ("**PDPA**") on these two specific issues. These long-awaited guidelines have been hotly debated for some time.

According to these guidelines, if there are any specific requirements issued by the regulators or relevant supervisory authority in any business sector (e.g., Bank of Thailand, the Securities and Exchange Commission, the Office of Insurance Commission), the data controllers in those sectors must comply with those specific requirements. For example, a specific consent form may be prescribed by a supervisory authority in a certain sector. Nevertheless, those specific requirements issued by the supervisory authority must also meet the requirements under the two guidelines above and the law. In an event that any part of any form prescribed by any regulator or supervisory authority in any business sector does not comply with the requirements of the Consent Guidelines or the Notification Guideline, it may deem such part to be non-compliant with the PDPA.

Consent Guideline

The Consent Guideline provides all the necessary details when any company must obtain consent from the data subjects until the process of withdrawal of consent. In this regard, the data controllers may decide to use a voluntary standard form issued by any relevant professional council or create their own consent form. In order to create its consent form, the data controller must consider the following factors and principles:

- Consent must be the last choice for the processing of personal data. If there is another available lawful basis, this should be evaluated first.
- Consent must be obtained on or before the processing of personal data for such purpose.



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- The data subjects must be informed of the purpose and detail of the consent, before giving their consent.
- Consent must be for a specific purpose rather than general.
- Consent must be separated from other parts of the document and contain language which is easy to understand and not misleading.
- Consent must be freely given.
- Consent for the processing of personal data which is not necessary or relating to the entry into a contract and/or provision of service, must not be a condition to the entry into such contract and/or provision of such service.

The above factors are based on the requirements under Sections 19 and 24 of the PDPA. However, the Consent Guideline provides further clarification and examples for each factor. For example, "being specific rather than general" means that such consent should not contain broad wording or several purposes in one consent.

Although the consent should be in writing and require a clear affirmative action (with some exemptions), the notification of consent details can be made orally or in any form, as appropriate. This Consent Guideline also includes details of the withdrawal of consent and request for consent from vulnerable persons (such as minors, incompetent persons, and quasi-incapable persons). When the data controller needs to obtain consent from a minor, the data controllers have to verify the age of the data subject and the authority of the parent. In this regard, self-declaration is also listed as a preferable method to verify the user's age.

Notification Guideline

The Notification Guideline includes conditions to be considered when data controllers have to give notice of the purpose and provide details of processing activities to the data subjects, as follows:

- **Fairness:** All data subjects must be informed of such processing activities and be able to understand the detail of such activities.
- **Purpose Limitation:** the data controller must not use personal data outside the scope of purposes that they have informed data subjects of.
- **Lawful Basis:** If the data controller is unable to rely on any other lawful basis for any processing activity, consent from data subjects must be obtained.
- **Implementation of Legitimate Interest:** When the data controller has to rely on legitimate interest, they have to prioritize protecting the benefit or preventing any impact on the data subject.
- **Collection of Personal Data from Other Sources:** The data subject may not be aware of the processing activities from which the data controller indirectly collected their personal data. Therefore, it is suggested that the data controller prepare the Data Processing Impact Assessment (DPIA) to assess the risk involved in such activities, especially when the data controller has applied a new technology in its processing.

This Notification Guideline also contains some exemptions from the requirement to give notice of indirect collection, including an event where such notice cannot be made or may result in difficulty in processing the personal data, particularly for the purpose of scientific, historical, and statistical research. In this regard, the data

controller must have sufficient measures for the protection of the rights, freedoms, and interest of the relevant data subjects. In addition, the data controller should make its privacy policy publicly available for general persons or conduct a DPIA to prevent the risk of such processing. In order to use this exemption, the following factors shall be taken into account:

- quantity and quality of the personal data;
- age of relevant data subjects; and
- preventive measures.

This Guideline also lists examples of notification methods in writing, verbal, or other electronic methods, including a layered approach which was firstly introduced in the official documents issued by the PDPC.

We believe that the PDPC may soon issue other supplementary regulations as there are still several uncertain points to be addressed. If you have any questions in relation to the issues raised, please contact the authors in the left-hand column

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