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THAILAND

Newsletter

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Thailand PDPA Update: Necessity of DPO Appointment

On 14 September 2023, the Notification of the Personal Data Protection Commission ("PDPC") Re: the Appointment of Data Protection Officer ("DPO") under Section 41(2)¹ of the Personal Data Protection Act B.E. 2562 (2019) ("PDPA") B.E. 2566 (2023) (the "Notification") was published in the Royal Gazette. This Notification sets out the key criteria for when a Data Controller or Data Processor needs to appoint a DPO. This Notification focuses only on cases where core activities consist of processing operations, which require regular or systematic monitoring of personal data on a large scale, similarly with Article 37 (1) (b) of the GDPR.

Regular or Systematic Monitoring of Personal Data

If any core activities of a Data Controller or Data Processor involve tracking, monitoring, analyzing, or profiling that generally processes personal data regularly or systematically, they will be deemed as processing activities requiring regular or systematic monitoring of personal data. Moreover, the Notification further prescribes some specific cases that are deemed as regular or systematic monitoring, such as processing of data of membership cards, public transportation cards, and electronic cards, activities involving credit scoring or fraud prevention, and behavioral advertising.

On a Large Scale

In addition to similarities with the GDPR, the Notification provides some specific cases deemed as large-scale processing, as follows:

- Processing as a part of core activities with 100,000 or more data subjects;
- Processing for behavioral advertising through widely used search engines or online social media platforms;
- Processing of customers' or service users' personal data in the usual operations of the companies dealing with life insurance, non-life insurance, and financial institution businesses, excluding operations of the credit bureau and its members as defined by credit information business laws; or

¹Section 41(2) of the PDPA prescribes that the Data Controller and the Data Processor shall designate a DPO in circumstances that the processing activities require regular or systematic monitoring of personal data on a large scale as prescribed and announced by the PDPC.



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- Processing of customers' or service users' personal data by licensees of the Telecommunications Business Operators Type 3 according to the telecommunication business operation laws.

If the core activities do not fall under above cases, the Notification further provides four key factors which must be considered when determining whether the processing is carried out on a large scale: (1) the number of data subjects, (2) the volume of data, (3) the duration of processing and (4) the geographical extent of the processing activities. In considering the criteria above, each operator itself shall carefully assess their processing activities by taking into account the standards and practice guidelines of the business or enterprise, as well as the risks and impacts on the data subjects.

In case the core activities of any Data Controller or Data Processor consist of processing operations which require regular or systematic monitoring of personal data on a large scale as mentioned above, the entity is required to appoint a DPO. In case a DPO is needed, such operator has to inform the PDPC office about the DPO appointment with the details (i.e., name), address and contact method of such DPO.

Note that this Notification will be effective on 13 December 2023 and there might be another sub-regulation prescribing the qualifications of the DPO which may be announced on a later date. Data Controllers and Data Processors which fall under the above requirements should appoint their DPO immediately in order to avoid penalties arising from non-compliance of the PDPA and be exempted from some qualifications which may be promulgated on a later date, such as passing an authorized DPO training course before the DPO appointment.

Any Data Controller or Data Processor who falls under the above requirements and fails to appoint the DPO shall be punished with an administrative fine not exceeding THB 1 million.

This Newsletter only provides brief details. Please contact the authors if you require further information on the issues raised in this publication or related issues.

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