

Proposed Changes to Singapore Data Protection Law



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Introduction

Earlier this year in May, the Ministry of Communications and Information and the Personal Data Protection Commission (“**Commission**”) invited feedback from the public on the draft Personal Data Protection (Amendment) Bill (“**Bill**”). The Bill proposes significant amendments to the Personal Data Protection Act 2012 (“**PDPA**”) that has been in force in Singapore since July 2014.

Pursuant to the above, on 5 October 2020, the Bill was introduced in Singapore’s Parliament¹. The Bill will come into force after further readings in the Parliament and upon the President’s assent. The date the Bill comes into force will be notified and published in the Government Gazette.

The Bill has been drafted in order to review the PDPA so as to take into account technological advances, new business models and global developments in data protection legislation.

Set out below, is a summary of the changes proposed under Bill.

1. New Definitions

A new definition of “derived personal data” is introduced by the Bill which clarifies that the term shall refer to personal data about an individual that is derived by an organisation in the course of business from other personal data about that individual, or data of another individual in the possession or under the control of the organisation. However, it excludes personal data derived using any prescribed means or method, such as mathematical averaging and summation.

Additionally, the Bill prescribes new definitions of the terms “user activity data” and “user-provided data”. “User activity data” refers to personal data about an individual that is created in the course or as a result of the individual’s use of an organisation’s product or service; while “[U]ser-provided data” refers to personal data that is provided by an individual to an organisation.

2. Increased Penalties

At present, the maximum financial penalty that may be imposed for violations under the PDPA is capped at SGD 1 million.

The Bill proposes an increase in financial penalties by raising the capped amount to ten per cent (10%) of a company’s annual turnover (“**AT**”) in Singapore if its AT in Singapore exceeds SGD 10 million, or SGD 1 million - whichever is higher.

3. Compulsory Reporting Obligations

In the event of a data breach², the company will now be ‘mandated’, under the following instances, to notify the Personal Data Protection Commission (“**Commission**”) and the affected individuals:

- (i) Where the breach is likely to result in significant harm to any affected individual; or
- (ii) Where the breach is of a significant scale.

The Bill also proposes that where a company has reason to believe that there has been a data breach affecting personal data that was in such company’s possession or control, it must conduct an assessment of whether the breach is notifiable, in a reasonable and expeditious manner. The timeframe for reporting to the Commission is within three (3) calendar days from the day that the company determines that a breach is notifiable. There is no timeline specified under the Bill for notifying individuals but it has been proposed that the affected individuals be notified *without undue delay*.

¹ <https://sso.agc.gov.sg/Bills-Supp/37-2020/Published/20201005?DocDate=20201005>

² A new definition of ‘data breach’ has been proposed under the Bill.

4. Expanded Scope Re Deemed Consent

The Bill proposes that there shall be deemed consent to the processing of personal data under two circumstances:

- (i) Where the processing of personal data is necessary for the specific performance of a contract; and/or
- (ii) Where reasonable steps have been taken to notify individuals of the purpose of the data processing and they are given a reasonable period of time to opt out.

However, the deemed consent provisions will exonerate the company if it can show that prior to the collection, use or disclosure of personal data about an individual, the company has:

- (i) conducted an assessment to determine that the proposed collection, use or disclosure is not likely to have an adverse effect on the individual;
- (ii) taken reasonable steps to bring to the individual's attention the following information:
 - (a) the company's intention to collect, use or disclose the personal data;
 - (b) the purpose for which the personal data will be collected, used and/or disclosed; and
 - (c) the period within which, and the manner by which, the individual may notify the organisation that the individual does not consent to the organisation's proposed collection, use or disclosure of the personal data.

5. Exceptions

The Bill seeks to establish new exceptions to consent as under:

- (i) In furtherance of legitimate interests - where companies need to know more about their customers in order to carry out legitimate commercial operations. In order to avail of this exception, the company has the onus of establishing that its purpose cannot reasonably be achieved without the personal data in an individually identifiable form.
- (ii) For business improvements - where a company need to know more about their customers, including prospective customers, in order to carry out operational efficiency and service improvements, or develop or enhance products/services.
- (iii) For research purposes – institutes carrying out scientific research and development, or arts and social science research, or to market research aimed at understanding potential customer segments, may avail of this exception to use personal data.

6. Tighter Restrictions on Telemarketing et al

The Do-Not-Call (“**DNC**”) Provisions of the PDPA enable individuals to opt-out of receiving specified messages by requiring persons to check the relevant DNC Register before sending a specified message to a Singapore telephone number.

The Bill proposes that third party checkers will be required to communicate accurate DNC Register results to the companies on behalf of which they are checking the DNC Register. The Bill goes on to place the liability on to the checkers for DNC infringements resulting from any erroneous information provided by them.

Additionally, the Bill proposes that the failure to comply with the DNC provisions can attract a financial penalty of up to:

- (a) SGD 200,000 in the case of an individual; or

- (b) SGD 1 million in any other case (except in the case of use of dictionary attacks or addressing harvesting software, where a company's AT exceeds SGD 20 million, a penalty of up to 5 per cent of a company's AT in Singapore may be imposed).

7. New Obligations Re Data Portability

The Bill proposes to introduce a new Data Portability Obligation (“**Obligation**”) to provide consumers with greater autonomy over their personal data. Under this Obligation, a company must, at the request of an individual, transmit his/her personal data that is in the company's possession or under its control, to another company in a commonly used machine-readable format.

The Bill clarifies that a company's portability obligation will only apply to:

- (a) User-provided data and user activity data held in electronic form, including business contact information;
- (b) Requesting individuals with an existing, direct relationship with the relevant company; and/or
- (c) The company receiving the data (i.e. to whom the data is being ported over) having a presence in Singapore.

8. Offences by Individuals

The bill proposes to hold individuals accountable for mishandling of personal data on behalf of a company. Specifically, individuals will be liable for:

- (a) Any unauthorised disclosure of personal data that is carried out knowingly or recklessly;
- (b) Any unauthorised use of personal data that is carried out knowingly or recklessly and results in any person's wrongful gain or loss; and
- (c) Any unauthorised re-identification of encrypted / anonymized data that is carried out knowingly or recklessly.

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