

PROPOSED DATA PROTECTION (DP) REGIME FOR SINGAPORE

Consultation Paper from Ministry of Information, Communication & the Arts (issued 13 September 2011)

Current position:

- The existing Data Protection (DP) framework is a multi-pillar approach using common law, sectoral laws, industry education and various codes of practice (e.g. Model Data Protection Code for the Private Sector) with no general law governing DP currently.

Scope of the Consultation Paper:

- An intended baseline law that applies to all Organisations in Singapore. It will operate concurrently with other legislative and regulatory frameworks applicable to specific sectors.
- The DP law will regulate the collection, use, disclosure, transfer and security of Personal Data by Organisations.
 - 'Personal data' covers both electronic and non-electronic forms of information about an identified or identifiable individual (whether living or deceased).
 - 'Organisations' include a natural person (not acting in personal or domestic capacity), a trust, any company or association or body of persons (corporate or unincorporated). Public sector Organisations are governed by their respective existing DP framework.

Key Considerations:

Seeking a balance between the need to protect individuals' Personal Data against an Organisation's need to obtain and process such data for legitimate and reasonable purposes.

Obligations imposed on an Organisation under the proposed DP law:

4 areas:

- i) General rules, for example, relating to transparency of processes – based on consent (express or implied), purpose and reasonableness.
- ii) Rules on the collection, use and disclosure of Personal Data –
 - Organisations are to only collect Personal Data for purposes that a reasonable person would consider appropriate in the circumstances, and which fulfil the purposes that the Organisation discloses.
 - Disclosure (verbally or in writing) of the purposes for the collection of the Personal Data is to be made; on or before collecting the individual's Personal Data
 - Provision of the contact information of an officer/ employee who is able to answer any questions the individual may have about the collection of his Personal Data by the Organisation.
 - Organisations must use or process such Personal Data reasonably and only the purposes for which the individual's consent was obtained.
- iii) Rules on accuracy, protection and retention of Personal Data –
 - Organisations will be required to make a reasonable effort to ensure that Personal Data collected by or on behalf of the Organisation is reasonably accurate and complete,

- Organisations are to protect Personal Data by making reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal or other risks.
 - Organisations can retain the information for a period of time after using it to enable the individual has a reasonable opportunity to obtain access to it.
- iv) Rules on providing access to and correction of Personal Data – Upon the individual's request, steps has to be taken by an Organisation to provide him with:
- access to his Personal Data,
 - provide him with information about the ways in which the Personal Data has been and is being used by the Organisation; and
 - provide him with the names of the individuals and Organisations to whom the Personal Data has been disclosed.

Set Up of a Data Protection Commission ("DPC"):

- to oversee compliance with the new DP legislation and to undertake DP education and awareness efforts.
- Its proposed powers include the issuance of orders for an Organisation to rectify non-compliance with the DP law, requiring the Organisation to pay a financial penalty of such amount not exceeding S\$1 million as well as criminal penalties.

Points for Businesses to take note:

- List of Personal Data:

The proposed DP law will not prescribe a fixed, or "hardwired", list of Personal Data that should be protected.

 - E.g. of what is clearly Personal Data is a person's NRIC number
 - Other information may be considered Personal Data only in specific contexts (e.g. when combined with other information). Guidelines giving examples of information that may constitute Personal Data may be issued by DPC in due course.
- Proposal to protect the Personal Data of deceased persons for 20 years:
 - This is significantly longer than the statutory limitation periods.
 - A re-look at the document retention and disposal policies will be necessary if implemented.
- Proposal to exclude Organisations outside Singapore that engage in data collection and/or processing activities in Singapore:
 - This is in view of the limited ability to carry out investigation, enforcement with breaches remaining uncorrected.
 - Practically, when considered with the approach of not distinguishing between data controllers and data processors, this may not impact the extent of DP framework.
- No distinction between data controllers and data processors:
 - An Organisation that merely outsources the collection and/or processing of Personal Data is still responsible for the management of such Personal Data as the Organisation is considered to have control over the data

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- The onus will be on the Organisation to ensure that appropriate measures are taken to protect Personal Data where such data is transferred outside Singapore. The scope of the obligations and responsibilities imposed on the outsourced party will need to be adequately framed.
- Designated personnel:
 - Recommendation that 1 to 2 individuals are to be designated as persons responsible for ensuring that the Organisation complies with the DP regime.
 - These individuals will also likely be the same persons listed in a contact list to be provided to the party from whom the Personal Data is obtained.
- Extent of Consent and Retention Period:
 - Note that fresh consent has to be obtained if the Personal Data collected is to be used for a different purpose other than the purposes for which the individual has given consent.
 - If the proposal of requiring individuals to be informed of the retention period for their Personal Data at the point of collection is implemented, it will be important to ensure that the initial consent is framed adequately.
- Refusal of Access to Personal Data:

Although it is proposed that an Organisation can refuse requests for access to the individual's personal data in circumstances where it is frivolous or vexatious or where responding to the request will unreasonably interfere with the operations of the Organisation, the interpretation and implementation of such exceptions remains unclear.
- Guidance on fee structures:

Guidance on Fee structures for processing requests to access Personal Data is expected to be issued.

- Transitional Period:

A transitional period of 1-2 years is proposed for the adjustments to policies, procedures and systems to comply with the new DP Act. Organisations will have to ensure compliance within the transitional period.

- Existing Data:

It will be important for Organisations to examine the purpose and use of existing Personal Data collected as fresh consent would need to be obtained if an Organisation intends to use existing Personal Data for a new or different purpose.

- National Do-Not-Call ("DNC") Registry:

Proposed set-up of a National Do-Not-Call ("DNC") Registry for individuals to opt-out of unsolicited telemarketing calls, SMS and fax messages from Organisations; unless the individual has specifically given his consent for the Organisation to call/ send him telemarketing messages.

- This may have a significant impact on the back-room operations of businesses who store and process the data collected.
- Time, effort and costs will be required and incurred in order for Organisations to ensure that their internal listing is in line with the DNC Registry information.

The full Consultation Paper is accessible from the website of the Ministry of Information, Communications and the Arts at <http://www.mica.gov.sg/dpconsultation>

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