
Personal Data Protection Act

Thailand's Personal Data Protection Act – A Year in Review 2023

Introduction

Thailand's Personal Data Protection Act B.E. 2562 (2019) ("**PDPA**") became fully effective in mid-2022 and, since then, various subordinate laws have been issued to clarify certain provisions. We have set out below a snapshot of PDPA developments in 2023.

PDPA Developments

- **On enforcement trends**

Recently, Thailand's Personal Data Protection Committee ("**PDPC**") has conducted investigations on data controllers for alleged non-compliance with the PDPA. Two recent investigation cases are summarized as follows:

- **Investigation of an insurance company for alleged personal data collection**

The investigation was initiated following exposure on a popular Facebook social media page, revealing that many insurance agents collected personal data of students and their parents across Thailand through questionnaires and homework. The data collected included the name, age, address, telephone number, monthly income and financial planning details in relation to the students' families. The data subjects were not notified about the details of such collection and no consent was obtained from them.

On 23 November 2023, the PDPC summoned the insurance company to provide additional details, and reiterated the company's obligation to rigorously regulate its agents. The investigation of the alleged non-compliance is still ongoing and the PDPC may impose administrative sanctions against the insurance company. The PDPC also contacted several relevant organizations, e.g., the Office of Insurance Commission (OIC), the Thai Life Assurance Association, to help coordinate the matter.

- **Investigation of a social media communication application company for data leak incident**

On 27 November 2023, a social media communication application company disclosed that, due to unauthorized access, up to 440,000 personal data items were leaked, with 300,000 items linked to application users. The PDPC promptly summoned the company to provide additional details regarding types and amount of the personal data that was affected. The PDPC also informed the company to consider having a rectification and remedy policy for those affected.

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According to the PDPC's statistics, from the effective date of the PDPA in 2022 until 19 January 2024, the PDPC has issued approximately 91 administrative orders, mainly requiring data controllers/processors to take action, rectify issues, or cease certain activities. The statistics also reveal that the PDPC Office received more than 390 complaints and was notified of data breach incidents in over 380 cases.

From a regulatory enforcement perspective, the above investigations and the PDPC's administrative orders have demonstrated a more active enforcement approach by the PDPC.

- **On the issuance of administrative orders in the event of complaints – effective 22 June 2023**

On 2 June 2023, the PDPC issued a notification establishing the rules and method for issuing an administrative order of an expert committee, which came into force on 22 June 2023.

Under the PDPA, where there is a complaint from a data subject that a data controller/processor has violated the PDPA, the expert committee could issue an administrative order for the data controller/processor to perform, cease, or rectify their acts within the specified period of time. This notification further provides that such administrative order must include:

- 1) factual details of the subject matter of the administrative order;
- 2) relevant law; and
- 3) considerations and supporting points of the committee's discretion,

and that the data controller/processor shall be notified in writing.

- **On the appointment of Data Protection Officers – effective 13 December 2023**

On 31 August 2023, the PDPC issued a notification by virtue of section 41(2) of the PDPA establishing the criteria for the appointment of a data protection officer ("DPO") for data controllers and data processors, which came into force on 13 December 2023.

Under this notification, data controllers/processors would have to appoint a DPO if:

- 1) the processing activities are part of their core activities;
- 2) their processing activities require regular monitoring of personal data or systems; and
- 3) their processing activities involve personal data on a large scale.

The PDPC Office also announced a self-assessment form for DPO appointment to help organizations internally consider whether it is necessary for them to appoint a DPO, and a notification form for DPO appointment, which includes necessary information of the DPO to be notified to the PDPC Office. To facilitate this obligation, the PDPC Office also announced a notification form for DPO Appointment, which can be submitted to the PDPC Office via email: saraban@pdpc.or.th.

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However, it is worth noting that the PDPA and the notification establishing the criteria for the appointment of a DPO are silent on the timeline for the notification of the DPO appointment. As such, the practice of the notification timeframe should continue to be monitored.

- **On security measures for data controllers exempted from the PDPA – effective 7 March 2024**

Under section 4 of the PDPA, certain data controllers are exempted from the enforcement of the PDPA, such as certain public authorities having the duty to maintain state security, mass media, the House of Representatives, the Senate, the Parliament, the courts, and the credit bureau company. Other exemptions could also be made by a Royal Decree. However, the PDPA still requires those exempted data controllers to put in place security measures for the protection of personal data.

In this regard, on 1 December 2023, the PDPC issued a notification setting security standards for data controllers exempted from the PDPA, which will come into force on 7 March 2024. The key measures include, for example:

- 1) Implementation of organizational, technical, and physical measures for personal data in any forms;
- 2) Ensuring confidentiality, integrity, and availability of personal data;
- 3) Implementation of access control, identity proofing and authentication, authorization, need-to-know basis/ least privilege access, user access management, user registration and de-registration, user access provisioning, management of privileged access rights, removal or adjustment of access rights;
- 4) Raising awareness about privacy and security among employees; and
- 5) Adopting pseudonymization or encryption measures.

- **On appropriate safeguards for historical documents or archives for public interest – effective 7 March 2024**

Under the PDPA, a collection of personal data can be conducted without consent if it is for the achievement of a purpose relating to the preparation of historical documents or archives for public interest, provided that there are suitable measures to safeguard the data subjects' rights.

As a result, on 1 December 2023, the PDPC issued a notification setting appropriate safeguards, which will come into force on 7 March 2024. The notification requires a data controller to implement appropriate safeguards similar to those set out in the PDPC's previously issued Notification on security measures of data controllers, such as implementation of organizational, technical, and physical measures, adopting of pseudonymization or encryption measures.

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- **On cross-broader data transfer – effective 24 March 2024**

On 12 December 2023, the PDPC issued a notification on the rules for the provision of data protection for cross-border transfer to a foreign country (section 28 of the PDPA), which will come into force on 24 March 2024. The notification lays down two criteria for consideration of adequacy of the data protection standard of a recipient country/ international organization:

- 1) The destination country/organization shall have a data protection law/regulation that aligns with the PDPA, especially the data controller's obligation to have appropriate security measures in place, including data protection measures that allow enforcement of data subject's right and legal remedies; and
- 2) The destination country/organization shall have an agency or authority to enforce data protection law/regulation.

In addition, this notification allows issues regarding adequacy of the data protection standard of the recipient country/ international organization to be submitted to the PDPC to decide. In this regard, the PDPC may itself issue a list of countries which are deemed to provide an adequate level of data protection.

- **On cross-broader data transfer among affiliated businesses – effective 24 March 2024**

On 12 December 2023, the PDPC also issued a notification on Binding Corporate Rules for affiliated businesses and appropriate safeguards (section 29 of the PDPA), which will come into force on 24 March 2024. This notification sets out the criteria for establishing binding corporate rules ("BCR") and the PDPC Office's process of certifying such BCR.

The notification also outlines appropriate safeguards to enable data controllers or data processors to carry out data transfers in the absence of a BCR or a decision by the PDPC regarding the adequacy of data protection standards in a recipient country or international organization.

Appropriate safeguards can be achieved by complying with one of the following:

- 1) having generally acceptable standard contractual clauses in place;
- 2) obtaining certification that appropriate safeguards for cross-border transfer of personal data have been implemented, for which a certification mechanism will be subsequently issued; or
- 3) arranging a legally binding and enforceable instrument in case of data transfer between government agencies of Thailand and those of other countries.

In addition, the appropriate safeguards must have legal enforceability and be binding upon the related parties, ensure data protection and data subject's rights and complaints, and include security measures that align with minimum standards.

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- **On appropriate safeguards when collecting criminal records – effective 7 April 2024**

The PDPA requires that any collection of criminal records must be carried out under the control of an authorized official authority, or where appropriate safeguards have been implemented. On 28 December 2023, the PDPC issued a notification on appropriate safeguards for the collection of criminal records not carried out under the control of an authorized official authority, which will come into force on 7 April 2024.

Under this notification, any collection of criminal records that is not carried out under the control of an authorized official authority could be conducted when it is required by law. If such collection is not required by law, then explicit consent must be obtained from the data subject. Such collection is also subject to limited purposes, which include, for example, qualification checking for a job/position, etc.

The data controller must also implement organizational and technical measures, which may include physical measures, to ensure that the collection, use, disclosure of criminal records is conducted to the extent necessary under the lawful purposes of the data controller. The data controller can retain such criminal records for a maximum of six months after completing operations related to them, unless otherwise specified by other laws or unless explicit consent has been obtained from data subjects.

- **On appropriate safeguards for data collection for research or statistics – effective 7 April 2024**

The PDPA allows collection of personal data to be conducted without consent if it is for the purposes of research or statistics. The same applies to sensitive personal data, where there is a legal obligation to achieve the purposes with respect to scientific, historical, or statistic research. However, both scenarios require a data controller to implement suitable measures to protect the data subject's rights. On 28 December 2023, the PDPC issued a notification on appropriate safeguards for data collection for the purposes of: (i) research or statistics; (ii) scientific, historical, or statistic research; or (iii) other public interests. The notification will come into force on 7 April 2024.

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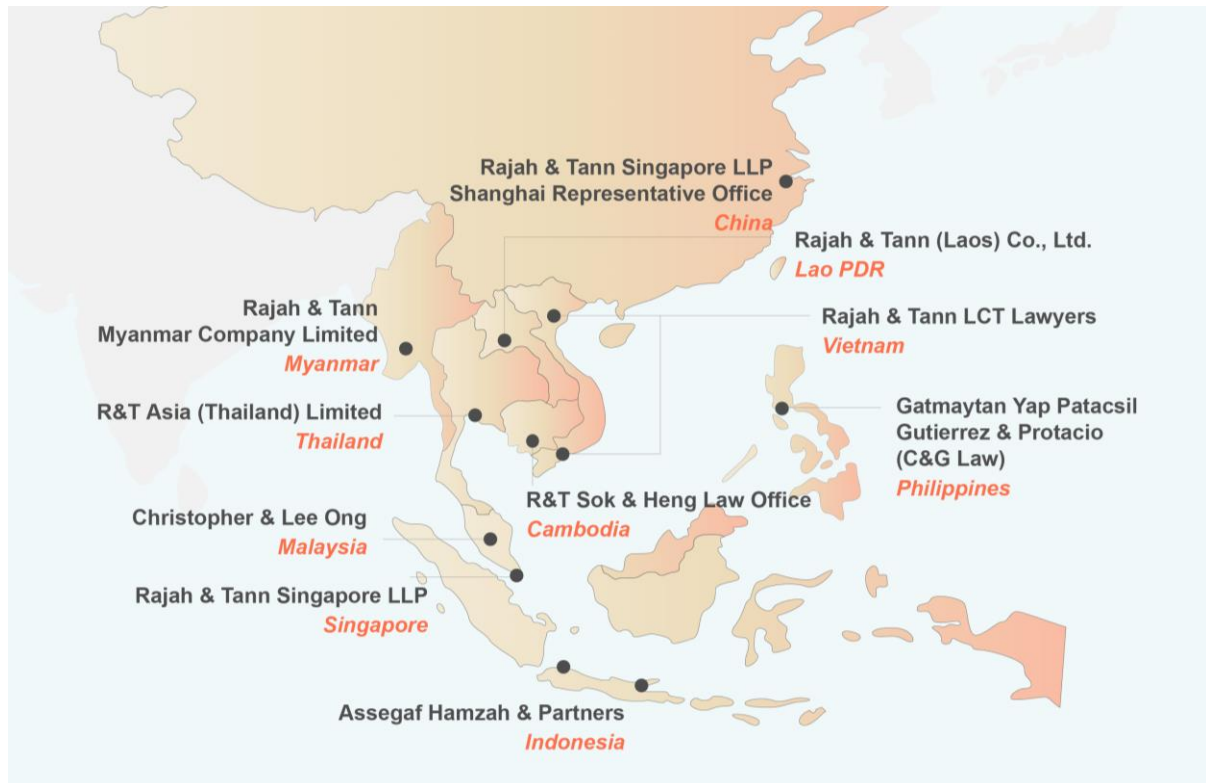
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