RESPONDEK & FAN

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Dear Reader,

In January 2013 Singapore started to implement its Personal Data Protection Act ("PDPA"). The new law incorporates a number of significant new obligations for companies collecting customer data. It seems advisable for companies to start preparing now, so that they are PDPA compliant once the main rules will come into effect in June 2014.

As usual, if you have any comments, remarks or questions, we would love to hear from you. Please contact me at +65 -6324-0060 or by email: respondek@rflegal.com.

Kind regards,
RESPONDEK & FAN
Dr Andreas Respondek
Managing Director

SINGAPORE'S PERSONAL DATA PROTECTION ACT ("PDPA") - OVERVIEW

The PDPA comes into effect in phases

The trend for data collection and analysis is expected to grow exponentially as the processing and analysis of large amounts of personal data becomes possible with increasingly sophisticated technology. Until recently, Singapore had no overall data protection law in force and had only sector -specific confidentiality obligations contained in various laws (e.g. Banking Act, Securities and Futures Act, Official Secrets Act etc). On 2 January 2013 Singapore enacted the "Personal Data Protection Act". Various key provisions of the PDPA will only become effective in phases, e.g. the "Do-Not-Call" Registry will come into force on 02 January 2014 and the main data protection rules will come into force on 02 July 2014. This gradual coming into force will allow companies to review and adopt internal personal data protection policies and practices and comply with the PDPA.

Scope of the PDPA / key features

The PDPA governs the collection, use and disclosure of personal data by organisations in a manner that recognises and balances both the right of individuals to protect their personal data and the need of organisations to collect, use or disclose personal data for legitimate and reasonable commercial and operational purposes. The PDPA is intended to curb excessive and unnecessary collection of an individual's personal data by businesses, and includes requirements such as obtaining the consent of individuals to disclose their personal information. Main features of the PDPA are as follows:

i) Establishment of a Data Protection Commission ("DPC"; http://www.pdpc.gov.sg) on 02.01.2013 to administer and enforce the provisions of the PDPA. The Commission has a range of powers under the PDPA including directing an organisation to: (i) stop collecting, using or disclosing personal data; (ii) destroy personal data; (iii) comply with any directions from the Commission; and (iv) pay a financial penalty of up to SGD1million.

SINGAPORE Office
1 North Bridge Road
#16-03 High Street Centre
Singapore 179094
Tel: +65-6324-0060 Fax: +65-6324-0223

THAILAND Office
323 Silom Road, United Center,
39th Floor, Suite 3904 B
Bangkok 10500
Tel: +66-2-635-5498 Fax: +66-2-635-5499

ii) The PDPA applies to all private sector organisations in Singapore as well as all organisations located outside of Singapore that are engaged in data collection, processing or disclosure of such data within Singapore; therefore, the PDPA would likely apply to a company that was not incorporated in Singapore, but which collects data online from a person in Singapore.

iii) Creation of a requirement of at least one designated individual within each organisation to be responsible for compliance with the PDPA ("Personal Data Officer");

iv) The requirement for organisations to implement policies and practices to comply with the PDPA;

v) Introduction of general rules and exclusions relating to the collection, use and/or disclosure of personal data;

vi) To allow individuals to request access to their personal data held by an organisation in order to find out how organisations have used or are using the personal data collected, to correct any inaccurate information collected and to seek redress for suspected breaches of the PDPA;

vii) Introduction of a penalty and enforcement regime for breaches of the PDPA; (a person who suffers loss as a result of breach of the rules on collection, use and disclosure, as well as access to, correction and care of personal data, shall have a right of action in civil proceedings in court; the court may award damages, injunctions or other remedies as it sees fit.) and

viii) Introduction of a "Do-Not-Call" Registry ("DNC Registry").

"Personal data" under the PDPA

Sec. 2 of the PDPA defines "personal data" that will be protected under the PDPA broadly as data about an individual who can be identified either from the data itself or from other data that an organisation is likely to have access to.

Key obligations of companies under the PDPA

The cornerstone of the PDPA is the prohibition of the collection, use or disclosure by organisations of personal data without the consent of the relevant individuals, and generally requiring organisations to obtain the explicit consent of individuals. However, an individual would be deemed to have given his consent for the collection, use or disclosure of his personal data if that individual voluntarily provides his personal data to an organisation, and if it is reasonable that the individual would volunteer the data under the circumstances. For an explicit consent, the individual needs to be provided with certain information about the purpose of the data processing. Consent can be obtained through electronic means (online) and can be withdrawn at any time. Also the consent cannot be made a condition of the provision of a product or service (beyond what would be reasonable for the provision of that product or service).

In summary, the main obligations of relevant organisations under the PDPA when it comes into force in January 2014 will be to:

i) Appoint an officer to be responsible for ensuring that the organisation complies with the requirements of the PDPA and make such person's contact available to the public

SINGAPORE Office
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ii) Obtain consent for the collection, use or disclosure of personal data;

iii) Make reasonable efforts to ensure that the personal data collected by or on behalf of the organisation is accurate and complete;

iv) Protect the personal data in its possession or under its control by making reasonable security arrangements to prevent authorised access, collection, use, disclosure, copying, modification, disposal or similar risks.

v) Provide individuals with access to the personal data stored by the organisation upon request;

vi) ensure that personal data is retained only for as long as it is needed;

vii) Correct the personal data of individuals upon request; and

viii) Protect all personal data in its custody.

Right of Private Action

Individuals who have suffered loss or damage as a result of an organisation's failure to comply with the abovementioned requirements of the PDPA will be able to seek redress through civil proceedings. In particular, the PDPA provides that in the event that the Commission established under the PDPA has already made a decision regarding the contravention in question, the civil proceedings will only be able to commence after the decision has been finalised, as a result of there being no further right of appeal.

Do-Not-Call ("DNC") Registry

Under this scheme, individuals may register their Singapore phone and fax numbers with the DNC signalling that they do not want to be contacted by companies for marketing purposes. This registration will not expire and is therefore permanent.

Obligations for companies

Companies operating in Singapore will need to consider the impact of the PDPA on their operations and ensure that, by July 2014, their data collection and handling processes comply with the new rules set out in the PDPA. Even if foreign entities are not incorporated in SGP, but as long as they collect, use and/or disclose personal data in SGP, the provisions of the PDPA will apply to them.

Companies that conduct direct marketing activities will have a duty to check the DNC Registry and will need to establish processes to ensure that, by January 2014, they do not market goods or services to a telephone number listed on the Do-Not-Call Registry without obtaining clear and unambiguous consent in writing from the subscriber or user of that telephone number.

In light of the significant impact that the PDPA has on the operations of all private sector organisations, such organisations should prepare to be compliant with the PDPA provisions and to thoroughly familiarise themselves with the PDPA so that early preparations for the establishment of the necessary compliance measures can be put into place.

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