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LEGAL E-BULLETIN

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Dear Readers,

This E-Bulletin provides an overview of important recent legal developments in Singapore:

- Changes to the Data Protection Act
- New CCCS Guidelines on Price Transparency
- New Insolvency Act
- Amendments to the Companies Act
- Further tightening of work pass requirements

We appreciate your feedback and look forward to hearing from you.

Best regards,
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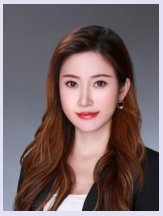

SINGAPORE

1) Singapore's proposed Changes to the Data Protection Act

The Personal Data Protection (Amendment) Bill (Bill) was introduced in Parliament recently and is expected to come into force by the end of 2020 (Consultation: https://www.pdpc.gov.sg/news-and-events/announcements/2020/10/closing-note-to-public-consultation-on-personal-data-protection-(amendment)-bill ; Bill's text: https://sso.agc.gov.sg/Bills-Supp/37-2020/Published/20201005?DocDate=20201005)

Companies familiar with the GDPR and other privacy laws will find many similarities in the proposed data privacy amendments. The five key areas of the amendments can be summarized as follows:

- Mandatory data breach notification to the Personal Data Protection Commission such as cyberattacks, incidents caused by human errors or computer system erros.
- The ambit of deemed consent to be extended to cover contractual necessity and where steps have been taken to notify individuals of the data processing and proferred a reasonable period of time to opt out.
- A new data portability obligation will be introduced to enable consumers to switch to new service providers more easily, and also support the development of new and innovative services or applications.
- Increase in the cap on financial penalties for breaches - Previously, there was a maximum cap of SGD 1 million. The bill seeks to increase the financial penalty to up to 10% of an organisation's annual gross turnover; or SGD 1 million, whichever is higher.
- Tighter rules on telemarketing and spam control.

There will be no 'sunrise' or transition period before the amendments kick in, organisations should take the following steps to ensure compliance with the new PDPA:

- Review existing data protection policies and procedures to ensure

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compliance with the new PDPA;

- Assess if the existing consent agreememt should be revised or updated to take advantage of the new consent framework;
- Revise the telemarketing or the sending of marketing emails practice to comply with the updated requirements;
- Review the relevant agreements with external vendors or data intermediates to ensure protection of the organisation's interests in the event of a data breach;
- Implement the necessary procedures and technical arrangements that will be needed to comply with the new data portability obligation.

2) Competition and Consumer Commission of Singapore (CCCS) Publishes New Guidelines on Price Transparency

The Competition and Consumer Commission of Singapore ("CCCS"), which oversees consumer protection and anti-competition practices in Singapore, has developed a Guidelines on Price Transparency (https://www.cccs.gov.sg/legislation/consumer-protection-fair-trading-act/price-transparency-guidelines) to provide greater clarity on what price practices could potentially infringe the Consumer Protection Act, such as the following:

- "Drip pricing" - Suppliers should ensure that any unavoidable or mandatory charges (e.g. taxes, surcharges, service fees) are included in the total headline price;Price comparisons – To compare only prices of goods or services that are accepted to be similar or equivalent by consumers or trade norms;
- Prohibited discounts – Ensure that discount or price benefit offered is genuine;
- Commercial use of term "free"- Ensure that the representation that the price of a good / service is "free" is not misleading by ensuring that any subsequent key terms and conditions imposed on consumers are stated clearly together with the "free" representation.

The Guidelines will be effective from 1 November 2020 and will apply to all suppliers, whether operating online or in physical stores.

3) Singapore's new Insolvency, Restructuring and Dissolution Act

The new Insolvency, Restructuring and Dissolution Act 2018 ("IRDA"; https://sso.agc.gov.sg/Acts-Supp/40-2018/Published/20181107?DocDate=20181107) came into force on 30 July 2020. IRDA not only unifies Singapore's legislation in relation to personal and corporate insolvency and debt restructuring, but also introduces significant changes to the present regime.

Some of the key provisions are hereinbelow summarized:

(1) Introduction of the Concept of Wrongful & Fraudulent Trading

Section 239(1) of the IRDA provides that a company trades wrongfully if it incurs debts or liabilities without reasonable prospect of meeting them in full when the company is insolvent or

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becomes insolvent as a result of such debts or liabilities being incurred. Under this provision, the Singapore Court may relieve the person declared responsible from the personal liability if: (a) the person acted honestly; and (b) having regard to all the circumstances of the case, the person ought fairly to be relieved from personal liability.

(2) Restriction of Ipso Facto Clauses in Insolvency/Restructuring Proceedings

Section 440(1) of the IRDA limits contractual clauses that (a) terminate or amend, or claim an accelerated payment or forfeiture of the term under, any agreement with a company or (b) terminate or modify any right or obligation under any agreement with a company solely due to the company being insolvent or undergoing restructuring proceedings. In particular, the restrictions would allow certain ongoing projects or contracts to continue for the distressed company.

(3) Safeguards on Litigation

In ensuring accountability for litigation proceedings commenced by insolvent companies, liquidators are now required to seek prior authorisation from the court or a committee of inspection before bringing or defending against legal proceedings.

(4) Voluntary Judicial Management by Creditors' Resolution

Previously, a company has to make an application to the court in order to be placed under the judicial management**.** Section 94 of the IRDA enables a company to put itself into judicial management once a resolution is passed by the creditors, without the need to go through court proceedings. Such a change would reduce the expense, formality and delay associated with obtaining a judicial management order.

(5) Early Dissolution

Sections 209-211 introduce a new summary procedure for early dissolution of a company where the liquidator has reasonable cause to believe that realisable assets are insufficient to cover the costs of the winding-up, and that the affairs of the company do not require further investigation. This helps the insolvent companies who are devoid of an asset base to support the administration of the winding up and allows liquidators to take the practical step of bringing the company's life to an expedient end.

(6) New Requirement to Nominate a Licensed Insolvency Practitioner

In winding-up proceedings, the official receiver is no longer the default liquidator. Instead, when making up a winding-up application, the applicant must now nominate a licensed insolvency practitioner. A person will not be able to act as a liquidator, judicial manager or receiver of a corporation unless duly licensed.

4) Singapore's proposed amendments to the Companies Act

The proposed amendments to the Companies Act aim to reduce compliance costs and facilitate the increasingly prevalent use of technology.

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The Companies Act Working Group's (CAWG; https://www.acra.gov.sg/legislation/legislative-reform/listing-of-consultation-papers/public-consultation-on-proposed-amendments-to-the-companies-act) report and recommendations on proposed amendments to the Companies Act focusses on six areas:

- Facilitating digitalisation, such as dematerialisation of physical share certificates and recognition of digital meetings;
- Types of companies and financial reporting;
- Matters relating to directors and company secretaries, i.e. removal of the prohibition against a sole director of a company appointing himself or herself as the company secretary;
- Safeguarding shareholders' interests;
- Share capital and financial assistance, i.e. enable directors of a company to alter the share capital of the company by increasing its share capital / capitalising its profits, without issuing new shares, and without the need for an ordinary resolution approving the alteration;
- Updating outdated provisions, i.e. updating Form 45, two model constitutions in the Companies Regulations.

The proposed amendments are only at the preliminary public consultation stage and are subject to change, more details pertaining the amendments will be reported in due course once the proposals have been finalized.

5) Tightening of work pass requirements in Singapore

Employment Passes: From 1 September 2020 the minimum qualifying salary for Employment Passes ("EP") has been raised from SGD 3,900 to SGD 4,500. For all EP renewal applicants, this new salary requirement will take effect from 1 May 2021. Additionally, the minimum qualifying salary for EPs in the financial services sector will be raised to SGD 5,000 effective from 1 December 2020.

S Passes: From 1 October 2020, the minimum monthly salary requirement for all new S Pass applicants has been raised from SGD 2,400 to SGD 2,500, with more experienced candidates requiring higher salaries. For all S Pass renewal applicants, this new salary requirement will take effect from 1 May 2021.

Fair Consideration Framework Job Advertising Requirement: With effect from 1 October 2020, the job advertising requirement will extend to new S Pass applications as well. Further, the minimum duration for the advertising for both EP and S Pass will be extended to 28 days, from the previous 14 days' duration.

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