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This issue covers the following topics:

Thailand

PERSONAL DATA PROTECTION ACT - ANOTHER POSTPONEMENT, EXTENSION OF THE SECURITY MEASURES REGULATION, AND WHAT DATA CONTROLLERS CAN PREPARE IN THE MEANTIME

2019 年に制定されたタイ個人情報保護法は、本年 6 月 1 日から全面施行される予定であったが、新型コロナウイルスの感染状況等を踏まえ、全面施行が 1 年間延期されることとなった。全面施行の延期は昨年に続き 2 回目となり、延期に関する具体的措置は昨年同様であるが、その内容を詳述する。

Effective from 9 May 2021, the '*Royal Decree Prescribing the Data Controller's Organizations and Businesses to which Personal Data Protection Act of 2019 shall not be applied (No.2) of 2021*' ("**New Royal Decree**") has been brought into force, yet again, for another 1 year, to de facto postpone and thereby delay the full enforcement of the Personal Data Protection Act B.E. 2562 (2019) ("**PDPA**") to take effect from 1 June 2022.

1. Postponement for another 1 year

The New Royal Decree is technically an amendment to its predecessor, the '*Royal Decree Prescribing the Data Controller's Organizations and Businesses to which Personal Data Protection Act of 2019 shall not be applied of 2020*' ("**Original Royal Decree**"), based on which, the full enforcement of the PDPA had been de facto postponed from 27 May 2020 (the date on which the PDPA was first scheduled to be fully enforced) to 31 May 2021. The New Royal Decree has been issued to extend such de facto postponement for another 1 year until 31 May 2022, whereby, the PDPA will be fully effective from 1 June 2022. Therefore, other details such as the legal technicalities and the extent of the de facto postponement of the PDPA remain the same as those in the Original Royal Decree (for more details and discussions on the Original Royal Decree, please see *here*).

The New Royal Decree was issued amidst the severe resurgence of the Covid-19 outbreak in Thailand. The official reasons therefor cite the fact that "the Corona 2019 virus outbreak is still continuing until now and has become even more severe, affecting the economy and society significantly", and, that, "the compliance with the criteria, procedure and conditions prescribed under the [PDPA] is very stringent and complex, and requires a high level of technology in order to ensure the efficacy of the data protection so as to fulfil the purposes of the [PDPA]", which led the government to deem it appropriate for the issuance thereof as it sees that "many of the data controllers of

various organizations and businesses, both in government and private sectors across Thailand, are still not ready to comply with the [PDPA]".

2. Extension of the security measures regulation

The extension of the de facto postponement of the PDPA by the New Royal Decree has also made it necessary to extend the effective period of the '*Notification of Ministry of Digital Economy and Society Re: Standard of Security Measures on the Personal Data of 2020*' ("**Original Notification**"), which was issued pursuant to the Original Royal Decree for a limited effective period from 18 July 2020 to 31 May 2021. The Original Royal Decree required the data controllers (against whom the full enforcement of the PDPA has been de facto postponed) to provide security measures in accordance with the standard prescribed by the Ministry of Digital Economy and Society –hence, the Original Notification was issued. This requirement presumably sought to provide, as a place holder, a personal data protection measure until the PDPA becomes fully effective, and, thereby, the Data Protection Committee ("**Committee**"), a regulatory authority under the PDPA, issued the standard of security measures (for more details and discussions on the Original Notification, please see *here*).

Thus, soon after the New Royal Decree, the '*Notification of Ministry of Digital Economy and Society Re: Standard of Security Measures on the Personal Data (No.2) of 2021*' ("**New Notification**") was issued and became effective as of 25 May 2021, thereby extending the same security measure requirements as prescribed in the Original Notification against such data controllers until 31 May 2022.

3. What data controllers can prepare in the meantime

As of the date hereof, the Committee has not yet been officially formed and there is still no subordinate legislation issued thereby.

Nevertheless, as there are data controllers' duties, details of which are already clearly stipulated in the PDPA, and principally do not require any further details to be laid down by the Committee, it may be recommended for the data controllers to observe whether they have already prepared for such duties, or, if not, to start preparing for such duties to be ready for the full enforcement of the PDPA.

Such preparation, among other things, and aside from the compliance regarding the provision of security measures as prescribed under the Original Notification whose effect has been extended by the New Notification as mentioned above, includes the following:

(i) Drafting of the consent letter;

(ii) Drafting of the privacy notice;

(iii) Drafting of the internal data protection policy;

(iv) Drafting of the data processing agreement;

(v) Drafting of the consent withdrawal method for the personal data collected prior to the full enforcement of the PDPA;

(vi) Preparing of the records of personal data; and

(vii) Exploring for the appropriate candidates for the Data Protection Officer ("**DPO**")

For (i) to (vi) above, it can be said that the provisions of the PDPA are straightforward enough to prepare such relevant documentations. Especially for (ii), it is observed that several business operators, such as financial institutions, have already prepared and put into use such documents despite the PDPA not yet being fully enforced.

For (vi), the PDPA exempts data controllers who are "small businesses", as shall be prescribed by the Committee, from most of the items that the PDPA principally requires to be included therein, unless (a) the collection, use, or disclosure of the personal data is likely to result in a risk to the rights and freedoms of data subjects; (b) the data controller is not in such a business where the collection, use or disclosure is occasional; or (c) 'sensitive personal

data'[1] is being collected, used, or disclosed. The Committee has still not prescribed (as mentioned, even the Committee itself has not yet been officially formed) what kind of data controllers fall under the term "small businesses", however, the analogy is made, and thereby, to a certain degree, alluded that the data controllers who employ less than 250 employees may fall under such category in line with similar rules under the European Union's General Data Protection Regulation[2].

For (vii), although not all the data controllers are required to appoint a DPO[3], and, although the Committee *may* prescribe the qualifications of the DPO in the future, since the PDPA is clear that a DPO can be appointed from among the employees of data controllers or hired from a service provider, and that the DPO can concurrently hold other positions or perform other duties or tasks so long as it does not affect the performance as a DPO, it may be advisable for the data controllers to begin exploring for the appropriate candidates for the DPO. In any case, it is suggested that, based on the nature of the works of the DPO prescribed under the PDPA, the DPO candidates should not be the persons who will be concurrently holding management positions within the organization where such concurrent holding of the positions could cause a conflict of interest, e.g., the chief executive officer should not be concurrently appointed as a DPO[4].

4. Conclusion

In light of the above points, although the New Royal Decree has, by its effect, delayed for yet another year the full enforcement of the PDPA, prudent business operators should, with the support of a professional legal advisor, ensure the provision of the security measures in accordance with the Original Notification whose effect has been extended by the New Notification, and ensure to continue making, or start making, necessary preparations, especially those set out in (i) to (vii) above, in order to ensure that they are ready to comply with the PDPA should there be no more delay in the future.

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1 The term 'sensitive personal data' or 'sensitive data' is not used in the PDPA, however, it generally refers to the personal data, which is provided under Section 26 of the PDPA, namely, personal data pertaining to ethnicity, race, political opinion, doctrinal belief, religious belief, philosophical belief, sexual behavior, criminal record, health record, information about labor union, genetic or biometric data or any information as prescribed by the Committee.
2 2021. *Thailand Data Protection Guidelines 3.0*. Bangkok: Research Center for Law and Development, Faculty of Law, Chulalongkorn University, p. 123. Available at: < https://www.law.chula.ac.th/wp-content/uploads/2020/12/TDPG3.0-C5-20201208.pdf> [Accessed 13 June 2021]
3 Under Section 41 paragraph 1 of the PDPA, for the data controllers in private sector, the appointment of the DPO will be mandatory if (a) activities of the data controllers are the collection, use, or disclosure of personal data which require a regular monitoring thereof or monitoring of the system due to having large amount of information as prescribed by the Committee –which is yet to the prescribed; or (b) the core activity of the data controllers is the collection, use, or disclosure of 'sensitive personal data'.
4 Thailand Data Protection Guidelines 3.0. p. 128

Singapore

SINGAPORE HIGH COURT CONSIDERS SCOPE OF THE RIGHT TO PRIVATE ACTION UNDER THE PERSONAL DATA PROTECTION ACT

シンガポールの個人情報保護法では、事業者が同法に違反したことで損失又は損害を被った個人は、民事裁判手続を通して救済を求める権利が認められているが、今般、何をもってこの「損失又は損害」を被ったと言えるかという点について初めての裁判所の判断が示された。そこで、本稿ではこの裁判例について概要を紹介する。

In a recent decision rendered in May 2021, the Singapore High Court determined for the first time the scope of a person's right of private action under section 32 of the Personal Data Protection Act 2012 ("**PDPA**"). The Court considered the threshold of "loss or damage" that must be met in order for a person to bring a civil action against an organisation for a breach of the PDPA.

The High Court held that loss of control over personal data or emotional distress from such loss of control, without more, is insufficient to establish a right of private action. Instead, a person must have suffered one of the heads of loss and damage under common law (such as financial loss, damage to property, and personal injury, including psychiatric illness). The case, *Bellingham, Alex v Reed, Michael* [2021] SGHC 125 ("***Bellingham v Reed***"), is presently on appeal to the Singapore Court of Appeal.

Background

The PDPA is the primary legislation in Singapore that governs the collection, use and disclosure of personal data by organisations. The Personal Data Production Commission ("**Commission**") is a specialised body empowered to, among others, administer and enforce the PDPA.

Section 32 of the PDPA (now section 48O of the amended PDPA) creates a right of private action. Section 32(1) gives any person who suffers "loss or damage" directly as a result of a contravention of certain provisions in the PDPA, a right to bring a civil action in court. At present, the PDPA is silent on the definition of "loss or damage".
The remedies available to a plaintiff in such a civil action are set out at section 32(3) of the PDPA. These include injunctive or declaratory relief, damages and any other relief the court considers appropriate.

Summary

In *Bellingham v Reed*, the defendant, Bellingham, was a former employee of a fund management business known as the IP Investment group of companies ("IPIM Group"). Clients disclosed their personal data to the relevant companies within the IPIM Group, which managed their investments. Bellingham later joined a rival company, and contacted a number of the IPIM Group's clients to explore new investment opportunities, including the plaintiff, Reed. Bellingham contacted Reed at his personal email address.

Reed then brought an action against Bellingham in the District Court under section 32 of the PDPA. The District Court found that Bellingham had breached statutory obligations under the PDPA and granted an injunction against him. Bellingham then appealed against this decision to the Singapore High Court.

Decision of the Singapore High Court

The High Court agreed with the District Court's finding that the defendant had breached various obligations under the PDPA. However, the High Court ruled that the plaintiff did not have a right of private action under section 32(1) of the PDPA because he had not suffered any "loss or damage" within the meaning of that provision.

As the PDPA does not contain a statutory definition of the term "loss or damage", the issue before the High Court was whether the term should be interpreted:

(a) narrowly to refer to the heads of loss or damage under common law (such as financial loss, damage to property, personal injury including psychiatric illness); or

(b) widely to include distress and loss of control over personal data.

The High Court adopted a purposive approach to the interpretation of section 32(1) of the PDPA, and ascertained the legislative purpose behind the provision with reference to parliamentary material when the Personal Data Protection Bill was tabled for discussion.

Having consulted these material, the High Court found that the primary intent of the PDPA was not so much to protect an absolute or fundamental right to privacy (which was a driving consideration in other jurisdictions such as Canada, the EU and the UK) but to enhance Singapore's competitive edge as a trusted place for business and to safeguard individuals' personal data against misuse. In addition, unlike relevant statutory provisions in other jurisdictions which contained express references to forms of emotional harm (such as loss of dignity, injury to feelings and distress), the High Court noted that the Singapore Parliament finally chose only to refer to "loss or damage" in section 32(1) of the PDPA, thereby evincing an intention to exclude emotional harm and loss of control over personal data from that provision.

The High Court further considered that section 32(1) of the PDPA created a statutory tort, which could be given effect by interpreting the term "loss or damage" narrowly to refer to the heads of loss or damage applicable to torts under common law noted above.

In this case, it was not disputed that the plaintiff had not suffered any financial loss, psychiatric injury or nervous shock as a result of the defendant's breaches of the PDPA. Instead, the plaintiff's claim was based on emotional distress and loss of control over his personal data resulting from those breaches. In the circumstances, the High Court thus determined that the plaintiff was not entitled to claim relief under section 32 of the PDPA.

Conclusion

The decision of the Singapore High Court in *Bellingham v Reed* clarifies the scope of a person's right under section 32(1) of the PDPA to commence a civil action against an organisation that has contravened its obligations under the PDPA. As it stands, one must have suffered a head of loss or damage applicable to torts under common law (such as financial loss, damage to property, or personal injury including psychiatric illness) to qualify for relief under section 32 of the PDPA. This narrows the pool of potential claimants by excluding those who have suffered only a loss of control of personal data and associated emotional distress.

As the decision is now under appeal to the apex court of Singapore, it remains to be seen if the narrow approach will continue to reflect the position in Singapore.

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Myanmar

OVERVIEW OF RECENT NOTIFICATIONS ISSUED BY THE GOVERNMENT OF MYANMAR

ミャンマーでは、2021 年 2 月 1 日に軍によるクーデターが発生し、12 か月の非常事態宣言が発出されました。クーデターから 5 ヶ月程経過した現在もまだ国内の騒乱は続いている状況で、外国企業にとってはミャンマー国内での事業を再開する見通しが立たない状況にあります。他方で軍政権はこの期間中にも企業の事業活動に関わる複数の通達を出しており、経済活動の再開に向けた動きも見られます。そこで本稿では、直近で軍政権から発行された通達のうち、重要なものについて紹介します。

Background

Myanmar's new military government has issued a number of notifications after the military seized power on 1 February 2021 with the declaration of 12 months State of Emergency. Below is a brief summary of some of the recent notifications that would have effect on commercial and investment activities in Myanmar.

1. Temporary relief on penalties for late lodgement of the Annual Return

On 27 April 2021, the Directorate of Investment and Companies Administration ("**DICA**") issued Notification no.110/2021, which provides for suspending penalties for late filing of the Annual Return for three-month period from 1 February to 30 April 2021. This relief against the late filing of Annual Return had been extended for another one month from 1 May 2021 to 31 May 2021 according to the Notification no.115/2021 by DICA dated 29 May 2021.

Under the Myanmar Companies Law (**"MCL"**), every company conducting business in Myanmar must file an Annual Return within two months of its incorporation and thereafter once at least in every calendar year (but not later than 1 month after the anniversary of its incorporation). Every overseas corporation, in Myanmar must file an Annual Return within 28 days of the end of its financial year with DICA.

The filing can be made by using online registry system MyCO or in person by submitting prescribed form at DICA. The filing fee for Annual Return is MMK 50,000 and the automatic penalty for late submission imposed by online filing system is MMK 100,000. In addition to the penalties described above, late filing of Annual Return may result in suspension and/or de-registration of the company by DICA under the MCL.

2. Import restriction on products

Ministry of Commerce ("**MOC**") issued a Newsletter no.10/2021 on 4 June 2021 that certain products have been prohibited from being imported via border trade. It stated in the Newsletter no. 10/2021 that the reason for the restriction is to reduce the demand for foreign exchange and to support local business. The restriction does not apply to import by sea and air cargo, and only apply when being imported across land borders.

In addition, a temporary suspension has been put in place on the import of food products through border starting from 1 May 2021 by the Newsletter no. 6/2021 on 12 April 2021. No end date to these restrictions have been provided. The table below provides details of the products.

List of foods products restricted to import	H.S Code
Various type of soft drinks	2201
Fruit Juice	2009
Essence and powder for soft drink	2106
Coffee Mix, Tea Mix, instant Coffee	1201
Condensed Milk/Evaporated Milk	1901

3. New solar tender project invitation

The Electric Power Generation Enterprise ("**EPGE**") under the Ministry of Electricity and Energy (**"MOEE"**) published its second new public tender invitation to bid for the construction and operation of ground-mounted

solar power plant projects from independent power producers on a build-operate-own basis on 24 May 2021. The first public tender for the construction and operation of solar power plant was launched last year which concluded in September 2020 with 29 successful bidders on a 1GW PV tender by allocating all of the procured capacity.

Interested bidders are required to prepare the proposal pursuant to the Request for Proposal. In addition, the bidders must propose tariff which covers all applicable taxes and all other costs in relation to the construction and operation of the solar power plants and the transmission facilities in the proposal. The concession period to operate solar power plants is 20 years from commercial operation date. As the date of writing of this article, no further details are given as to the location and capacity.

4. Exemption of licensing requirement for importation and exportation of certain products have ended

MOC has announced the end of the exemption of licensing requirement for importation /exportation of certain products by the Newsletter no. 9/2021 on 28 May 2021. MOC issued Newsletter no.02/2021 on 3 March 2021 which granted an exemption for obtaining import/export licenses when importing/exporting certain goods. Newsletter 2/2021 provided that 72 items were exempted from obtaining import licenses and 32 items were exempted from obtaining export licenses. The exempted goods included essential items, including basic foods, medical products, agricultural products and certain other items that are important for the development of the country.

In addition, MOC further issued Newsletter no.7/2021 on 4 May 2021 and extended the exemption of licensing requirement for import/export until 7 June 2021. However no further extension has been announced and starting from 8 June 2021, an exporter/ importer is required to apply for license with respect to the products set out in Newsletter no.2/2021. However, the products which had already arrived at port before 8 June 2021 are still exempted from licensing requirement to smoothen the business. The application for import or export license can be made online by using Trade Net Website or in person by visiting the Office of the Public Access Center under the MOC to submit an application.

Conclusion

Despite increasing instability in the country, the new military government has intended to move forward with issuance of the regulations for the development of business in the country to portray business as usual. It is recommended that investors monitor any particular issuance from the new military government in relation to the operation matters to avoid being exposed to penalties and to comply with the legal requirements.

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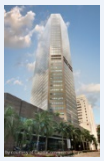

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