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This issue covers the following topics:

Thailand

Checklist of Requirements for Data Controller under the Personal Data Protection Law

2022 年 6 月 1 日に、タイ個人情報保護法が全面施行された。同法は 2019 年に制定されたものであるが、規制当局等に関する一部の規定のみが先行して施行され、それ以外の規定の適用開始は、2 度にわたり延期されていた。本稿では、データ管理者が同法上遵守すべき主要な事項を解説する。

1. Background

From 1 June 2022, the Personal Data Protection Act of 2019 of Thailand (the "**PDPA**") has become fully effective after its effectiveness was extended twice in 2020 and 2021. Any person including a business operator who collects, uses or discloses ("**Data Controller**") the personal data of natural persons who are in Thailand ("**Data Subject**") shall duly comply with the requirements and obligations set forth under the PDPA. In this article, to facilitate the existing or potential Data Controller, we aim to provide a checklist of key requirements and obligations of the Data Controller under the PDPA.

2. Key requirements and obligations of the Data Controller under the PDPA

The PDPA provides several requirements and obligations particularly with which the Data Controller is required to comply. This article narrows down substantial requirements and obligations which the Data Controller should be aware of as below.

2.1 Obtaining of consent

The Data Controller cannot collect, use or disclose personal data unless the Data Subject gives consent except as permitted under the PDPA. Principally, the request of consent shall be made explicitly in writing or via electronic system. According to the draft regulation under the PDPA, for the request of consent via electronic means, it is expected that the Data Controller shall provide an evidence or record in electronic form (e.g. audio or video record) to verify that the Data Subject has given consent. Also, providing consent via electronic means shall be done by way of electronic signature under the electronic transactions law of Thailand (e.g. providing consent using password, digital signature, biometrics such as fingerprint, face or voice recognition or similar).

Also, the Data Controller shall inform the purpose of collection, use or disclosure to the Data Subject. The statement for the request of consent shall be easily understandable and in accessible format. The Data Controller shall procure that the Data Subject freely provides such consent. And, the request for consent shall not be a condition for entering into an agreement or providing services.

Nevertheless, the Data Subject may withdraw his/her consent at any time. If the withdrawal of consent will affect the Data Subject in any manner, the Data Controller shall notify the Data Subject of such effect. Although the consent is withdrawn, it will not affect the collection, use or disclosure for which the consent has been given.

2.2 Privacy notice

Apart from obtaining consent, prior to or at the time of collection of personal data, the Data Controller shall notify the Data Subject of the following matters under the PDPA:

- Purpose of collection including the purposes of collection with no need to obtain consent;
- Information regarding provision by Data Subject of personal data to comply with a law or an agreement or to entering into an agreement including the effect for not providing such data;
- Personal data to be collected and retention period;
- Types of persons or organizations to which personal data may be disclosed;
- Information, place and means of contact of the Data Controller and its representative or the data protection officer (if any); and
- Rights of Data Subject.

Although the Data Controller can collect personal data without obtaining consent from the Data Subject for certain purposes as specified under the PDPA, the Data Controller still needs to notify the Data Subject the abovementioned matters. In practice, the notification can be in the form of privacy notice which contains the abovementioned matters. When obtaining consent, the Data Controller can provide the Data Subject a privacy notice and a consent form at the same time.

2.3 Procedure to withdraw consent for personal data collected before the enforcement of PDPA

For the personal data collected prior to the enforcement of the PDPA, the Data Controller can continue to collect and use the personal data for the original purposes. The Data Controller needs to prepare a method to cancel consent and publicize such to the Data Subject for the Data Subject to cancel consent given prior to the enforcement of the PDPA.

2.4 Personal data record

In principle, the Data Controller shall prepare a record of the information as required by the PDPA[1] which can be in a written or electronic form, in order to enable the Data Subject and the Office of Personal Data Committee to verify.

However, in case of a Data Controller, which is a small business (the "**Small Business Data Controller**"), it will only be required to prepare a record of the rejection of request or objection to the exercise of right of the Data Subject; except where (i) the collection, use, or disclosure of such personal data is likely to result in a risk to the rights and freedoms of Data Subject, or (ii) it is not a business where the collection, use, or disclosure of the personal data is occasional, or (iii) it involves in the collection, use, or disclosure of the sensitive data, the Small Business Data

[1] The Data Controller shall maintain, at least the following records in order to enable the data subject and the Office of Personal Data Protection Committee to check upon, which can be whether in a written or electronic form:
(1) the collected personal data;
(2) the purpose of the collection of the personal data in each category;
(3) details of the Data Controller;
(4) the retention period of the personal data;
(5) rights and methods for access to the personal data, including the conditions regarding the Data Subject having the right to access the personal data and the conditions to access such personal data;
(6) the use or disclosure of the personal data;
(7) the rejection of request or objection to the exercise of right of the Data Subject; and
(8) explanation of the appropriate security measures.

Controller will still be required to prepare a record in accordance with the preceding paragraph.

According to the Notification of the Personal Data Protection Committee Re: Exemption for maintaining the records of the Data Controller who is a small organization of 2022 dated 10 June 2022 issued under the PDPA, the Small Business Data Controller under the preceding paragraph includes, for example, a small enterprise or a medium enterprise according to the laws concerning small and medium enterprise promotion, or a foundation, association, religious organization, or non-profit organization.

2.5 Data processing agreement

The Data Controller may designate another person or juristic person to collect, use or disclose personal data on behalf of or under instructions of the Data Controller. In such case, such another person or juristic person shall be the data processor (the "**Data Processor**"). The Data Controller is required to execute an agreement with the Data Processor to ensure that the Data Processor will collect, use or disclose under the Data Controller's instruction only and perform other duties as required by the PDPA (the "**Data Processing Agreement**").

The Data Processing Agreement shall specify provisions at least in relation to (i) the collection, use or disclosure of personal data being in accordance with the Data Controller's instruction only, (ii) the provision of appropriate security measures and (iii) the provision of record of data processing activities.

2.6 Appointment of the data protection officer ("DPO")

The Data Controller is required to appoint a DPO if, among others, the activities of the Data Controller in the collection, use or disclosure of the Personal Data requires a regular monitoring of the personal data or the system, by the reason of having a large number of personal data or the core activity of the Data Controller is the collection, use or disclosure of the sensitive data.

According to the potential draft sub-regulation in relation to the DPO, one of the clarification of having large amount of personal data is 'having the personal data under its supervision within the period of 12 months of more than 50,000 data subjects, or 5,000 data subjects in case of sensitive data'.

The responsibilities of the DPO are, among others, providing advice to the Data Controller and its employees in relation to compliance with the PDPA, and coordinating with the competent officer in case of any problems arising from the collection, use or disclosure of the personal data by the Data Controller and its employees.

The Data Controller also has the duty to notify the details of the DPO and his contact details to the Data Subject through privacy policy as well as to the competent officer.

2.7 Appointment of a representative in Thailand (in case the Data Controller is outside Thailand)

Where the Data Controller is outside Thailand, the PDPA shall apply to the collection, use or disclosure by such Data Controller of the personal data of the Data Subjects who are in Thailand if the activities of such Data Controller are as follows:

(1) offering of goods or services to the Data Subjects who are in Thailand, irrespective of whether the payment is made by the Data Subject; or

(2) monitoring of the Data Subject's behavior which takes place in Thailand.

In principle, the Data Controller who is outside Thailand and conducts the activities as described above will be required to appoint a representative in writing and such representative shall be in Thailand acting on behalf of the Data Controller without any limitation of liability with respect to collection, use or disclosure of the personal data according to purposes of the Data Controller.

However, such Data Controller outside Thailand might be exempted from appointing the representative in case where such Data Controller engages in the profession or business of collecting using, or disclosing the personal data that is not the sensitive data and does not have large amount of the personal data as described in paragraph 2.6 above.

3. Conclusion

As of now, the PDPA is already enforceable. Although the sub-regulations are in a draft form and not yet finalized, any person or company who is considered a Data Controller still needs to ensure that it has complied with the requirements and obligations as specified above under the PDPA and should monitor the status of the sub-regulations. Failure to comply with the PDPA may result in civil liability, criminal and/or administrative penalty.

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Singapore

New Amendments to the Singapore Rules of Court 2021

シンガポールの裁判所における民事手続に適用される規則であるシンガポール法廷規則が 2021 年に大幅に改正された。これは、2015 年に民事司法委員会が設立された際に最高裁長官が「訴訟の近代化、効率化、迅速な審理、適正なコストの維持により、訴訟手続を単なる改革ではなく変革する」と誓約したことを受けて改正されたものである。本稿ではこの改正された法廷規則の概要について紹介する。

Introduction

The Singapore Rules of Court 2021 ("**New ROC**"), a set of rules governing the applicable proceedings for all civil procedures in the Singapore Courts, was substantially amended last year. This follows a commitment by the Chief Justice upon the establishment of the Civil Justice Commission in 2015, to "*transform, not merely reform, the litigation process by modernizing it, enhancing efficiency and speed of adjudication and maintaining costs at reasonable levels*".

The New ROC is based on five 'ideals', which the Court must keep in mind when rendering decisions under the New ROC:

1. Fair access to justice
2. Expedited proceedings
3. Cost-effective legal work
4. Efficient use of court resources
5. Fair and practical results, suited to the needs of the parties

The New ROC took effect from 1 April 2022. It applies to: (1) all civil proceedings commenced in the Singapore Courts on or after 1 April 2022; and (2) all appeals made to the Court of Appeal / Appellate Division of the Singapore Courts on or after 1 April 2022. Proceedings commenced in the Singapore International Commercial Court on or after 1 April 2022 will be governed under a separate set of rules known as the Singapore International Commercial Court Rules 2021.

A number of the more significant updates to the procedures under the New ROC are set out below.

Interlocutory applications

An interlocutory application is an application made to the Court by either party for the request of some relief that would assist them in the preparation of their case prior to the trial. Common interlocutory applications include applications for amendment of the parties' pleadings, for specific discovery of documents, and for further and better particulars of the pleadings.

Previously, parties would individually consider the necessity for interlocutory applications on a stage-by-stage basis; as and when the need would arise for a particular type of interlocutory relief, the relevant application would then be filed.

The New ROC, however, has introduced the concept of a "Single Application Pending Trial" ("**SAPT**"). The Court will direct that the parties each file a SAPT to deal with, as far as possible, all matters that are "*necessary for the case to proceed expeditiously*". Examples of such matters would include: (1) applications for security for costs, (2) amendment / particulars of pleadings, (3) production of documents, (4) striking out part of an action or defense, and (5) interim relief. (For the full list of interlocutory relief covered by the SAPT, see Order 9 rule 9, paragraph (3) of the New ROC)

Once the SAPT has been filed, parties may not file further applications for relief which could have been covered by the SAPT, unless they get the permission of the Court. In doing so, they will need to write in formally to the Court in a letter setting out the essence of the intended application, and justifying why the separate application would be necessary at that stage of the proceedings. A part of this written request may include an explanation on why the application had not been contemplated earlier, and/or why it had not been included in the SAPT. (See Order 9 rule 9, paragraphs (7) and (8) of the New ROC)

However, the SAPT does not cover all forms of pre-trial interlocutory relief available to parties. Some specific applications, such as for (1) substituted service of process, or service of process outside of Singapore, (2) judgment in default, (3) striking out the whole of an action or defense, and (4) an injunction, are not covered by the SAPT. These types of relief may be applied for at any time, without needing to specifically seek the Court's approval. (For the full list of interlocutory relief exempted from the SAPT, see Order 9 rule 9, paragraph (7) of the New ROC)

Further, in order to minimize the taking out of last-minute applications in the lead-up to trial, no application (whether covered by the SAPT or otherwise) is permitted to be taken out in the period from 14 days prior to the commencement of trial, up to the determination of the merits of the case by the trial Judge. Any party seeking to take out an interlocutory application during this period must write in to get the permission of the trial Judge specifically, and must do so in a letter justifying why the application is a special case that should be heard. (See Order 9 rule 9, paragraphs (10) and (11) of the New ROC)

Document production

The amendments to the document production process in the New ROC were made with two key principles in mind:

1. A claimant should sue and proceed on the strength of their own case, and not the weakness of the defendant's case.

2. A party who sues or is sued in Court does not give up their right to privacy and confidentiality in their documents and communications.

In line with these principles, the New ROC requires parties to produce, as part of document production: (1) all documents that they are relying on, (2) all known adverse documents (or documents which they reasonably should know to be adverse), including any private / internal correspondence, and (3) any other documents which the parties may have agreed to produce. (See Order 11 rule 2 of the New ROC)

Crucially, documents which may not be immediately relevant, but which may lead down a "*train of inquiry*" to other potentially-relevant documents, can no longer be requested in discovery applications as a general rule. The Court will only permit the production of such documents in a "*special case*". This will help to streamline the scope of documents that can be sought during the document production process. (See Order 11 rule 5 of the New ROC)

The Court is also empowered under the New ROC to order that not just pleadings, but all affidavits of evidence-in-chief, be filed prior to the commencement of the document production process. The purpose for this is to allow the key issues to become more fixed and definite, streamlining the matters that the parties will need to deal with and potentially reducing the scope of documents that will need to be disclosed. (See Order 2 rule 8 of the New ROC)

Expert evidence

While previously parties were free to put forward the evidence of an expert where needed to support their case, the New ROC now provides that no expert evidence can be provided without Court approval. The Court will consider each case on its own merits, and approve the use of expert evidence where it has been convinced that the expert evidence will contribute "*materially*" to the determination of issues that relate to scientific, technical or other specialized knowledge. (See Order 12 rule 2 of the New ROC)

Another change from previous practice, is that the New ROC now also requires parties to, as far as possible, agree on a single, common expert shared between the parties. (Previously, parties would each be able to tender their own expert, and the Court would hear the evidence from both experts in the course of the trial.) With the use of

this common expert, the parties will then need to agree on a list of issues to be referred to the expert, and on a common set of agreed / assumed facts which the expert will be entitled to rely on. (See Order 12 rules 3, 4 of the New ROC)

The Court will not permit reliance on more than one expert's evidence for a single issue by a party except in a "*special case*" with the Court's approval. The Court may also, in a "*special case*", appoint its own court expert in addition to, or in place of, the parties' expert(s).

Enforcement

The process for enforcement of judgments received has also been simplified under the New ROC. Whereas previously, a party had to take out a fresh application for each type of enforcement method they wished to execute, parties may now take out a single enforcement application in the Court, under which they can seek all of the enforcement methods they wish to obtain all at once. This includes applications for a stay of enforcement, an enforcement order, and an order for attachment of a debt (*i.e.* a garnishee order). (See Order 2 rule 14, and Order 22 rule 2 of the New ROC)

All methods of enforcement will be carried out by the Sheriff. Where the enforcement order indicates the sequence in which the methods of enforcement granted by the Court are to be carried out, they will follow that sequence; if no such sequence is provided, the Sheriff will exercise their own discretion to carry out the methods, either sequentially or concurrently.

Conclusion

Alongside these new amendments to the procedure before the Courts in civil proceedings, the language of the New ROC has also been adjusted to make the Court terminology more accessible to the general public. The use of specific court terminology has been phased out, and will instead be replaced with simpler terms that will make their meaning clearer to the general public; for example, the term "subpoena" will be replaced by "Order to attend Court or produce documents", and the term "*ex parte* summons" will be replaced by "summons without notice".

The comprehensive nature of these amendments in the New ROC reflects the commitment of the Singapore Courts to improving the efficiency of proceedings in Court, streamlining the litigation process to improve access to justice, and making the law more accessible to the general public. As Singapore continues to establish itself as a hub for dispute resolution, these improvements to the procedure of the Singapore Courts have come at a timely juncture.

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Myanmar

Winding up of the Myanmar Companies under the Myanmar Insolvency Law

ミャンマーでは 2020 年に倒産法が制定されたが、その後の新型コロナウイルスの感染拡大やミャンマーの政治体制の変動により、実務的にはまだ完全に施行されない状況が続いていた。2021 年 11 月、投資企業管理局は、会社の倒産及び清算手続きは会社法ではなく倒産法に従って実施されなければならない旨のアナウンスがなされた。そこで、本稿ではミャンマー倒産法に基づく①株主による清算、②債権者による清算、③裁判所による清算の 3 つの清算手続きについて概説する。

Background

The Myanmar Insolvency Law 2020 ("**MIL**") came into force on 25 March 2020 and the Myanmar Insolvency Rules 2020 ("**MIR**") were issued on 28 April 2020. Prior to the enactment of the MIL, the winding up of the companies in Myanmar was governed under Chapter VI of the Myanmar Companies Law 2018 ("**MCL**"). Chapter VI relating to the winding up of the companies under the MCL was replaced by the MIL. In light of the economic impact from the COVID -19 crisis and political situation in Myanmar, MIL has not yet been fully implemented by the Directorate of Investment and Company Administration ("**DICA**") and other relevant authorities despite 26 months having passed since the MIL came into effect. However, DICA published an announcement on its website on 19 November 2021 stating that insolvency proceedings and winding up of companies must now be carried out under the MIL. The announcement of the DICA stipulates that public announcement for the winding up or liquidation are required to comply with the relevant Sections of the MIL instead of the Sections of the MCL. In addition, companies are also required to comply with the timelines specified under the MIL for the winding up process. While the applicable prescribed forms under MIL are still not issued and DICA is working on the new prescribed forms under the MIL, the prescribed forms issued under the MCL are to be used for filing cases with DICA for the winding up of the companies in accordance with the MIL. In addition, MIL requires the insolvency practitioner ("**IP**") certified by the Myanmar Insolvency Practitioner Regulatory Council ("**MIPRC**"), which is established under the MIL, to be appointed as liquidator to carry out liquidation procedures under the MIL. However, at the time of this article, no IP license has been issued by the MIPRC. In addition, IP must be registered with the DICA. However, the application process for the registration of IP has so far not been established by the DICA. Therefore, companies are still unable to appoint a liquidator under the MIL in practice. DICA is nevertheless still allowing companies to appoint liquidator under MCL until the MICRP and DICA have established the procedures for licensing and registration of IP.

A summary of the three key procedures to effect the dissolution of a Myanmar company under the MIL, being (1) members' voluntary winding up, (2) creditor's voluntary winding up and (3) winding up by the court, is set out below.

1. Members' Voluntary Winding up

A members' voluntary winding up is commenced by a special resolutions (i.e. at least 75 percent of votes cast by members entitled to vote on the resolution) passed by the company's members at a general meeting. Prior to the meeting of members at which the resolution is made, the majority of directors of the company must make a declaration of solvency and attach to that declaration, a statement of the company's assets and liabilities as at that date before the making of the declaration of solvency. The majority of directors must approve a declaration of solvency stating that the company will be able to pay its debts in full within a period not exceeding one (1) year after the commencement of the winding up.[1] The above declaration of the solvency must be made within three weeks before passing of the special resolution of members approving the winding up.[2] However, no requirements have been provided on the preparation the statement in the MIL. Before the general meeting is held, the proposed liquidator (IP) must consent in writing to act as liquidator, if so appointed at the meeting for the purpose of the winding up of the company's affairs and distribution of its property.[3] The appointment of the liquidator must be filed by way of a prescribed form set out in the MIR together with the declaration of solvency, with the DICA within

[1] Section 151 (a) of the MIL
[2] Section 151 (b) of the MIL
[3] Section 152 of the MIL

two business days.[4] Once the liquidator is appointed, the power of the directors of the company cease. In addition, the company must cease carrying on its business except for those actions that are required for the winding up of the business[5].

This process is regulated by Chapter VII – Division 2 of the MIL.

2. Creditors' Voluntary Winding up

The procedure for entering into a creditors' voluntary winding up is contained in Chapter VII – Division 3 of the MIL. In the event that the company is unable to pay its debts in compliance with the requirements of members' voluntary winding up, members' voluntary winding up would be converted into creditors' voluntary winding up.[6]The principal difference between a "members' voluntary winding up" and a "creditors' voluntary winding up" is that, it is the creditors and not the shareholders that will supervise the process of the winding up, because there are insufficient assets in the company to meet all debts and liabilities. A creditors' voluntary winding-up is commenced by calling a meeting of creditors of the company on the day for the purpose of voluntary winding up. A prior notice shall be sent to all of the company's creditors not less than 14 days before the date of the creditors meeting.[7]A notice of the creditors meeting must be published in the newspaper. The directors must report on the affairs of the company, together with a list of the creditors of the company and the estimated amount of their claim in the prescribed forms set out in the MIR at the creditors' meeting as provided under the MIL.[8] The creditors may appoint one or more liquidator at the creditors' meeting. If no liquidator is appointed at the creditors' meeting, the company may appoint a liquidator.[9] After that, the liquidator will proceed to carry out the liquidation of the company in accordance with the MIL.

3. Winding up by the Court

A company may be wound up by the court in the following circumstances under the MIL[10]:

- The company has by special resolution resolved that the company be wound up by the court;
- The company does not commence its business within a year from its incorporation or suspends its business for a whole year;
- The company is insolvent;
- The court is satisfied that it is just and equitable that the company should be wound up; or
- The court is satisfied there are proper grounds of public interest. Ground of public interest could be where the company has no directors or the company has carried on business with intent to defraud creditors of the company or any other person, or for any fraudulent purposes.

The winding up by the court is initiated by presentation of the winding up petition by a director or a creditor (including contingent or prospective creditor). If the winding up application is successful, the court will order that the company be wound up. Upon making a winding up order, the court will appoint a liquidator. The appointment for the liquidator must be filed by way of the prescribed form set out by the DICA within two business days of his or her appointment.[11] When a liquidator has been appointed by the court, no other proceedings or action or arbitration can be commenced against the company unless with the leave of court.[12]

[4] Section 31 (g) of the MIR
[5] Section 77 of the MIR
[6] Section 154 of the MIL
[7] Section 31 (g) of the MIR
[8] Section 157 of the MIL
[9] Section 158 of the MIL
[10] Section 161 of the MIL
[11] Section 79 (a) of the MIL
[12] Section 172 (d) of the MIL

Conclusion

In the absence of any further official announcement, it is not yet known how long it will take to be able to commence all formalities of insolvency proceedings under the MIL. It is expected that there would be developments regarding the implementing of the winding up procedures under the MIL, such as the issuance of the prescribed forms and procedures for registration as IP under the MIL in the near future, for the MIL to be fully effective.

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