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Vietnam

**New Decree on Security Interests Registration**

ベトナムにも担保登記制度があるところ、今般これに関する政令が改定された。本稿では、担保登記制度の効率性を高めることが期待される新政令の内容をご紹介します。

The Government has recently issued Decree No. 99/2022/ND-CP on registration of security interests (“**Decree 99**”) to replace Decree No. 102/2017/ND-CP dated September 1, 2017. Effective from January 15, 2023 (except for certain provisions on online registration which are to come into effect as of January 1, 2024), Decree 99 is expected to increase efficiency in the field of secured transactions and improve the quality of the current secured transactions registration system.

***Cases of registration of security interest***

As opposed to the regulations of Decree 102/2017/ND-CP which divide security interests to be registered into only two groups (i.e. security interests that are required to be registered and security interests to be registered upon request), Decree 99 specifies four cases for registration of secured transactions as follows:

- (1) Mortgage, pledge and reservation of ownership over assets under Civil Code and relevant laws;
- (2) as agreed between securing party and secured party or on request of the secured party, except reservation of ownership;
- (3) notification of disposal of secured assets in case such assets are used to secure many obligations for many secured parties, if there is an agreement between securing party and secured party;
- (4) registration for change or deregistration of the aforementioned cases.

***Security interest registration agency***

In order to ensure compliance with relevant laws, in addition to regulations on the general authority of the registration agency, Decree 99 clearly classifies registration cases under the respective jurisdiction of each registration agency as follows:

- Land registration offices (under the Department of Natural Resources and Environment): to register and provide information on security interests over land use rights and land-attached assets.
- Civil Aviation Authority of Vietnam (under the Ministry of Transport): to register and provide information on

security interests over aircraft.

- Vietnam Maritime Administration under the Ministry of Transport, or Sub-Department or Maritime Administration as decentralized by the Vietnam Maritime Administration: to register and provide information on security interests over seagoing ships.
- Vietnam Securities Depository (VSD): to register and provide information related to securities that have been collectively registered in accordance with the provisions of the law on securities.
- Transaction and Asset Registration Center of the National Registration Agency for Secured Transactions (under the Ministry of Justice): to register and provide information on security interests over movable assets other than aircrafts, seagoing ships or registered securities.

### ***Validity of registration***

The registration will be effective from the effective date of registration until the time of deregistration. In general, the change of registration contents will not change the effective time or terminate the validity of the registration. When an asset is used to secure more than one obligation, the registration for the subsequent obligation would not alter or revoke the validity of the registration for earlier registered obligation.

Under Decree 99, the registration may be revoked in one of the following situations:

- Registration authority receives an effective judgment, order or decision of a competent court that rules that a registered security interest is entirely or partly revoked;
- A registered security interest is detected to fall into a circumstance whereby its registration can be refused;
- Overlapping registrations.

In case of revocation, the registration will be invalid. However, the revocation of a part of the registration will not affect the remainder of its contents. In case of overlapping registrations, the validity of the registration will be determined based on the order of registration.

The registration's validity period is a basis to determine the duration of enforceability against the third party in accordance with the Civil Code.

### ***General procedures for registration of security interests***

Applications for the registration of security interests may be submitted online, in hard copy, by postal service or by email. Digital signatures and digital seals are accepted in case of online submission.

Regarding the applicant, to ensure compliance with the authority to request registration in accordance with the law on security for performance of obligations and relevant laws, Decree 99 distinguishes between the applicant for registration, applicant for registration for change and applicant for deregistration. Decree 99 also specifies information about the representative in the registration, the rights and obligations of the applicant.

In order to ensure transparency and avoid wasting time and costs for the applicant in case the registration authority unreasonably refuses to accept the registration application, Decree 99 stipulates that the registration authority is not allowed to request any additional documents or to provide any additional information unless there are grounds to do so in the Decree. If the registration agency refuses the registration application, it must issue a letter clearly stating the grounds for such refusal. The registration agency will be held liable for any violations of the aforementioned principles, and the applicant has the right to file a complaint, initiate a lawsuit, or request the registration agency to compensate for damage in case of an inappropriate refusal.

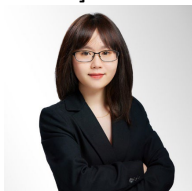
Decree 99 also outlines a mechanism for information disclosure, contents, methods, and criteria for searching and providing information on secured transactions in order to ensure consistency with law and regulations on access

to information.

### **Conclusion**

Decree 99 sets out a clear mechanism for the registration and deregistration of security interests thereby ensuring transparency for lenders and investors in determining the borrowing capacity of borrowers and availability of unencumbered assets over which security interest can be created.

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## Philippines

## Updates to Philippine Data Privacy Regulations

直近数ヶ月で、フィリピン国家プライバシー委員会は、データ・プライバシー法（共和国法第 10173 号）及びその施行規則に関連する複数の通達を発行した。本稿では、最新の通達のうち、重要性の高い 2 つの通達の概要を紹介する。

**Background**

In recent months, the National Privacy Commission (“NPC”) has issued several circulars to further clarify and implement the Philippine Data Privacy Act of 2012 (Republic Act No. 10173) and its implementing rules and regulations (the “DPA”). Amongst the latest circulars, the following are discussed in this article:

- 1) NPC Circular No. 2022-01 issued on 8 August 2022, which imposes penalties for infractions of the DPA and fixes the range of administrative fines; and
- 2) NPC Circular No. 2022-04 issued on 5 December 2022 on the registration of personal data processing systems and data protection officer, and notification on automated decision making.

**NPC Circular No. 2022-01 on Administrative Fines**

To promote organizational accountability and enhance DPA compliance of personal information controllers (“PICs”) and personal information processors (“PIPs”), the following are the types of infractions now subject to administrative fines:

**a) Grave infractions**

Administrative fines of 0.5% to 3% of the PIC’s or PIP’s annual gross income of the immediately preceding year in which the infraction incurred may be imposed, among others, for violations of the general privacy principles of processing of personal data<sup>1</sup> and violations of the rights of the data subject<sup>2</sup> where the total number of affected data subjects exceed 1,000 in either case.

**b) Major infractions**

Major infractions include the failure by the PIC to (i) implement or ensure that third parties processing personal information on its behalf implement reasonable and appropriate security measures to protect the personal information<sup>3</sup>, or (ii) notify the NPC and affected data subject of personal data breaches (unless punishable as concealment of security breaches involving sensitive personal information under Section 30 of the DPA), and these may subject a PIC to administrative fines of 0.25% to 2% of its annual gross income of the immediately preceding year in which the infraction incurred.

**c) Other infractions**

On the other hand, administrative fines of Php 50,000 to Php 200,000 may be imposed for other infractions such as the failure to register or provide updated information on the identity or contact details of the PIC, the data processing system, or information on automated decision making. This administrative fine is relevant with respect to NPC Circular No. 2022-04, discussed below.

On top of the fine imposed for the original infraction, the failure to comply with any order, resolution, or decision of the NPC, will result in an administrative fine not exceeding Php 50,000. However, in no case will the total imposable fine for a single act of the PIC or PIP (whether resulting in single or multiple infractions) exceed Php

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<sup>1</sup> In relation to Section 11 of the DPA

<sup>2</sup> In relation to Section 16 of the DPA

<sup>3</sup> In relation to Section 20 of the DPA

5,000,000.

Further, consistent with the requirement of due process, administrative fines will be imposed only after notice and hearing. In determining the actual fines imposable, the NPC will consider factors such as whether the infraction occurred due to negligence or was intentional, the degree of damage/harm to the data subject, the actions taken prior to or subsequent to the infraction (e.g., mitigating measures), and the like. Decisions of the NPC on such matters are immediately executory unless restrained by the Court of Appeals or the Supreme Court, and refusal to pay the adjudged administrative fine may subject the PIC or PIP to cease and desist orders and other contempt proceedings.

#### **NPC Circular No. 2022-04 on Registration and Notification Requirements**

NPC Circular No. 2022-04 applies to PIPs or PICs operating in the Philippines (i.e., as defined in the circular, PICs and PIPs who, although not founded or established in the Philippines, use equipment that are located in the Philippines, or those who maintain an office, branch, or agency in the Philippines). It implements Sections 46 to 48 of the DPA on the requirements for registration of personal data processing systems and notification of automated decision making<sup>4</sup>.

The circular became effective on 11 January 2023, and covered persons have 180 days, i.e., until 10 July 2023, to comply with the requirements, which are summarized below:

##### ***a) Registration of data processing systems and data protection officer***

###### **Mandatory registration for covered persons**

A PIC or PIP that (i) employs 250 or more persons, (ii) processes sensitive personal information of 1,000 or more individuals, (iii) processes data that will likely pose a risk to the rights and freedom of data subjects, or (iv) processes personal or sensitive personal information involving automated decision making or profiling shall be required to register its data processing system through its designated data protection officer (“DPO”). The process and requirements to complete registration on the NPC’s official registration platform are detailed in the circular.

Note that PICs or PIPs who do not fall under mandatory registration and do not opt for voluntary registration, are required to submit to the NPC a sworn declaration and undertaking on their exemption from registration, in the form attached to the circular.

###### **Timelines for registration and amendments**

Newly implemented data processing systems or inaugural DPOs are required to register within 20 days from the commencement of the system or from their appointment coming into effect. Major amendments to existing registration information (e.g., name or office address of the PIC or PIP) should be made within 30 days from the date the changes take effect, while minor amendments (e.g., system update or changes in the DPO) should be made within 10 days from the system update or appointment of the new DPO.

Notwithstanding the above periods, all covered persons should complete the required registration by 10 July 2023 (within 180 days from the circular).

###### **Validity and renewal of registration**

After completion of the registration process, a PIC or PIP shall be issued a certification of registration, which shall be valid for 1 year from its issuance, unless sooner revoked for grounds such as misrepresentation. A PIC or PIP whose certificate of registration is revoked or that violated the registration requirements may be subject to enforcement orders, cease and desist orders or temporary or permanent

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<sup>4</sup> Defined in Section 2(a) of NPC Circular No. 2022-04 as “a wholly or partially automated processing operation that can make decisions using technological means totally independent of human intervention; automated decision-making often involves profiling.”

bans on processing of personal data or administrative fines, after due notice and hearing.

***b) Notification of automated decision making or profiling***

PICs or PIPs that carry out automated decision making or profiling are required to notify the NPC of such fact by indicating it in the registration record or to the amendments or updates of its registration.

A seal of registration shall be issued simultaneously with the certificate of registration, which must be displayed at all times (i) at the main entrance or most conspicuous place in the office of the PIP or PIC to ensure visibility to all data subjects, and (ii) on its main website, or the webpage specifically pertaining to the Philippines (in case of global websites), as either a clickable link to or displayed directly on the privacy notice page.

**Conclusion**

Considering that the DPA has cross-border application in certain instances, PICs and PIPs should be mindful of the infractions which may now be subject to administrative fines. In addition, PICs and PIPs operating in the Philippines (as defined) and who are covered by mandatory registration should take steps towards compliance with NPC Circular No. 2022-04, given the approaching deadline.

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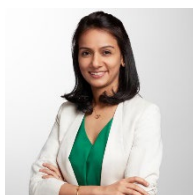


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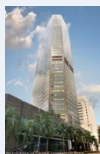
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