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Personal Data Breach Notification

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1. Background

On 15 December 2022, the Notification of the Personal Data Protection Committee re: Rules and Methods for Notification of the Personal Data Breach B.E. 2565 (2022) dated 6 December 2022 ("**Notification**") was published in the Government Gazette and became immediately effective thereafter.

One of the obligations of the data controller under the Personal Data Protection Act ("**PDPA**") is to make a notification of any personal data breach ("**Personal Data Breach**")[1] to the Office of the Personal Data Protection Committee ("**PDPC Office**") and/or the data subject[2]. The Notification therefore elaborates on the definition of a Personal Data Breach and the details of the Personal Data Breach notification, which we aim to provide a summary thereof in this article.

2. Summary of the Notification

2.1 Characteristics of a Personal Data Breach that a notification thereof must be made

The data controller has the duty to notify the PDPC Office when a Personal Data Breach incident as defined in the Notification occurs due to an action of the data controller, data processor, or a staff, employee, contractor, representative, or related person of the said data controller or the data processor, or any other persons, or any other factors ("**Data Breach Incident**"). Such Data Breach Incident may occur in various forms, as follows:

- confidentiality breach (for example, when personal data is accessed by an attacker or is disclosed by an unauthorized employee of the company);
- integrity breach (for example, when personal data is edited by an unauthorized person or is recorded incorrectly due to the malfunction of a program); and/or
- availability breach[3] (for example, when personal data is locked up due to an attack by a ransomware or is deleted due to the malfunction of an electronic system).

2.2 Obligations of the data controller in the case of a Data Breach Incident

In the case of a Data Breach Incident, the data controller must:

(1) assess the credibility of such information and preliminarily investigate the Personal Data Breach without undue delay, which includes assessing the risk level of such Personal Data Breach;

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[1] Clause 3 of the Notification. In this Notification,
"Personal Data Breach" means a breach of security measures that causes loss, unauthorized or unlawful access, use, alteration, editing, or disclosure of personal data, whether it is intentional, willful, negligent, an unauthorized or unlawful act, computer crime, cyber threat, error or accident, or other causes.

[2] Section 37(4) of the PDPA.

[3] Clause 4, Paragraph One of the Notification. A Personal Data Breach of which the data controller has the duty to notify the Office or the data subject…may involve a breach of one or more categories as follows:
(1) A Confidentiality Breach, which is an access or disclosure of personal data caused by either unauthorized or unlawful means, or an error or accident;
(2) An Integrity Breach, which is an alteration or editing of personal data in an incorrect, incomplete, or incomprehensive manner, caused by either unauthorized or unlawful means, or an error or accident; or
(3) An Availability Breach, which causes personal data to be inaccessible, or there is a destruction of personal data that makes such personal data unavailable as opposed to the usual situation.

(2) prevent, cease, or rectify the Personal Data Breach if the data controller finds that such Personal Data Breach poses a high risk of impacting the rights and freedom of a person;
(3) notify the PDPC Office of the cause of the Data Breach Incident without undue delay and within 72 hours from the time that it becomes aware of the cause, unless such breach does not pose a risk of impacting the rights and freedom of a person;
(4) notify the data subject of the cause of the Data Breach Incident together with the remedy approach without undue delay in the case of such breach posing a high risk of impacting the rights and freedom of a person; and
(5) proceed with the necessary and appropriate measures to cease, response, rectify, or remedy the condition resulting from the Personal Data Breach, and to prevent and reduce the impacts of any similar Personal Data Breach in the future, which includes the review of security measures to ensure their effectiveness.

2.3 Details of the notification of Data Breach Incident

To supplement the obligations in item 2.2 (3) and (4) above, the details of the notification of the Data Breach Incident shall be as follows:

(1) A notification of the Data Breach Incident to the PDPC Office shall be performed in accordance with the following details:

Method of notification	The notification shall be made in writing, or through an electronic method, or any other method prescribed by the PDPC.[4]
Timeline of notification	Within 72 hours from the time that the data controller becomes aware of the cause of the Data Breach Incident, as early as practicable
Details to be provided upon notification	(a) brief details in relation to the characteristics and category of the Personal Data Breach, the characteristics and number of data subjects, or characteristics and number of records of personal data related to the Data Breach Incident; (b) name and contact details of the Data Protection Officer (DPO), or name and contact details of the person whom the data controller assigned to coordinate the notification and provide further information; (c) information related to impacts that may occur due to the Personal Data Breach; and (d) information related to measures taken or will be taken by the data controller to prevent, cease, or rectify the Personal Data Breach, or remedy the damage – measures in respect of personnel, procedures, or technology, etc.[5]
Delay of notification	If the notification of the Data Breach Incident is delayed for more than 72 hours from the time that the data controller becomes aware of the cause of the Data Breach Incident due to any reason of necessity, the data controller may request the PDPC to consider exempting it from the liability related to the delayed notification of the Data Breach Incident. The data controller shall clarify the reason of necessity and relevant details thereof to show that there was a reason of necessity that caused the notification of the Data Breach Incident to be delayed. Such details shall be notified to the PDPC Office immediately; moreover, such notification shall be made no later than 15 days from the time that the data controller becomes aware of the cause of the Data Breach Incident.[6]

[4] Clause 6 of the Notification.
[5] Clause 6 of the Notification.
[6] Clause 7 of the Notification.

The data controller may rely on an exemption not to make a notification to the PDPC Office if the data controller can prove, for example, that such Data Breach Incident does not pose a risk of affecting the rights and freedom of a person, etc. In this regard, to rely on such an exemption, the data controller has the duty to provide information or evidence for the PDPC Office to consider.[7] However, the method and timeline of the provision of information and evidence in relation to such exemption is not stipulated in the Notification.

(2) Notification of the Data Breach Incident to the data subject shall be performed in accordance with the following details:

Method of notification	- notification in writing or by electronic means; or - notification to a group, or general notification via public media, online social media, or electronic means or any other means that the affected data subject or the public are able to access in case the data controller is not able to notify the data subject individually in writing or by electronic means because there are no contact details, or due to any other reason of necessity.[8]
Timeline of notification	As soon as practicable without undue delay
Details to be provided upon notification	(a) brief information related to the characteristics of the Personal Data Breach; (b) name and contact details of the Data Protection Officer (DPO) or the person whom the data controller assigned to coordinate the notification; (c) information related to impacts that may occur to the data subject due to the Personal Data Breach; and (d) approach to remedy the damage incurred by the data subject and brief information related to measures taken or will be taken by the data controller to prevent, cease, or rectify the Personal Data Breach – measures in respect of personnel, processes, or technology, or any other measures, including recommendations related to measures that the data subject may additionally take to prevent, cease, or rectify the Personal Data Breach, or remedy the damage incurred.

2.4 <u>Required provision in the data processing agreement between the data controller and data processor</u>

In the case where the data controller enters into an agreement with the data processor with respect to an entrustment of data processing, the data controller shall stipulate in such agreement the obligation of the data processor to notify the data controller of the Data Breach Incident without delay within 72 hours from the time which the data processor becomes aware of the cause.[9]

2.5 <u>Assessment of risk of the Personal Data Breach</u>

For the assessment of risk of the Personal Data Breach regarding its impact on the rights and freedom of a person, the data controller may take into account factors as itemized in the Notification, such as the category of the breach, personal data that has been compromised, number and status of affected data subjects, security measures that have been taken or will be taken by the data controller, and the impact of the breach on the public, etc.[10]

[7] Clause 9 of the Notification.
[8] Clause 11 of the Notification.
[9] Clause 8 of the Notification.
[10] Clause 12 of the Notification. For an assessment of risk that the Personal Data Breach poses in relation to the degree of impact on the rights and freedom of a person, the data controller may take into account the following factors:
(1) characteristics and category of the Personal Data Breach;
(2) characteristics or category of personal data relating to the breach;
(3) volume of personal data related to the breach, which may be considered from the number of data subjects or records of personal data relating

3. Conclusion

The notification of the Data Breach Incident to the PDPC Office and the data subject is one of the key obligations of the data controller and/or data processor in the perspective of the personal data protection.

To enhance the understanding of the said obligation, the PDPC also published the Manual on Guideline for Assessment of Risk and the Notification of the Personal Data Breach Version 1.0, dated 15 December 2022.

If the data controller fails to make a notification of the Data Breach Incident as required under the PDPA and the Notification, it shall be liable for an administrative fine not exceeding THB 3,000,000 (Three Million Baht).[11] Therefore, any person who is considered as a data controller and/or data processor should ensure that they duly comply with the obligation related to the Data Breach Incident under the PDPA and the Notification.

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to the breach;
(4) characteristics, category, or status of the affected data subjects, as well as the fact whether or not the affected data subjects, including minors, disabled persons, incompetent persons, quasi-incompetent persons, or vulnerable persons, lack the capability to protect the rights and benefits of themselves due to their limitations;
(5) severity of the impact and damage that occurred or may occur to the data subject due to the Personal Data Breach, and the effectiveness of the measures that the data controller has taken or will take to prevent, cease, or rectify the Personal Data Breach, or remedy the damage, to alleviate the impact and damage that occurred or may occur to the data subject;
(6) wide-ranging effects to the business or the operation of the data controller or the public due to the Personal Data Breach;
(7) characteristics of the storage system of the personal data relating to the breach and relevant security measures of the data controller or the data processor, including organizational, technical, and physical measures; and
(8) legal status of the data controller, such as whether it is a natural person or a juristic person, including the size and nature of the business of the data controller.

[11] Section 83 of the PDPA.

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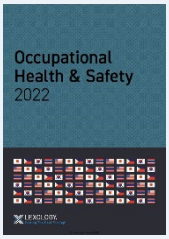

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