

September, 2023 No.69

**This issue covers the following topics:**

Thailand

**Regulation on hire purchase and financial leasing of cars or motorcycles: New Measures from the Bank of Thailand****Nopparak Yangiam /  
Thunyapuck Saicharoen**

India

**India's New Digital Personal Data Protection Law -  
The Digital Personal Data Protection Act, 2023****Shejal Verma**

Thailand

**Regulation on hire purchase and financial leasing of cars or motorcycles: New Measures from the Bank of Thailand**

現在、自動車・バイク向けのハイパーパーティーやファイナンスリースに関する事業は、消費者保護法上の規制を除き、業法上の規制には服していないが、これをタイ中央銀行の規制対象とする旨の規則案が検討されており、本年 11 月頃の公布が見込まれている（施行は官報公告の 180 日後）。同規則においては、当該事業に従事する事業者は、タイ中央銀行の所管のライセンス取得は求められていないものの、タイ中央銀行が定める各種義務に服することが求められており、本稿ではその規制概要を解説する。

**I. Background**

“Hire purchase” and “financial leasing” of cars or motorcycles (collectively “**Auto Hire Purchase and Leasing**”) are common means to provide loans for consumers to purchase vehicles in Thailand. According to the statistic provided by the Bank of Thailand (the “**BOT**”), as of the end of 2021, unpaid debts from Auto Hire Purchase and Leasing reached the amount of 1.8 trillion THB which constituted 12.4% of overall household debt of the nation. Moreover, 1 in 3 of Auto Hire Purchase and Leasing loans are provided through non-bank financial service providers. However, despite the prevalence of Auto Hire Purchase and Leasing in Thailand, the operation of Auto Hire Purchase and Leasing business is largely left unregulated, except for the regulation under the Consumer Protection Board which concerns only the restriction of unfair clauses in Auto Hire Purchase and Leasing agreements executed with consumers.

Given the lack of regulation of Auto Hire Purchase and Leasing business, the BOT, in cooperation with the Fiscal Policy Office under the Ministry of Finance, has initiated the drafting of the Royal Decree which will impose duties and restriction upon the business operators of Auto Hire Purchase and Leasing (the “**Draft Royal Decree**”). The Draft Royal Decree is enacted by virtue of Section 5 of Financial Institution Business Act B.E. 2551 (2008) (the “**Financial Institution Act**”) which gives power to the BOT to propose a Royal Decree to designate any unregulated financial service that affects the economy as a service which shall be under the regulation of the Financial Institutions Act. In this regard, the main objectives of the Draft Royal Decree are to maintain stability of financial economics, control the amount of insolvency in household debt, as well as provide protective measures to general consumers.

**II. Key Takeaways from the Draft Royal Decree**

Once enacted, the Draft Royal Decree will impose legal duties and restrictions on the business operators of Auto

Hire Purchase and Leasing. The key takeaways based on the Draft Royal Decree published by the BOT are as follows:

**(i) Definition of Auto Hire Purchase and Leasing**

Under Section 3 of the Draft Royal Decree, “hire purchase” and “financial leasing” of cars or motorcycles which will be subjected to the regulation under the Draft Royal Decree are defined as follows:

- **“Hire purchase”**: The definition refers to Section 572 of the Civil and Commercial Code of Thailand (the “CCC”) and specially limited to hire purchase and financial leasing of cars or motorcycles, meaning, “a contract whereby an owner of a car or motorcycle lets such car or motorcycle on hire and promises to sell to the lessee, or transfer the right therein to the lessee, on the condition that the lessee shall make certain rounds of payments.”
- **“Financial leasing”**: The definition refers to the stipulation under BOT’s notification concerning financial leasing service provided by commercial banks, meaning “renting a car or motorcycle under a financial lease contract, where a lessor procures a car or motorcycle according to the lessee’s bidding from a producer, distributor, or other party, or a car or motorcycle repossessed from another lessee in order to allow the lessee to utilize such car or motorcycle. The lessee is obligated to maintain and repair the leased asset. However, the lessee cannot terminate the contract unilaterally before maturity. Upon the expiration of the contract, the right to purchase the leased car or motorcycle is subjected to an agreement between the lessor and lessee”.

**(ii) Scope of “Business Operators”**

Under the definition in Section 3 of the Draft Royal Decree, business operators of Auto Hire Purchase and Leasing (“**Business Operators**”) which shall be subjected to the regulation under the Draft Royal Decree shall mean any Business Operator who provides Auto Hire Purchase and Leasing as an ordinary course of business, but shall not include, (i) financial institutions under the Financial Institution Act, (ii) Business Operators which are already regulated by specific regulators and laws, e.g., taxi cooperatives which are already under the supervision of Ministry of Agriculture and Cooperatives, and (iii) Business Operators who are natural persons.

**(iii) Duties for Business Operators**

It is noteworthy that the Draft Royal Decree does not require the Business Operators to obtain business license from the BOT in order to provide Auto Hire Purchase and Leasing but rather requires them to comply with duties under the Draft Royal Decree and sub-regulations which will be subsequently announced by the BOT (the “**Compliance Duties**”). Certain Compliance Duties may apply especially to the Business Operators of particular sizes or characteristics depending on the designation by the BOT. The examples of Compliance Duties under the Draft Royal Decree are as follows:

- The Business Operators shall publicly announce information regarding interest rate, discount rate and any service fees at its place of business and shall report such matters to the BOT in accordance with the criteria as will be designated by the BOT under Section 7 of the Draft Royal Decree. Additionally, the method and details for calculation of annual service fees must also be notified to the customers under Section 9 of the Draft Royal Decree.
- The Business Operators shall comply with the regulations in various matters which may be announced by the BOT by the virtue of Section 8 of the Draft Royal Decree i.e., (i) details of contract clauses under Auto Hire Purchase and Leasing agreements, (ii) maximum amount of debt guarantee in case a natural person becomes a guarantor to the Auto Hire Purchase and Leasing transaction, as well as, prohibition of unlimited amount guarantee, (iii) specific duties in case the Auto Hire Purchase and Leasing agreements grant the right to the Business Operators to amend the said agreements by themselves, (iv) disclosure of the Business Operators’ information, and (v) other operations relating to the business of Auto Hire Purchase and Leasing.
- The Business Operators shall comply with the rate of interest, discount, service fees, deposit, guarantee,

penalties, and benefits from the transaction as may be announced by the BOT under Section 11 of the Draft Royal Decree.

In addition to the Compliance Duties for Business Operators mentioned above, the Business Operators shall also have the duties to periodically report their business operations to the BOT, maintain record of financial accounts, documents, seal, or other evidence, as well as cooperate with the officer assigned by the BOT in case there is any request to give statement, inspection of corporate document or places of business, etc.

#### (iv) Penalties

Any Business Operator who fails to comply with the duties stipulated under the Draft Royal Decree shall be punishable with a fine penalty depending on the violation, for example, a Business Operator who fails to comply with the Compliance Duties stipulated by the BOT under the Draft Royal Decree shall be subjected to a fine not exceeding 500,000 THB and daily fine in the amount of 5,000 THB until the violation has been rectified. Directors, manager, or any authorized person of the Business Operators can also be subjected to the same penalty under Section 139 of the Financial Institutions Act i.e., imprisonment for a term not exceeding 1 year or a fine of 500,000 THB to 1,000,000 THB or both if such person gives any order or engages in any action which leads the Business Operator to commit certain violations under the Draft Royal Decree, for example, failure to keep an accurate record of financial accounts under Section 13, or failure to comply with the instruction given by the BOT under Section 21 to rectify any business practice which might be harmful to the public.

### III. Conclusion & further development

According to news report which cited the information from the meeting between the BOT and Thai Hire-Purchase Business Association, it can be expected that the Draft Royal Decree may be enacted by November 2023, and it will be effective at the expiry of 180 days from the date announced in the Royal Gazette. It can also be expected that the sub-regulations under the Royal Decree, which will stipulate details of Compliance Duties to the Business Operators, will be subsequently announced by the BOT shortly after the Royal Decree is enacted. Although the Draft Royal Decree will not impose license requirement upon the Business Operators in the same fashion as other financial services, such as, personal loan under the supervision of the BOT, the new measure under the Draft Royal Decree is likely to provide protection to general consumers who rely on Auto Hire Purchase and Leasing.

#### [Authors]



**Nopparak Yangiam** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)

np\_yangiam@noandt.com

Nopparak is a Thai qualified attorney and a member of the Bar Association of Thailand. She obtained a Second-Class honors LL.B. from Thammasat University and a LL.M. from Chuo University. She has assisted Japanese investors in various industries, such as, automobiles, retailing, hospitality and video games, etc. to expand their businesses in Thailand. Her main practice areas are corporate law, computer law, financial law and consumer protection laws, etc.



**Thunyapuck Saicharoen** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)

thunyapuck\_saicharoen@noandt.com

Thunyapuck Saicharoen is a Thai qualified attorney and a member of the Bar Association of Thailand. She graduated with a First-Class honors LL.B. from Chulalongkorn University. She has experience assisting in various commercial transactions for both local and international clients. Her main practices include corporate, merger and acquisition, labor, and compliance matters.

## India

## India's New Digital Personal Data Protection Law - The Digital Personal Data Protection Act, 2023

2023年8月、インドで初となる包括的な個人情報保護制度として、デジタル個人情報保護法が可決された。インドの個人情報保護制度は、2017年にインド最高裁がプライバシー権を基本的人権の一つと認める判決を出したことを契機に検討が開始され、長い議論を経て漸く法制化に至ったものである。実際の施行日については未定であるが、今後インドに関わる事業を行う企業にとって遵守が求められる重要な立法であることから本稿でその概要を紹介する。

### **Background**

In August 2023, India passed its first long awaited comprehensive data protection regime, the Digital Personal Data Protection Act, 2023 (the “**DPDP Act**”). The move to introduce a comprehensive data protection regime started after the Supreme Court of India recognized right to privacy as a fundamental right in 2017. The DPDP Act is substantially based on the draft presented for public comments in November 2022 (the “**2022 Bill**”), which we had covered in [the NO&T Asia Legal Review No. 55 \(January 2023\)](#). The effective date of the DPDP Act is yet to be notified. The Central Government has been empowered to appoint different dates of effectiveness for different provisions of the DPDP Act. Once effective, the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, which currently regulate data protection, will no longer be applicable.

The key provisions of the DPDP Act are as follows:

### **Applicability of the DPDP Act**

The DPDP Act applies to the processing of digital personal data within the territory of India, where the personal data is collected in digital form, or in non-digital form and digitized subsequently. The DPDP Act is also applicable to the processing of personal data outside the territory of India if such processing is in connection with offering goods / services to individuals in India, i.e., the DPDP Act has extra-territorial application to some extent.

### **Key Terms under the DPDP Act**

It is worth noting certain key terms defined by the DPDP Act:

- **Data Fiduciary** – means any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data.
- **Data Principal** – means the individual to whom the personal data relates and where such individual is— (i) a child, includes the parents or lawful guardian of such a child; (ii) a person with disability, includes their lawful guardian, acting on their behalf.
- **Data** – means representation of information, facts, concepts, opinions or instructions in a manner suitable for communication, interpretation or processing by human beings or by automated means.
- **Personal Data** – means any data about an individual who is identifiable by or in relation to such data.
- **Processing** – in relation to personal data, means a wholly or partly automated operation or set of operations performed on digital personal data, and includes operations such as collection, recording, organization, structuring, storage, adaptation, retrieval, use, alignment, or combination, indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction.

### **Obligations of Data Fiduciaries**

The DPDP Act imposes various obligations on data fiduciaries:

- **Grounds for processing personal data:** Data fiduciaries can process personal data of data principals for a lawful purpose for which the data principal has provided consent or for “certain legitimate uses”. Instances

comprising “certain legitimate uses” are limited and include purpose for which the data principal has voluntarily provided their personal data to the data fiduciary, use for fulfilling any obligation under Indian law, and use for compliance with any judgement, decree, or order issued under any Indian law.

- **Notice and consent:** Consent must be in a manner that is free, specific, informed, unconditional and unambiguous with a clear affirmative action, and that signifies an agreement to the processing of personal data for the specified purpose and limited to such personal data as is necessary for such specified purpose. The concept of “deemed consent” which was included in the 2022 Bill has been substituted with consent for “certain legitimate uses” in the DPDP Act.

In order to obtain consent, data fiduciaries are required to provide notice to the relevant data principals. The notice must meet certain minimum requirements, i.e., informing the data principals the personal data collected and the purpose for which it is to be processed, the manner in which they can withdraw consent at any time, means of grievance redressal and the manner in which the data principals may make a complaint to the Data Protection Board. The notice must also be sent to data principals who have given their consent before the commencement of the DPDP Act.

- **Processing of personal data of children and persons with disability:** Personal data of a child or a person with disability who has a lawful guardian may be processed only after obtaining verifiable consent of the parent (or lawful guardian, where applicable) of such child or the lawful guardian of such person with disability. Restrictions have been imposed on processing of personal data that is likely to cause any detrimental effect on the well-being of a child, as well as tracking or behavioural monitoring of children or targeted advertising directed at children.
- **Protection of personal data and breach:** A data fiduciary must protect personal data in its possession or under its control, including in case of any processing undertaken by it or on its behalf, by taking reasonable security safeguards to prevent personal data breach. In the event of a personal data breach, the data fiduciary is required to provide intimation of such breach to the Data Protection Board and each affected data principal.
- **Erasure of personal data:** A data fiduciary is required to cease retention of data as soon as it is reasonable to assume that the specified purpose for which such data was collected is no longer being served. Data must also be erased upon the data principal withdrawing consent.

### **Significant Data Fiduciaries**

The Central Government has the powers to notify any or a class of data fiduciaries as “Significant Data Fiduciaries” considering relevant factors, including the volume and sensitivity of personal data processed, risk of harm to the data principal, potential impact on the sovereignty and integrity of India, and public order. A significant data fiduciary is subject to additional obligations, such as appointing a “Data Protection Officer” based in India, who shall be the point of contact for the grievance redressal mechanism under the provisions of DPDP Act, and represent the significant data fiduciary, and appointing an “Independent Data Auditor” who shall evaluate the compliance of the significant data fiduciary and undertake other measures as may be prescribed.

### **Rights and Duties of Data Principals**

The DPDP Act sets forth a number of rights of data principals including the right to access their personal data and the right to correct and request for erasure of personal data that is no longer necessary for the purpose for which it was processed. The DPDP Act also sets forth certain duties for data principals, such as complying with all applicable laws while exercising their rights, not to impersonate another person while providing personal data and not providing false particulars or registering a false or frivolous grievance or complaint.

### **Cross-Border Transfer**

Cross-border transfer of personal data by a data fiduciary is permitted except to countries or territories outside India which the Central Government may by notification prescribe. The DPDP Act deviates from the 2022 Bill as the previous Bill permitted the transfer of personal data only to countries and territories outside of India specifically notified by the Central Government.

## **Penalties**

The DPDP Act prescribes penalties for various non-compliances. However, unlike the 2022 Bill, which prescribed penalties of up to INR 5 billion in certain cases, the DPDP Act prescribes penalties of up to INR 2.5 billion. The Data Protection Board has powers to accept voluntary undertaking from a person facing any proceeding under the DPDP Act which may include an undertaking to (i) take such action within such time as may be determined by the Data Protection Board, or (ii) refrain from taking an action, and/or (iii) publicising such undertaking. The acceptance of the voluntary undertaking by the Data Protection Board shall constitute a bar on proceedings under the DPDP Act as regards the contents of the voluntary undertaking, except in case the voluntary undertaking is breached.

## **Data Protection Board**

The DPDP Act empowers the Central Government to establish a Data Protection Board empowered to adjudicate on non-compliance with the provisions of the DPDP Act impose penalty on any breach.

## **Conclusion**

The DPDP Act is a positive development which was long due since the Supreme Court's recognition of right to privacy as a fundamental right. The DPDP Act is worded in simple and plain English and includes various illustrations to help readers grasp its principles. The scope and practical implementation of the DPDP Act, however, remains to be seen because it leaves a lot to the Central Government to clarify and expand certain aspects of the DPDP Act through delegated legislation. Businesses should start considering how to streamline procedures in order to comply with the DPDP Act while also getting ready for the DPDP Act's implementation.

[Author]



**Shejal Verma** (Nagashima Ohno & Tsunematsu)

shejal\_verma@noandt.com

Shejal is a lawyer in the Tokyo office. She is qualified in India and the UK. She has experience in a range of corporate law matters, including cross-border M&A, joint ventures, corporate restructuring, private equity investments and business/asset acquisition transactions.

## [EDITORS' PROFILES]



**Nobuo Fukui** (Nagashima Ohno & Tsunematsu Singapore LLP Partner)

nobuo\_fukui@noandt.com

Nobuo Fukui is a partner at Nagashima Ohno & Tsunematsu and a representative of its Singapore Office (Nagashima Ohno & Tsunematsu Singapore LLP). He has been stationed in Singapore since 2013 and providing legal services mainly to Japanese companies and its affiliates to expand their business into south-east Asian countries.

He is a graduate of the University of Tokyo (LL.B., 2001) and Duke Law School (LL.M., 2009). He was admitted to the Japan Bar in 2003 and New York State Bar in 2010. He worked as a foreign lawyer at Widyawan & Partners (Jakarta) from 2010 to 2013, focusing on Indonesian legal practice, and he has extensive legal experience in the Indonesia related transactions.



**Shohei Sasaki** (Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd. Partner)

shohei\_sasaki@noandt.com

Shohei Sasaki is a partner at Nagashima Ohno & Tsunematsu and the head of Bangkok office. He has been stationed in Bangkok since 2011 and supporting Japanese and other multinational corporate clients. His practice includes corporate, M&A, joint venture, corporate finance, restructuring, real property development, energy, infrastructure, data protection, compliance and crisis management. He also represents Thai and multinational corporate clients in their investments in Japan, particularly on renewable energy and real property projects.



**Rashmi Grover** (Nagashima Ohno & Tsunematsu Singapore LLP Partner)

rashmi\_grover@noandt.com

Rashmi Grover is an attorney in the Singapore Office. She is qualified in India and the UK. Her areas of practice include mergers and acquisitions, private equity and general corporate. She has extensive experience working in the Indian market and advising clients on corporate commercial and finance transactions including transactions involving mergers, acquisitions, formation of joint ventures, private equity investments, business/asset acquisition transactions, regulatory filings and debt issuances.

This newsletter is given as general information for reference purposes only and therefore does not constitute our firm's legal advice. Any opinion stated in this newsletter is a personal view of the author(s) and not our firm's official view. For any specific matter or legal issue, please do not rely on this newsletter but make sure to consult a legal adviser. We would be delighted to answer your questions, if any.

[www.noandt.com](http://www.noandt.com)

## NAGASHIMA OHNO & TSUNEMATSU

JP Tower, 2-7-2 Marunouchi, Chiyoda-ku, Tokyo 100-7036, Japan

Tel: +81-3-6889-7000 (general) Fax: +81-3-6889-8000 (general) Email: [info@noandt.com](mailto:info@noandt.com)



Nagashima Ohno & Tsunematsu is the first integrated full-service law firm in Japan and one of the foremost providers of international and commercial legal services based in Tokyo. The firm's overseas network includes locations in New York, Singapore, Bangkok, Ho Chi Minh City, Hanoi, Jakarta and Shanghai, and collaborative relationships with prominent local law firms throughout Asia and other regions. The over 500 lawyers of the firm, including about 40 experienced attorneys from various jurisdictions outside Japan, work together in customized teams to provide clients with the expertise and experience specifically required for each client matter.

### Singapore Office

(Nagashima Ohno & Tsunematsu Singapore LLP)



6 Battery Road Level 41  
Singapore 049909  
Tel: +65-6654-1760 (general)  
Fax: +65-6654-1770 (general)  
Email: [info-singapore@noandt.com](mailto:info-singapore@noandt.com)

### Bangkok Office

(Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)



34th Floor, Bhira Tower at EmQuartier  
689 Sukhumvit Road, Klongton Nuea  
Vadhana, Bangkok 10110, Thailand  
Tel: +66-2-302-4800 (general)  
Fax: +66-2-302-4899 (general)  
Email: [info-bangkok@noandt.com](mailto:info-bangkok@noandt.com)

### HCMC Office

(Nagashima Ohno & Tsunematsu HCMC Branch)



Suite 1801, Saigon Tower  
29 Le Duan Street, District 1  
Ho Chi Minh City, Vietnam  
Tel: +84-28-3521-8800 (general)  
Fax: +84-28-3521-8877 (general)  
Email: [info-hcmc@noandt.com](mailto:info-hcmc@noandt.com)

### Hanoi Office

(Nagashima Ohno & Tsunematsu Hanoi Branch)



Suite 10.04, CornerStone Building  
16 Phan Chu Trinh, Hoan Kiem District  
Ha Noi City, Vietnam  
Tel: +84-24-3266-8140 (general)  
Fax: +84-24-3266-8141 (general)  
Email: [info-hanoi@noandt.com](mailto:info-hanoi@noandt.com)

### Jakarta Office (\*Associate office)

(IM & Partners in association with

Nagashima Ohno & Tsunematsu)



Jakarta Mori Tower 14th Floor, Unit 1401  
Jalan Jenderal Sudirman Kav. 40-41  
Jakarta 10210, Indonesia  
Tel: +62-21-25098080 (general)  
Fax: +62-21-25098090 (general)  
Email: [info-jakarta@noandt.com](mailto:info-jakarta@noandt.com)

### Shanghai Office

(Nagashima Ohno & Tsunematsu

Shanghai Representative Office)



21st Floor, One ICC, 999 Middle Huaihai Road  
Xuhui District, Shanghai 200031, China  
Tel: +86-21-2415-2000 (general)  
Fax: +86-21-6403-5059 (general)  
Email: [info-shanghai@noandt.com](mailto:info-shanghai@noandt.com)

[For more details on our global practice](#)

If you would like to receive future editions of the NO&T Asia Legal Review by email directly to your Inbox, please fill out our newsletter subscription form at the following link: [https://www.noandt.com/en/newsletters/nl\\_asia\\_legal\\_review/](https://www.noandt.com/en/newsletters/nl_asia_legal_review/)

Should you have any questions about this newsletter, please contact us at [<asia-legal-review@noandt.com>](mailto:asia-legal-review@noandt.com).

Please note that other information related to our firm may be also sent to the email address provided by you when subscribing to the NO&T Asia Legal Review.