

## **Proposed Consumer Data Protection (“DP”) Regime for Singapore – Comments for Consideration**

### ***Rules on the Collection, Use and Disclosure of Personal Data : Transfer of Personal Data In Connection with Work by a Professional Services Firm***

#### **Background**

1.1 We note that paragraph 3.51 of the Consultation Paper provides as follows:

- “Following from the principle that the collection and use of personal data should be done with the individual’s consent for a specific purpose, disclosure of personal data collected must also be in line with the purpose for which the individual’s consent was obtained, unless otherwise permitted under the DP Act or required under any other written law.”

#### **Comments**

1.2 As a firm, PwC provides a wide range of professional services to individual and corporate clients. In connection with such services, we often have access to and use personal data in our role as the auditor, reviewer, investigator, advisor or consultant. For example, we may review payroll records during an audit or review, verify lucky draws, design or review personnel or patient systems or controls, investigate into fraud, conduct financial due diligence in an acquisition, provide tax services to individuals etc. We believe that this is different from the collection of consumers' personal data by organisations for commercial purposes. In fact, for the majority of the situations, we do not view our access to information as that of collecting personal data; we merely sample the data collected by clients for professional engagements conducted under conditions of confidentiality. It is therefore our view that while implementing a DP regime to protect consumers' personal data, the law should not introduce unintended consequences of impeding the work of professional firms. In particular, for a firm like PwC to conduct an efficient and effective audit, review or investigation, we should have free and unrestricted access to information (including personal data held) of the auditee, reviewee or investigatee. While this right of access to information (including personal data) is explicitly provided in the Companies Act (and therefore it falls under "required under any other written law"), we conduct a wide variety of audits, reviews or investigations which are not mandated under the Companies Act or any other written law. These include, for example, quarterly or half yearly audit or review of historical financial information, review of prospective financial information, review of internal controls or processes, financial due diligence, review of lucky draws, review of casino activities, review of donations for charitable organisation, all of which may involve personal data. It would not be desirable for the DP Act to introduce an uncertainty as to whether separate consent ought to be obtained from the individuals to enable professional services firms to have access to the personal data in connection with these engagements.

1,3 As Singapore is an international business hub, we often find ourselves conducting work for a Singapore entity that is part of a multinational company (MNC) where we are required to report our findings to the head office management and the global auditor. Our findings may include personal data. For

example, we may discover fraud or irregularities involving employees or payroll or we have an issue to raise relating to employee remuneration or activities. It would not be reasonable for us to seek consent from the individuals concerned to enable us to report the matters to the head office management or the global auditor. There should be a distinction between the collection of data by an organisation to further its commercial interest and the use of such data by professional organisations in audits, reviews, investigation, advice and consultancy and it is our suggestion that the Act should make this distinction very clear.

- 1.4 Our audit practice is subject to regulatory supervision and this includes inspection by the regulatory authorities (local and foreign). We believe the DP Act should make it clear that we do not need to filter out personal data for purposes of providing our files to regulatory inspection.
- 1.5 Many large multinational corporations station a large number of expatriate employees in Singapore to service the region. These companies may engage PwC to provide income tax compliance or advisory services to its employees. Our engagement contract is with the company and we work with the employees on their tax returns. This is a situation where we may be regarded as the collector of personal data. In our code of ethics, we always keep the information so obtained strictly confidential. When the individuals pass us the information in relation to tax returns or answering tax queries, we take it that we have the implied consent from the individuals who understand what the data will be used for under the terms of our engagement with the corporate clients. It is our recommendation that the DP Act should explicitly recognise this implied consent to avoid any doubt that the use of such information without an explicit written consent is in breach the DP law.
- 1.6 In short, PwC's position is that while the new DP regime seeks to protect the individual's personal information in various situations, it should not impede the professional services firms' ability to access personal data in the audit, review, investigation or performance of any procedures on financial and non-financial information of any individual or corporate entities which includes personal data. The DP regime should also not impede the professional services firms' ability to report their findings to those charged with governance or to the parent company or related companies (if applicable under the terms of the engagement). It is important that the professional services firms continue to have full right of access to information, including personal data, in the course of their work so as not to undermine the effectiveness and efficiency of their work.

## **Recommendation**

- 1.7 It is our recommendation that the DP Act should take into account normal business situations described above and that the DP Act can have a principles-based approach to address these normal business situations rather than to provide detailed exemptions which cannot be exhaustive given today's complex business environment.