

27 April 2012

BNP PARIBAS, SINGAPORE BRANCH – COMMENTS AND FEEDBACK

<u>No.</u>	<u>Section</u>	<u>Provision currently in draft Bill</u>	<u>Comments</u>
(1)	2 (Definition of “ <i>evaluative purpose</i> ”)	“evaluative purpose” means — (a) for the purpose of determining the suitability, eligibility or qualifications of the individual to whom the data relates — (i) for employment or for appointment to office; (ii) for promotion in employment or office or for continuance in employment or office; (iii) for removal from employment or office; (iv) for admission to an education institution; (v) for the awarding of contracts, awards, bursaries, scholarships, honours or other similar benefits; (vi) for selection for an athletic or artistic purpose; or (vii) for grant of financial or social assistance under any scheme administered by a public agency; or (b) for the purpose of determining whether any contract, award, bursary, scholarship, honour or other similar benefit should be continued, modified or cancelled; (c) for the purpose of deciding whether to insure any individual or property or to continue or renew the insurance of any individual or property; or (d) for such other similar purposes as may be prescribed by the Minister;	What does “ <i>athletic or artistic purpose</i> ” in sub-section (a)(vi) mean?
(2)	2 (Definition of	“personal data” means data, whether true or not, about an individual who can be identified —	We propose the following amendment:

	“personal data”)	(a) from that data; or (b) from that data and other information to which the organisation is likely to have access;	“personal data” means data, whether true or not, about an individual who can be identified — (a) from that data; or (b) from that data and other information to which the organization <u>has</u> is likely to have access; Rationale: To provide more clarity and certainty.
(3)	17	Deemed consent 17. An individual is deemed to consent to the collection, use or disclosure of personal data by an organisation for a purpose if — (a) the individual, without actually giving consent referred to in section 16, voluntarily provides the personal data to the organisation for that purpose; and (b) it is reasonable that the individual would voluntarily provide the data.	We think it is more reasonable if limbs (a) and (b) are disjunctive requirements, i.e. the section should be amended as follows: Deemed consent 17. An individual is deemed to consent to the collection, use or disclosure of personal data by an organisation for a purpose if — (a) the individual, without actually giving consent referred to in section 16, voluntarily provides the personal data to the organisation for that purpose; and or (b) it is reasonable that the individual would voluntarily provide the data.
(4)	18	Withdrawal of consent 18.— (1) Subject to subsection (5), on giving reasonable notice to the organisation, an individual may at any time withdraw any consent given, or deemed to have been given under this Act, in respect of the collection, use or disclosure of personal data about the individual for any purpose. (2) On receipt of the notice referred to in subsection (1), an organisation shall inform the individual of the likely	(1) We would like to request for Section 18(2) to be removed. In our view, the obligation to inform an individual of the “likely consequences” to the individual of withdrawing his consent is an unduly onerous one; it will require the organisation to make an assessment which would not only be time-consuming but also extremely difficult given the potentially subjective nature of the issue. The onus must

		<p>consequences to the individual of withdrawing his consent.</p> <p>(3) An organisation shall not prohibit an individual from withdrawing his consent to the collection, use or disclosure of personal data related to the individual.</p> <p>(4) Subject to section 27, if an individual withdraws consent to the collection, use or disclosure of personal data by an organisation for any purpose, the organisation shall cease (and cause its data intermediaries and agents to cease) collecting, using or disclosing the personal data, as the case may be, unless the collection, use or disclosure, as the case may be, without the consent of the individual is required or authorised under this Act or any other written law.</p> <p>(5) An individual may not withdraw consent if withdrawing the consent would frustrate the performance of a legal obligation.</p>	<p>surely be on the individual to have thought through the implications properly before withdrawing his consent.</p> <p>(2) We would like to propose the following amendments to subsections (4) and (5):</p> <p>(4) Subject to section 27, if an individual withdraws consent to the collection, use or disclosure of personal data by an organisation for any purpose, the organisation shall cease (and cause its data intermediaries and agents to cease) collecting, using or disclosing the personal data, as the case may be, <u>for such purpose (and only such purpose)</u> unless the collection, use or disclosure, as the case may be, without the consent of the individual is required or authorised under this Act or any other written law.</p> <p>(5) An individual may not withdraw consent if withdrawing the consent would frustrate the performance of a legal obligation, <u>and any such withdrawal or purported withdrawal shall be void.</u></p>
(5)	23	<p>Access to personal data</p> <p>23.—(1) Subject to subsections (2) to (4), on request of an individual, an organisation shall, as soon as reasonably possible, provide the individual with —</p> <p>(a) the individual’s personal data in the custody or under</p>	<p>We propose the following amendment to subsection (3):</p> <p>(3) An organisation shall not disclose personal data and other information under subsection (1) in any</p>

	<p>the control of the organisation;</p> <p>(b) information about the ways in which the personal data referred to in paragraph (a) has been or may have been used by the organisation; and</p> <p>(c) in addition, if the organisation is a credit bureau, the sources from which it received the personal data unless it is reasonable to assume the individual can ascertain those sources.</p> <p>(2) An organisation is not required to disclose personal data and other information under subsection (1) in respect of the matters specified in the Sixth Schedule.</p> <p>(3) An organisation shall not disclose personal data and other information under subsection (1) in any of the following circumstances:</p> <p>(a) the disclosure could reasonably be expected to threaten the safety or physical or mental health of an individual other than the individual who made the request;</p> <p>(b) the disclosure can reasonably be expected to cause immediate or grave harm to the safety or to the physical or mental health of the individual who made the request;</p> <p>(c) the disclosure would reveal personal data about another individual;</p> <p>(d) the disclosure would reveal the identity of an individual who has provided personal data about another individual and the individual providing the personal data does not consent to the disclosure of his identity; or</p> <p>(e) the disclosure of the information would harm the national interest.</p> <p>(4) If an organisation is able to remove the information referred to in subsections (2) and (3) from a document that contains personal data about the individual who requested it, the organisation shall provide the individual with access</p>	<p>of the following circumstances:</p> <p>(a) the disclosure could reasonably be expected to threaten the safety or physical or mental health of an individual other than the individual who made the request;</p> <p>(b) the disclosure could <u>can</u> reasonably be expected to cause immediate or grave harm to the safety or to the physical or mental health of the individual who made the request;</p> <p>(c) the disclosure would reveal personal data about another individual;</p> <p>(d) the disclosure would reveal the identity of an individual who has provided personal data about another individual and the individual providing the personal data does not consent to the disclosure of his identity; or</p> <p>(e) the disclosure of the information would harm the national interest; <u>or</u></p> <p><u>(f) the disclosure could reasonably be expected to cause the organisation to be in breach of any obligations imposed on it under any written law or other contractual undertakings or obligations.</u></p>
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		to the personal data after all such information is removed.	
(6)	24	<p>Right to request correction of personal data</p> <p>24.—(1) An individual may request an organisation to correct an error or omission in the personal data that is —</p> <p>(a) about the individual; and</p> <p>(b) in the custody or under the control of the organisation.</p> <p>(2) Unless the organisation is satisfied on reasonable grounds that a correction should not be made, the organisation shall —</p> <p>(a) correct the personal data as soon as practicable; and</p> <p>(b) send the corrected personal data to —</p> <p>(i) every organisation to which the personal data was disclosed by the organisation within a year before the date the correction was made; or</p> <p>(ii) if the individual so requests, only to specific organisations to which the personal data was disclosed by the organisation within a year before the date the correction was made.</p> <p>(3) When an organisation is notified under subsection (2)(b) of a correction of personal data, the organisation shall correct the personal data in its custody or under its control unless the organisation is satisfied on reasonable grounds that the correction should not be made.</p> <p>(4) If no correction is made under subsection (2) or (3), the organisation shall annotate the personal data in its custody or under its control with the correction that was requested but not made.</p> <p>(5) Nothing in this section shall require an organisation to correct or otherwise alter an opinion, including a professional or expert opinion.</p> <p>(6) An organisation is not required to comply with this</p>	<p>We propose the following amendment to subsection (3):</p> <p>(3) When an organisation is notified under subsection (2)(b) of a correction of personal data, the organisation shall correct the personal data in its custody or under its control unless the organisation is satisfied on reasonable grounds that the correction should not be made.</p> <p>Rationale: When an organisation is notified under subsection (2)(b) of a correction of personal data, it would mean that the notifying organisation is satisfied that there are no reasonable grounds to reject the correction and is obliged to make the correction. It appears to be highly anomalous for the notified organisation to be given the right to not correct the personal data in its (notified organisation’s) custody/control and could result in 2 organisations having different and contradictory personal data about one individual.</p>

		section in respect of the matters specified in the Seventh Schedule.	
(7)	47(1)	<p>Duty to check register</p> <p>47.—(1) No person shall, on or after the prescribed date, send a specified message addressed to a Singapore telephone number unless he had within 30 days before sending the specified message —</p> <p>(a) applied to the Commission under section 44(2) to confirm whether that Singapore telephone number is listed in the relevant register; and</p> <p>(b) received confirmation from the Commission that that Singapore telephone number is not listed in the relevant register.</p>	What does “ prescribed date ” refer to? It is not defined in the Act.
(8)	48(1)	<p>Contact information</p> <p>48.—(1) No person shall, on or after the prescribed date, send a specified message addressed to a Singapore telephone number unless —</p> <p>(a) the specified message includes clear and accurate information identifying the individual or organisation who authorised the sending of the specified message;</p> <p>(b) the specified message includes clear and accurate information about how the recipient can readily contact that individual or organisation;</p> <p>(c) the specified message includes such information and complies with such conditions as is or are specified in the regulations, if any; and</p> <p>(d) the information included in the specified message in compliance with this subsection is reasonably likely to be valid for at least 30 days after the message is sent.</p>	What does “ prescribed date ” refer to? It is not defined in the Act.

(9)	49(1)	<p>Calling line identity not to be concealed 10</p> <p>49.—(1) A person who, on or after the prescribed date, sends a specified message addressed to a Singapore telephone number from a telephone number or facsimile number shall not —</p> <p>(a) conceal or withhold from the addressee the calling line identity of the sender; or</p> <p>(b) perform any operation or issue any instruction in connection with the sending of the specified message for the purpose of, or that has the effect of, concealing or withholding from the addressee the calling line identity of the sender.</p>	<p>What does “prescribed date” refer to? It is not defined in the Act.</p>
(10)	<p>Third Schedule (COLLECTION OF PERSONAL DATA WITHOUT CONSENT) - Paragraph 1</p>	<p>1. An organisation may collect personal data about an individual without the consent of the individual or from a source other than the individual only if —</p> <p>(a) the collection is necessary for any purpose that is clearly in the interests of the individual, and consent for its collection cannot be obtained in a timely way or the individual would not reasonably be expected to withhold consent;</p> <p>(b) the collection is necessary to respond to an emergency that threatens the life, health or security of an individual;</p> <p>(c) the personal data is available to the public from a prescribed source;</p> <p>(d) the personal data is collected by observation at a performance, a sports meet or a similar event —</p> <p>(i) at which the individual voluntarily appears; and</p> <p>(ii) that is open to the public;</p> <p>(e) the collection is necessary in the national interest;</p> <p>(f) the collection is necessary for any investigation or</p>	<p>(1) Subsection (h) makes reference to “prescribed evaluative purposes”. What does this term mean? We note that whilst “evaluative purposes” is a defined term in the draft Bill, “prescribed evaluative purposes” is not.</p> <p>(2) Subsection (i) makes reference to “artistic or literary purposes”. What does this term mean?</p>

	<p>proceedings, if it is reasonable to expect that seeking the consent of the individual would compromise the availability or the accuracy of the personal data;</p> <p>(g) the collection is required or authorised by law;</p> <p>(h) the collection is necessary for prescribed evaluative purposes;</p> <p>(i) the personal data is collected solely for artistic or literary purposes;</p> <p>(j) the personal data is collected by a news organisation solely for its news activity;</p> <p>(k) the personal data is collected solely for the organisation to collect a debt owed to the organisation by the individual or for the organisation to pay to the individual a debt owed by the organisation;</p> <p>(l) the collection is necessary for the provision of legal services by the organisation to another person or for the organisation to obtain legal services;</p> <p>(m) the personal data is collected by a credit bureau from a bank or financial institution to create a credit report;</p> <p>(n) the personal data is collected solely to confer an interest or benefit on the individual under a private trust or a benefit plan, and to administer such trust or benefit plan, at the request of the settlor;</p> <p>(o) the personal data was provided to the organisation by another individual to enable the organisation to provide a service solely for the personal or domestic purposes of that other individual;</p> <p>(p) the personal data is business contact information;</p> <p>(q) subject to section 22(4) —</p> <p>(i) the personal data is included in a document or record produced in the course, and for the purposes, of the individual's employment, business or profession; and</p>	
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(11)	<p>Fourth Schedule (USE OF PERSONAL DATA WITHOUT CONSENT) - Paragraph 1</p>	<p>1. An organisation may use personal data about an individual without the consent of the individual only if —</p> <p>(a) the use is necessary for any purpose which is clearly in the interests of the individual, and consent for its use cannot be obtained in a timely way or the individual would not reasonably be expected to withhold consent;</p> <p>(b) the use is necessary to respond to an emergency that threatens the life, health or security of an individual;</p> <p>(c) the personal data is available to the public from a prescribed source;</p> <p>(d) the personal data was collected by observation at a performance, a sports meet or a similar event —</p> <p>(i) at which the individual voluntarily appears; and</p> <p>(ii) that is open to the public;</p> <p>(e) the use is necessary in the national interest;</p>	<p>(1) Subsection (h) makes reference to “prescribed evaluative purposes”. What does this term mean? We note that whilst “evaluative purposes” is a defined term in the draft Bill, “prescribed evaluative purposes” is not.</p> <p>(2) Subsection (i) makes reference to “artistic or literary purposes”. What does this term mean?</p>

		<p>(f) the use is necessary for any investigation or proceedings;</p> <p>(g) the use is required or authorised by law;</p> <p>(h) the use is necessary for prescribed evaluative purposes;</p> <p>(i) the personal data is used solely for artistic or literary purposes;</p> <p>(j) subject to paragraph 2, the personal data is used by a news organisation solely for its news activity;</p> <p>(k) the personal data is used solely for the organisation to collect a debt owed to the organisation by the individual or for the organisation to pay to the individual a debt owed by the organisation;</p> <p>(l) the use is necessary for the provision of legal services by the organisation to another person or for the organisation to obtain legal services;</p> <p>(m) subject to paragraph 3, the personal data is used for a research purpose, including historical or statistical research; and</p> <p>(n) subject to paragraphs 4 and 5 —</p> <p>(i) the data was collected by the organisation in accordance with section 19(1); and</p> <p>(ii) is used by the organisation solely for the purposes consistent with the purpose of that collection.</p>	
(12)	<p>Fifth Schedule (DISCLOSURE OF PERSONAL DATA WITHOUT CONSENT) - Paragraph 1</p>	<p>1. An organisation may disclose personal data about an individual without the consent of the individual only if —</p> <p>(a) the disclosure is necessary for any purpose which is clearly in the interests of the individual, if consent for its use cannot be obtained in a timely way;</p> <p>(b) the disclosure is necessary to respond to an emergency that threatens the life, health or safety of an individual;</p> <p>(c) subject to paragraph 2, there are reasonable grounds to</p>	<p>(1) Subsection (j) makes reference to “prescribed evaluative purposes”. What does this term mean? We note that whilst “evaluative purposes” is a defined term in the draft Bill, “prescribed evaluative purposes” is not.</p> <p>(2) Subsection (k) makes reference to “artistic or literary purposes”. What does this term mean?</p>

	<p>believe that the health or safety of any individual will be seriously affected and consent for the use of the data cannot be obtained in a timely way;</p> <p>(d) the personal data is available to the public from a prescribed source;</p> <p>(e) the personal data was collected by observation at a performance, a sports meet or a similar event —</p> <p>(i) at which the individual voluntarily appears; and</p> <p>(ii) that is open to the public;</p> <p>(f) the disclosure is necessary in the national interest;</p> <p>(g) the disclosure is necessary for any investigation or proceedings;</p> <p>(h) the disclosure is required or authorised by law;</p> <p>(i) the disclosure is to a public agency and such disclosure is necessary in the public interest;</p> <p>(j) the disclosure is necessary for prescribed evaluative purposes;</p> <p>(k) the disclosure is solely for artistic or literary purposes;</p> <p>(l) subject to paragraph 3, the disclosure is by a news organisation solely for its news activity;</p> <p>(m) the disclosure is necessary for the organisation to collect a debt owed by the individual to the organisation or for the organisation to pay to the individual a debt owed by the organisation;</p> <p>(n) the disclosure is necessary for the provision of legal services by the organisation to another person or for the organisation to obtain legal services;</p> <p>(o) the personal data is contained in a credit report disclosed by a credit bureau to a member of the credit bureau, solely to enable the member to assess the creditworthiness of the individual in relation to a transaction with the member requested by the individual;</p>	
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	<p>(p) the personal data about the current or former students of the organisation, being an education institution, is disclosed to a public agency solely for the purposes of policy formulation or review;</p> <p>(q) the personal data is disclosed to any officer of a prescribed law enforcement agency, upon production of written authorisation signed by the head or director of that law enforcement agency or a person of a similar rank, certifying that the personal data is necessary for the purposes of the functions or duties of the officer;</p> <p>(r) the disclosure is for the purpose of contacting the next of kin or a friend of an injured, ill or deceased individual;</p> <p>(s) subject to paragraph 4, the personal data —</p> <p>(i) is disclosed to a party or a prospective party to a business asset transaction with the organisation;</p> <p>(ii) is about an employee, customer, director, officer or shareholder of the organisation; and</p> <p>(iii) relates directly to the part of the organisation or its business assets with which the business asset transaction is concerned;</p> <p>(t) subject to paragraph 5, the disclosure is for a research purpose, including historical or statistical research;</p> <p>(u) the disclosure is for archival or historical purposes if a reasonable person would not consider the personal data to be too sensitive to the individual to be disclosed at the proposed time; or</p> <p>(v) the personal data was collected by the organisation in accordance with section 19(1) and is disclosed solely for the purposes consistent with the purpose of that collection.</p>	
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