

Personal Data Protection Bill (PDP Bill)

A Background

1. Through two partnerships and a number of corporate entities, PricewaterhouseCoopers Singapore ("PwC") provides professional services to its clients. Majority of such clients exist as entities and are not individuals. Such services include statutory audits (audits required under the Companies Act), non-statutory audits (see below), internal audits, financial due diligence, merger and acquisition advice, investigations, forensic analysis, corporate and personal income tax compliance, payroll processing, litigation support, IT security review, system consulting etc. Non-statutory audits (or limited reviews) mentioned above include audits (or limited reviews) performed for clearance to head office auditors of multi-national companies, audits of entities not incorporated in Singapore, audits of investment funds/trusts, review of expenses (which may include staff salaries) qualifying for government grants etc.
2. In the course of our provision of the above services to our clients, it is common for us to have access to personal data of individuals as part of our work around payroll and various other human resource functions. The procedures we perform are generally "impersonal" and the information documented in our file is generally high level in nature. Normally we do not need to and have no contact with such individuals and we keep the information gathered in the course of our work strictly confidential in accordance with our code of ethics and/or contractual obligations. We never share or trade the information because we strictly abide by our code of ethics or contractual obligations. We provide in Section B below some practical examples of our work.
3. It would appear that under the provisions of the PDP Bill, other than legal firms which enjoy a specific exemption, professional firms like PwC will need to obtain specific consent from each individual if they need to have access to the individual's personal data in the course of their work with clients that employ the individual. If this is indeed the intent of the new legislation, we foresee a regime whereby auditing (other than statutory audit), reviewing or investigating into any areas where personal data is involved would entail a tedious process to obtain the specific consent. If such consent cannot be obtained, our procedures would be subjected to severe scope restrictions. This may lead to an environment of declining corporate governance and weakening internal controls as the process of auditing, investigating and consulting encounters various unintended legal roadblocks.
4. We respectfully submit that this is neither feasible nor business efficient and would indeed **impede** the work of service providers to their clients. As a service provider to our client, PwC should be permitted to carry out its work on the basis that the client has obtained the requisite consent of the owners of the personal data.

B. Provision of Services

We set out below some examples of our work which involves personal data.

1. Non-statutory audit or review

A substantial proportion of our audit work is **not** required under the Companies Act. In common with a statutory audit, the scope of a non-statutory audit or review of the financial statements of a client normally covers payroll expenses including testing of internal controls within the human resource function. Currently, as the auditor we have unrestricted access to personal data in the course of our work and we observe strict confidentiality in accordance

with our code of ethics and/or contractual obligations. We do not make use of the personal data for any other purpose.

2. Internal audit/review

In an internal audit/review of a client, we may be required to conduct more in-depth procedures around the human resource functions. The work may also cover investigation into payroll fraud or suspected fraud or any allegation of wrong-doing. It is not practicable for the auditor to be required to seek specific consents of individuals whose personal data might be the subject of audit, review or investigation. An audit or review may not yet amount to an investigation and would not fall within the exemptions in the Third, Fourth and Fifth Schedules in respect of collection, use or disclosure of personal data for an investigation.

3. Payroll processing

Where we are engaged by a client to carry out payroll processing, we will have access to its employees' personal data including remuneration. We have no contact with the individuals concerned.

4. Financial due diligence

We conduct financial due diligence for clients involved in a business assets transaction (as defined in the PDP Bill). In the course of our work, we may be provided with personal data of the target company's employees.

The above services are not statutory audit services mandated by the Companies Act and would therefore not fall within the exemptions in the Third, Fourth and Fifth Schedules in respect of collection, use or disclosure of personal data as required or authorised by law.

C. Feedback and Proposed Suggestions for Consideration

We set out below our feedback and suggestions for your consideration.

1. Data Intermediary or Specific Exemption

PwC, as a service provider to the client, is really carrying out the role of a "data intermediary" **ie we receive the personal data from our clients and process them for the purposes of the client and not for PwC's own purposes**. As such, to enable service providers like PwC to carry out their role effectively, such service providers should be accorded the status of "data intermediaries". In the circumstances, we would suggest that the definition of "data intermediary" and "Processing" be appropriately widened so that it is clear that such service providers are within the definition of "data intermediaries". We suggest that the definition of "Processing" in the legislation appended below be considered as they refer to "obtaining, consultation, use, disclosure by dissemination or otherwise making available". In addition, in particular, the words "whether or not by automatic means" in the EU Directive could be included to clarify that "data intermediaries" do not apply to merely passive "data storage or processing centres".

1	UK Data Protection Act 1998	"processing", in relation to information or data, means obtaining , recording or holding the information or data or carrying out any operation or set of operations on the information or data, including— (a) organisation, adaptation or alteration of the
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		<p>information or data,</p> <p>(b) retrieval, consultation or use of the information or data,</p> <p>(c) disclosure of the information or data by transmission, dissemination or otherwise making available, or</p> <p>(d) alignment, combination, blocking, erasure or destruction of the information or data;</p>
2	EU Directive 95/46/EC – The Data Protection Directive	<p>(b) "processing of personal data" ("processing") shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;</p>

Alternatively we propose that a specific exemption be given in the Third, Fourth and Fifth Schedules for professional firms providing services to a client which requires it to receive personal data.

2. Consent to be Obtained by Client

If PwC is not considered to be a "data intermediary" nor will a specific exemption be provided for service providers in the Schedules, we would like to propose that provisions be made in the PDP Bill to clarify that, professional service providers need only seek confirmation from their clients that such clients have obtained the necessary consents from individuals prior to disclosure of such personal data to the service providers to be used in the course of their work for the client. This will be a more practicable and feasible approach given that a professional service provider like PwC will not come into contact with such individuals and presumably under the new data protection regime, the client should have obtained the necessary consents from the individuals routinely to facilitate the engagement of external parties in auditing, investigating, consulting or other professional services. It should not be necessary for professional service providers like PwC to conduct another round of exercise to obtain specific consents.

3. Clarification in relation to Business Asset Transaction Exemption

In relation to financial due diligence services, it appears that our client as a "party" or "prospective party" to a "business asset transaction" (as defined in the PDP Bill) may rely on an exemption in the Third, Fourth and Fifth Schedules. We would propose that such exemption be extended to apply to the professional advisers to the party or prospective party. Currently, such exemption does not seem to apply to the professional advisers of the purchaser as paragraph 4(4) of the Fifth Schedule provides that "party" means "another organisation that enters the business asset transaction with the organisation". It would be illogical for the party or prospective party to have an exemption but for its professional advisers to be required to seek specific consents from the individuals.