



HSBC Singapore

**Response to Public Consultation on
Personal Data Protection (Amendment) Bill**

28 May 2020

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INTRODUCTION

1. HSBC Singapore would like to thank the Ministry of Communication and Information (“MCI”) and Personal Data Protection Commission (“PDPC”) for the opportunity to provide comments on the Public Consultation on the Personal Data Protection (Amendment) Bill.
2. We note that three public consultations on MCI/PDPC’s key proposals for the amendment of the PDPA were conducted between 2017 and 2019. MCI/PDPC has taken into consideration the feedback received in the previous public consultations, including comments provided by HSBC Singapore via the Association of Banks in Singapore (“ABS”) submissions, for the proposed amendments to the PDPA.
3. We are supportive of MCI/PDPC continuous efforts to update the regulatory framework to respond to a rapidly evolving data-driven, digital and technology landscape. In this regard, we are keen to continue sharing our thoughts and challenges in the data protection space to proactively contribute to raising the data protection standards in Singapore. Therefore, we would be happy to further discuss and elaborate on the points submitted for this public consultation.

COMMENTS

Enhanced Financial Penalties for Breaches

4. Insofar as banks are concerned, reputation risk and our accountability to regulators and customers are more effective deterrents than significant financial penalties.
5. Financial institutions are motivated to comply with the PDPA (and financial regulations) primarily by reputation risk (and the significant cost of responding to data privacy complaints and investigations) and our accountability to PDPC, MAS and our customers. These factors are effective and sufficient in practice. Financial institutions in Singapore have been subject to privacy obligations under financial regulations for decades and been in compliance without the need for hefty fines.¹
6. The imposition of fines by reference to annual gross turnover is arbitrary and not necessarily proportionate to the loss or damage caused by the non-compliance. As regards to banks, hefty amounts of administrative fines mean that banks would have to make significant amount of provisions for meeting the risk-based capital allocation requirements. Further, such fines create additional uncertainty in the current already difficult and challenging economic climate.
7. Fines do not need to increase by such an extreme magnitude to have increased deterrent effect. Fines with higher maximum caps would achieve this effect and provide certainty for organisations from a risk management perspective.
8. If MCI and PDPC are minded to introduce revenue-based financial penalties, they should be reserved for cases meeting clearly specified criteria (e.g. aggravating factors, severity of consequences or other extraordinary circumstances). There should be clear guidance on how the fines will be calculated, and what aggravating and mitigating factors would impact the level of penalties imposed. Further, we suggest that time be given to organisations to adjust to the new revenue based penalty regime.

Notes:

1. See section 47 of the Banking Act and section 49 of the Trust Companies Act.

Data Portability Obligation

9. Noted that the Data Portability Obligation will only come into effect with the issuance of Regulations. The Regulations will prescribe requirements that apply to the porting of specific datasets. PDPC will work with the industry and relevant sector regulators to develop the requirements to be prescribed in the Regulations.
10. At the same time, banks in Singapore are engaged in the Financial Planning Digital Services (“FPDS”) Open Banking initiative supported by the Monetary Authority of Singapore. This initiative aim at facilitating data portability with a secure Application Programming Interface (“API”) framework, giving consumers greater access and control over their financial data. FDPS would also be looking at introducing new types of authorized institutions to the incumbent group of financial institutions.
11. We are committed to supporting both initiatives to harness the potential and benefits of an integrated data portability platform. However, we would like to suggest that the two workstreams be harmonized for greater alignment in policy directions to derive synergies, reduce risk of gaps in regulations and achieve cost efficiencies. If integration of the two workstreams is not feasible, workstreams should work more closely together, consider issuance of joint communications and FAQs to achieve the points raised above.

CONCLUSION

12. We request PDPC to take into account of our comments as it finalizes the proposed amendment to the Personal Data Protection Bill.
13. Once again, we would like to express our appreciation for the opportunity to provide these comments to MCI/PDPC.

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