

PUBLIC CONSULTATION ON THE DRAFT PERSONAL DATA PROTECTION (AMENDMENT) BILL

Submission

To:

The Ministry of Communications and Information of the Government of Singapore

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From:

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Summary of major points

1. *The new **Data Portability Obligation** may prove to be overburdensome on non-dominant companies despite anticipatory efforts outlined in the amendments. The effects could diminish competition and ultimately harm consumers.*
2. *The expansion of deemed consent to **deemed consent by notification**, as an opt-out option, may not enable any more meaningful consent than under the current PDPA.*
3. *As the digital/legal landscape rapidly evolves, firms will increasingly face challenges staying in compliance. As such, the amendments should emphasize the important role of **independent supervision** which firms can utilize, to ensure they meet their obligations.*

Statement of Interest

HewardMills is global data protection consultancy that helps multinational organisations comply with data protection laws and regulations and mature their privacy programmes. The rapid growth of data regulations around the world has made it difficult for companies to keep up. Our aim is to support organisations to comply with relevant laws in jurisdictions where they operate. However, we are conscious that data protection legislations may at times make it difficult for companies to easily comply across multiple jurisdictions, especially when such laws conflict. Being in an intendent supervisory role, HewardMills seeks to facilitate compliance while protecting individual rights and freedoms.

Comments

1. Data Portability Obligation

Information collected by small firms is critical to helping emerging social networking companies innovate and develop new services. If this information became freely available to more dominant firms by way of users' data portability, it could stifle competition and discourage innovation.

The draft Personal Data Protection (Amendment) Bill (PDPA) anticipates this impact and provides there will be "Exceptions to the Data Portability Obligation."¹ As stated, these exceptions will mirror those to the Access Obligation under the Fifth Schedule to the PDPA.

¹ Public Consultation Paper Issued by the Ministry of Communications and Information and the Personal Data Protection Commission, para 48, pg. 17.

These are an important first step, but the exceptions outlined under the Fifth Schedule to the PDPA were not designed with Data Portability in mind.² There should in fact be a new process to determine more specifically what data is to be excluded from the Data Portability Obligation.

For example, the Fifth Schedule to the PDPA includes just one general exception that relates to data which, if disclosed, would reveal confidential commercial information that could harm the competitive position of the organisation. This broad definition leaves open the possibility of wide-ranging interpretations of the law. Theoretically, a company could claim that *any* information it shares with another company would in harm its competitive position.

2. Deemed consent by notification

The expansion of the scope of deemed consent to deemed consent by notification is backed by the reason that “reliance on consent for stated purposes has resulted in lengthy or broadly worded notices that do not allow individuals to ascertain purposes nor provide meaningful consent for the collection of their personal data.”³

Under the proposed Amendment, an organisation is obliged to provide similar information that must be provided under the current Privacy Notice requirement.⁴ Thus, the proposed Amendment may not necessarily lead to reduced compliance costs and more narrowly worded notices nor provide individuals with a better overview of the purposes of the collection of their personal data. Individuals may, therefore, be unable to meaningfully opt out of the collection, use or disclosure of his/her personal data for a purpose. The concern of the lack of meaningful consent under the current PDPA still exists in the proposed Amendment in the form of the lack of meaningful opt-out option.

The proposed Amendment also appears to offer less protection to individuals’ data rights as the collection, use or disclosure of personal data would occur automatically unless individuals choose to opt out. This puts the burden on individuals to take further steps compared to the current regime in order to not be bound by organisations’ collection, use or disclosure of their personal data.

The proposed deemed consent by notification does not offer any more meaningful consent than that existing under the current PDPA and instead would result in less protection to individuals.

² <https://sso.agc.gov.sg/Act/PDPA2012#Sc5->

³ Public Consultation Paper Issued by the Ministry of Communications and Information and the Personal Data Protection Commission, para 4, page 3.

⁴ Personal Data Protection (Amendment) Bill 2020, Clause 7, 15A(3)(b).

3. Independent Supervision

Important decisions regarding data protections, including those on portability or consent, should be documented and signed off by senior management with input from the Data Protection Officer (DPO).

Conclusion

The exceptions to the Access Obligation under the Fifth Schedule to the PDPA are insufficient to meet those of the forthcoming Data Portability Obligation. Rather than attempt to put these issues into the same category, there should be a separate exercise to determine exceptions to the Data Portability Obligation.

The proposed deemed consent by notification does not improve the current PDPA in relation to meaningful consent. Instead of building an opt-out framework, the PDPA should focus on a stricter approach, such as an opt-in culture similar to that under the GDPR.⁵

Overall, these new amendments to the PDPA help ensure Singapore's digital landscape and economy keep pace with evolving trends. In keeping with the PDPA's efforts to support its business community make the shift towards an accountability-based approach to data protection, it should also emphasize the importance of outside, independent supervision in meeting its data protection standards.

⁵ Council Regulation (EU) 2016/679 of the European Parliament and of the council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)