Public Consultation for the PDP (Amendment) Bill

About myself

20+ years' experience serving in various key global/regional roles in technology risk management and information/cyber security management within large global organisations including GlaxoSmithKline, Bank of America-Merrill Lynch, Deutsche Bank, Barclays, OCBC Bank and United Overseas Bank.

Member of the Future Growth Industries and Markets, Cyber Security Deep Dive committee, invited by Singapore Economic Development Board to explore strategies to develop the Cyber Security sector.

Invited to provide closed door consultation to Cyber Security Agency (CSA) and Ministry of Communications and Information (MCI) on Singapore Cybersecurity Bill.

Pro bono Information Security Advisor
- Singapore Red Cross, Infocomm Technology Advisory Panel (ITAP)
- Mount Alvernia Hospital, Technology Strategy Committee (TSC)

Holds a Master's degree (Management of Technology) from the National University of Singapore - Graduate School of Business and a Bachelor's degree in computer engineering from Nanyang Technological University - School of Applied Science. CISM, CRISC, CISSP and certified $(ISC)^2$ CISSP Instructor.

Recognised thought leader in the industry, invited speaker at various conferences.

Personal Particulars

Mr. Winston Chew
[Redacted]

Summary of major points

The intend of the amendment is well and good. The maximum penalty of “up to 10% of organisation’s annual gross turnover in Singapore” may be excessive, as it puts Singapore company at a disadvantage vis-a-vis its global counterparts. In addition, it risks steering MNC expanding their business in the region to choose other countries over Singapore because of the perceived higher compliance cost. Furthermore, it may be sending the wrong signal that protecting personal data is even more important than protecting critical information infrastructure. The timing of this legislation may also not be ideal with the suggested hefty fines and expected global recession.

Statement of interest

58. Under section 29(2)(d) of the PDPA, PDPC may impose a financial penalty of up to S$1 million for data breaches under the PDPA. The amendments will increase the maximum financial penalty to (i) up to 10% of an organisation’s annual gross turnover in Singapore; or (ii) S$1 million, whichever is higher.

Comments

The suggested amendment to enhance the Personal Data Protection to further protect personal data and boosts public confidence is applauded.

However the maximum penalty suggested may be excessive taking reference to EU GDPR, US California Consumer Privacy Act, Hong Kong Personal Data (Privacy) Ordinance, Malaysia Personal Data Protection Act.

	GDPR Penalty (Max)	PDPA Penalty (Max)	HK/MY/CCPA Penalty (Max)
Company generating revenue locally	€20 million	S$1m or 10% of Singapore annual gross turnover whichever is higher	HK PDO - HKD 1m, MY PDPA - RM 500,000 US CCPA - $7,500
MNC generating revenue globally	€20 million, or up to 4% of the annual worldwide turnover	S$1m or 10% of Singapore annual gross turnover whichever is higher	HKPDO - HKD 1m, MY PDPA - RM 500,000 US CCPA - $7,500

SINGAPORE COMPANY AT A DISADVANTAGE TO GLOBAL PEERS

Comparing maximum penalties from the various global personal data protection legislation. EU GDPR is currently having the most hefty fines that is capped at €20 million for companies without global operation while Singapore has a $1m or 10%, whichever is higher. Potentially the amended Singapore PDPA has an even higher penalty than EU GDPR depending on the annual turnover of the Singapore company. The positive side is that companies should in theory, place more emphasis protecting personal data and making necessary investment. However, this also translates to higher compliance cost to adhere to the requirement.

Is this putting Singapore companies at a disadvantage vis-a-vis their peers in other countries that has a relatively lower operating cost and thus lower the chance of operating a profitable business?

MNC CHOOSE OTHER ASIA COUNTRIES OVER SINGAPORE

For EU MNC, GDPR has a maximum penalty of 4% annual worldwide turn whereas the suggested amendment has a 10% of Singapore annual turnover. Albeit this may be "good news", for MNC expanding in the regional markets, the higher fines and perceived higher compliance cost than other regional countries may drive business leaders to choose our neighbouring countries that are also competing for foreign investment over Singapore.

Having worked in multiple MNCs, business leaders often make decision based on numbers while seated on the other side of the globe. Thus, this may not be ideal from an economic and strategic perspective as business may choose Hong Kong or Malaysia over Singapore due to higher compliance cost.

Is this sending the right message to world business leaders who may be thinking of investing in the region?

MORE IMPORTANT THAN CRITICAL INFORMATION INFRASTRUCTURE?

Critical Information Infrastructure (CII) are essential services that has debilitating impact on the economy and society. Cyber Security Act is a key legislation put in place with for protecting critical information infrastructure. The maximum penalty is at S$100,000 which is minuscule compared to the proposed amendment of PDPA penalty. Relatively, protecting personal data now seems much more important than protecting essential services that can debilitate the economy and society. Cybersecurity involves protecting Confidentiality, maintaining Integrity and ensuring Availability. Personal data, no doubt important, is typically a small fraction of what needs to be considered especially for CII. By overemphasising on personal data, resources may risk be diverted away from covering CII as a whole to overly focus on personal data.

Is this sending the right message where personal data is much more important than CII?

GLOBAL RECESSION WITH COVID-19

MAS (Monetary Authority of Singapore) expects gross domestic product (GDP) to shrink by between 1 per cent and 4 per cent in 2020 because of the loss of economic activity at home and abroad amid the travel restrictions and lockdowns. IMF (International Monetary Fund) anticipates the world economy will experience the worst recession since the Great Depression. The timing of the suggested change to this magnitude of hefty fines (10%) is less than ideal and further sour business sentiment. This may be better timed with the recovery of the global economy.

Conclusion

Suggest to cap the maximum penalty to 4% instead of 10% and time the legislation with economic recovery.