

**MCI's and PDPC's Public Consultation on Personal Data Protection  
(Amendment) Bill 2020**

**GLAXOSMITHKLINE PTE LTD**

23 Rochester Park  
Singapore 139234  
Frederick Tay / Ong Bo Xian  
Counsel / Legal Affairs Manager  
[frederick.x.tay@gsk.com](mailto:frederick.x.tay@gsk.com) / [boxian.x.ong@gsk.com](mailto:boxian.x.ong@gsk.com)

## **Summary of major points**

1. We, GlaxoSmithKline Pte Ltd, would like to thank MCI and PDPC for the opportunity to give comments in this public consultation with respect to the proposed amendments to the Personal Data Protection Act (PDPA) and related amendments to the Spam Control Act (SCA).
2. In general, we support the proposed amendments to the PDPA and the SCA as we recognize that the proposed amendments aim to strengthen public trust, enhance business competitiveness, and provide greater organizational accountability and assurance to consumers.
3. However, we have some concerns with respect to certain issues, as elaborated further below.
4. Unless otherwise stated, references in this submission to section numbers are references to the corresponding sections in the proposed Personal Data Protection Act (Amendment) Bill (Bill).

### **Statement of interest**

5. We, as part of our business and operations, may from time to time, collect, store and use personal data of consumers and/or employees in accordance with the relevant laws and regulations and our business practices.
6. In this regard, we believe in the importance of protecting individual's personal data and we support legislation that seeks to achieve this objective and strikes a balance with the needs of businesses to collect, store and use personal data as part of their business operations.

## Comments

### Deemed consent

7. With respect to section 7 of the Bill, we would appreciate clarification on what “prescribed purpose” referred to in the proposed section 15A(2) of the PDPA refers to.

### Collection, use and disclosure without consent

8. With respect to section 31 of the Bill, we would appreciate clarification on the distinction between the situations meant to be covered by the proposed paragraphs 2 and 3 of Part I of the First Schedule of the PDPA.
9. With respect to Part 3 of First Schedule at paragraph 10, we would appreciate clarification on whether the current proposed exemption will be wide enough to cover activities or actions that the employer may carry out with the interests and well-being of the individuals in mind even if the individuals may not have requested for it. Such programs could be health related programs to help employees manage chronic illnesses or health related apps rolled out to employees to help them track their health status and such information may be shared with the employer to facilitate any programs that could assist employees with upkeeping their health.

### Protection of personal data

10. With respect to section 11 of the Bill, we would appreciate guidance on:
  - a. what would constitute the “reasonable security arrangements” as referred to in the proposed section 24 of the PDPA;
  - b. and whether the concept of “unauthorized access” as referred to in the proposed section 24 of the PDPA shares the same meaning as that in the section 3 of the Computer Misuse Act (Cap 50A) (CMA).
11. Where there are overlaps between the PDPA and the CMA, and it is eventually found that the breach under the PDPA was the act of an employee of the organization, will the organization’s disclosure/reporting to the PDPC pursuant to the PDPA for the same act constitute a prejudicial act to the organization should the organization be found vicariously liable for the acts of the employee? For the jurisdictions where PDPC has referred to in relation to the amendments in this Bill, do those countries have an equivalent act like the CMA and if so, how do they deal with such issues?
12. A proposal to deal with this is to provide under the PDPA that disclosures by the company will not prejudice itself against proceedings taken under a different statutory regime.

### Notifiable data breaches

13. We have the following comments with respect to section 12 of the Bill.
14. We would appreciate clarification as to:
  - a. The applicable deadline by which the organization has to inform such affected individuals of a notifiable data breach pursuant to the proposed section 26D(2) of the PDPA;

- b. what constitutes all the information that must be reported to the PDPC / affected individual pursuant to the proposed section 26D(3)(a) of the PDPA;
  - c. whether an organization which has made the written application to the PDPC under the proposed section 26D(7) of the PDPA is relieved of its obligations under the proposed section 26D(2) of the PDPA pending a response from the PDPC; and
  - d. whether any notifications made to the PDPC pursuant to the proposed 26D(3)(a) of the Act would be on a without prejudice basis for the purposes of any offenses under the Computer Misuse Act (Cap 50A) as per our comment in paragraph 10 above.
15. Separately, we suggest that the obligation to inform affected individuals under the proposed section 26D(2) of the PDPA is imposed only:
- a. after the organization has notified the PDPC of the same; and
  - b. the PDPC provides the organization with positive confirmation that the proposed section 26D(6) of the PDPA does not apply.

Our concern is that otherwise, there may be a situation where the organization has made the notification to affected individuals under proposed section 26D(2) of the PDPA and the PDPC or such other prescribed law enforcement agency subsequently directs the organization not to make such notification; or the other instance where the organization will rather wait for a response before proceeding to inform affected individuals. We foresee such scenarios because the language of the proposed section 26D(2) of the PDPA makes the proposed section 26D(2) is subject to the proposed section 26D(6).

16. We would also wish to clarify whether the restriction under Section 26D(6) prevents an organization from informing individuals where such individuals are employees of the organization and not third parties.
17. Finally, we would also wish to clarify whether Section 26D(6) applies to non-reportable breaches. Looking at the PDPC's rationale at paragraphs 23 and 24 of the document titled "Public Consultation on PDP Amendment Bill", we would have thought the same considerations will apply where the breaches may not be reportable. Please clarify.
18. We note that in paragraph 18 of the Public Consultation Paper dated 14 May 2020 by MCI and the PDPC (Consultation Paper) that MCI/PDPC intends to prescribe in the Regulations categories of person data which, if compromised in a data breach, will be considered likely to result in significant harm to individuals. We hope that there would be an opportunity in the future for businesses such as ourselves to also give comments on this aspect of the proposed Regulations.

#### Data portability (general comments)

19. We note from paragraph 47 of the Consultation Paper that the Data Portability Obligation will only come into effect with the issuance of Regulations, and that PDPC will work with the industry and relevant sector regulators to develop the requirements to be prescribed in the Regulations. We hope that there would be an opportunity in the future for businesses such as ourselves to also give comments on this aspect of the proposed Regulations. We would also request that the said Regulations be firmed up prior to the passing of the amendment bill or that a transition period is be provided for with respect to compliance with the relevant portability obligations. This is because to ensure compliance with the relevant portability obligations, organisations may, if they have not already done so, have to create new ways of working or introduce new technology to ensure that data requested for portability can be responded to.

20. With respect to section 26E(1), we would appreciate clarification as to whether the references to “prescribed” therein are to mean references as may be set out in the Regulations to be eventually enacted.

21. We have no further comments on the other proposed amendments to the PDPA and the SCA.

## **Conclusion**

22. Once again, we thank MCI and PDPC for the opportunity to participate in this round of the public consultation exercise.
23. We will be happy to answer any queries MCI and/or PDPC may have arising from our comments.
24. We look forward to future involvement in the public consultation process.