

## News Update

### Thailand's Personal Data Protection Act (PDPA) entering into force on 01 June 2022

Thailand's Personal Data Protection Act (PDPA) **will enter into force on 01 June 2022**, after it had been postponed for the last 2 years. This was confirmed by the Thailand's Prime Minister Prayut Chan-ocha in a seminar set up by the Ministry of Digital Economy and Society (MDES) on 23 May 2022.

The enforcement of the PDPA was announced, despite concerns from the private sector as to the readiness (or the lack thereof) of the more specific subordinate laws and official guidelines from the authorities.

To address these concerns, the MDES has come up with the following strategies:

1. **Privacy Notice and Consent:** The main concern of the private sector is how to be in compliance with the PDPA and how to avoid the penalty, especially the administrative liability (which includes fines of up to THB 5 million (approx. USD 150,000)), not to mention the criminal liabilities under this regulation. Until the issuance of the subordinate laws on the required form of the privacy notice and consent under the PDPA, the authorities will publish interim guidelines on these documents. These guidelines will not be considered statutory law, so any privacy notice and consent that do not conform to the guidelines will not be considered as a violation of the PDPA, hence not subject to the administrative or criminal liability.
2. **Record of Processing Activities (RoPA):** Under the PDPA, data controllers and data processors must prepare and maintain a record of (personal data) processing activities (RoPA). Preparing a RoPA can be time-consuming and requires man-power to complete it, as the data, purpose, retention, involved persons, etc. have to be considered for each transaction. However, there is a draft announcement of the Personal Data Protection Committee (PDPC) in relation to the RoPA duty. In this draft, the RoPA duty is exempted for small

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operations, which includes small and medium-sized enterprises (SMEs)<sup>1</sup>, to reduce the burden on small operators under the PDPA.

3. **Grievance and Administrative Liability:** There are 3 draft subordinate laws currently published for public hearing in relation to grievance and administrative liability. Being punished due to non-compliance with the PDPA is one of the main concerns of the private sector. These 3 draft announcements can help minimize such worries. In summary:

- The grievance will be reviewed and considered by the “Expert Committee”, whose members will be selected from each business sector. Therefore, the grievance will be reviewed by a committee that understands the code of conduct and normal process in such sector.
- The grievance, which has no ground, is irrelevant or unreasonable can be rejected by the committee.
- For a minor violation, the committee can issue a warning or an order to rectify the violation. Only in severe cases or repetitive violations should the operator be penalized with an administrative fine. The committee was given the direction to aim for warning, instead of liability, during the first year.

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<sup>1</sup> Companies with annual revenue of less than THB 500 million and less than 200 employees.