

# Personal Data Protection Act (PDPA) Updates

November 2020



## What is new?

The Personal Data Protection Commissioner (PDPC) has issued new amendments which aim to:

- Strengthen consumer trust through organisational accountability;
- Ensure effective enforcement;
- Enhance consumer autonomy; and
- Support data use for innovation.

**The new amendments are effective from 1 February 2021.**

## Implication of non-compliance

Organisations which fail to comply with PDPA may be fined up to 10% of an organisation's annual turnover in Singapore or S\$1 million, whichever is higher.

## Key updates

### 1. Mandatory data breach notification

- Organisations are required to **notify the PDPC** when a data breach occurs that are of significant scale (indicative scale: > 500 individuals).
- In addition, organisations must **notify both the PDPC and affected individuals** when data breaches result, or are likely to result, in **significant harm** to individuals.

### 2. Remove exclusion for agents of Government and criminalise egregious mishandling of personal data.

- All private sector organisations** are subject to the PDPA, even when they are acting on behalf of public agencies.

- The new amendments also include **new offences made by an individual** who mishandle data such as:
  - Disclosure of personal data;
  - Use of personal data that results in personal gain for the offender or another person;
  - Harm of loss to another person; or
  - Re-identification of anonymised information
- Related amendments will also be made to the Public Sector (Governance) Act and Monetary Authority of Singapore Act to align the public and private sector data regimes.

### 3. Enhancing the flexibility and effectiveness of the PDPC's enforcement

- A statutory scheme is introduced which the PDPC may, in lieu of a full investigation, accept **written voluntary undertakings** from organisations to remedy breaches and prevent their recurrence. Such undertakings may be accepted when organisations with **effective monitoring and breach management systems** notify the PDPC of a data breach and undertake in writing to implement their breach management plan.
- PDPC is empowered to establish a **dispute resolution scheme** for the resolution of customer complaints.
- PDPC is empowered to **require the attendance of an individual or employee** to give statements and produce documents that are relevant to its investigations.

### 4. Increase financial penalty cap for organisations

- Maximum financial penalty to be increased to **10% of an organisation's annual turnover** in Singapore or **S\$1 million**, whichever is higher.

### 5. Addition to DNC provisions

- The new inclusion prohibits the use of **dictionary attacks** and **address-harvesting software** when sending messages to telephone numbers.
- Maximum financial penalty that may be imposed on an organisation is **5% of annual turnover** in Singapore or **S\$1 million**, whichever is higher, and **S\$200, 000** for an individual.

### 6. Data portability obligation

- The new inclusion allows individuals to **request for a copy of personal data** to be transmitted to another organisation.
- Regulations will be issued in the coming months on the categories of data that should be portable, and other technical and consumer protection details.

### 7. Expand "deemed consent" to cater for more scenarios or purposes

- **Contractual performance:** Multiple layers of contracting and outsourcing are common in modern commercial arrangements. The amendment therefore expands deemed consent to cater for scenarios where personal data is passed from an organisation to successive layers of contractors for the organisation to fulfil the contract with its customer.

- **By notification:** Organisations may notify their customers of the new purpose and provide a reasonable period for them to opt out. Before doing so, organisations must conduct a **risk assessment** and conclude that the collection, use or disclosure of personal data in this manner will not likely have an adverse effect on the individual.

## 8. Expand “exception” for processing of personal data

- **Legitimate interests exception:** To rely on this exception, organisations must conduct an **assessment** to eliminate or reduce risks associated with the collection, use or disclosure of personal data, and must be satisfied that the overall benefit of doing so outweighs any residual adverse effect on an individual. To ensure transparency, organisations must **disclose** when they rely on this exception.
- **Business improvement exception:** Purposes include (a) **operational efficiency and service improvements;** (b) **developing or enhancing products or services;** and (c) **knowing the organisations’ customers.** As a safeguard, this exception can be relied upon only for purposes that a reasonable person may consider appropriate in the circumstances, and where the purpose cannot be achieved without the use of the personal data.
- This exception also applies to **entities within a group** as they may consolidate corporate or administrative functions or concentrate research and development expertise in a single unit. The Bill provides for additional safeguards for intra-group sharing by requiring related corporations to be bound by a **contract, agreement or binding corporate rules** to implement and maintain appropriate safeguards for the personal data.
- **Research and development exception:** Current research exceptions have also been revised to support commercial research and development that is not immediately directed at productization. This could apply to research institutes carrying out scientific research and development, educational institutes embarking on social sciences research, and organisations conducting market research to identify and understand potential customer segments.

## Next steps

Organisations will need to:

- develop clear action plan to meet the new compliance requirements;
- revisit your current personal data protection policy and include the key updates to the policy, process, procedure document; and
- implement and communicate the changes to staff.

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