

Enforcement of some PDPA provisions postponed to 1 June 2021 and security measure standards implemented in the interim period

The following report may be of interest to :

All clients

Summary :

In this Legal Insight, we would like to inform you that the Personal Data Protection Act BE 2562 (2019) ('PDPA') enforcement has been postponed and the notification on security measure standards for personal data under the PDPA was published in the Thai Government Gazette.

1) The PDPA postponement

On 21 May 2020, the Royal Decree postponing the effective date of some PDPA provisions from 27 May 2020 to 1 June 2021 was legislated and published in the Thai Government Gazette ('Royal Decree'). The Royal Decree exempts organisations and businesses who are personal data controllers ('data controllers') from some provisions allowing them more time to prepare for PDPA compliance from now until 31 May 2021.

Reason for postponement

Many data controllers in the Thai public and private sectors aren't ready to comply with the PDPA's rules, procedures and conditions that are detailed, complicated and have high technology requirements.

Exemptions for PDPA provisions

The Royal Decree temporarily exempts data controllers from the following provisions:

1. Chapter 2 - Personal data protection (Sections 19 – 29)

This chapter focuses on restrictions in collecting, using, or disclosing personal data without consent, except for circumstances where consent is not required. It also includes the data controllers' obligation to notify data subjects before or at the time personal data is collected and the criteria for remitting or transferring personal data to a foreign country.



2. Chapter 3 - Rights of data subjects (Sections 30 – 42)

This chapter focuses on the rights of data subjects and includes the right to access data, right to data portability, right to object, right to erasure, right to restrict processing and right to rectification.

3. Chapter 5 - Complaints (Sections 71 – 76)

This chapter allows a data subject to lodge a complaint against a data controller or data processor.

4. Chapter 6 - Penalties (Sections 77 – 90)

This chapter stipulates penalties for failure to comply with the PDPA.

5. Section 95 – Grandfathering

This section allows a data controller to only collect and use personal data collected before the PDPA enforcement for its original purpose. It prohibits any disclosure or other processing of that personal data that is not an act of collection or use.

Qualified data controllers

According to the Royal Decree, data controllers qualifying for the above exemptions are:

1. Organisations

- government agencies
- foreign government agencies and international organisations
- foundations, associations, religious organisations and non-profit organisations.

2. Businesses

- agriculture
- industry
- commerce
- medicine and public health
- energy, steam, water, waste disposal and other related businesses
- construction
- repair and maintenance
- transportation, logistics, and warehousing
- tourism
- communication, telecommunication, computers and other digital operations
- finance, banking and insurance
- real estate
- professional practices
- administration and support

- science and technology, academia, social welfare and arts
- education
- entertainment and recreational activities
- security guards
- households and community enterprises whose activities cannot be classified

In cases of doubt on whether an organisation or business is listed within the Royal Decree, the Data Protection Committee can verify the organisation or business at its discretion. When considering the list of exempted businesses according to the Royal Decree, it can be assumed that all types of business operations in Thailand are covered.

Security measure standards

Although they are exempt from most obligations, data controllers must arrange and implement security measures to maintain a level of personal data security while the PDPA enforcement is postponed. These must follow standards prescribed by the Ministry of Digital Economy and Society ('MDES').

No exemption for data processors

The Royal Decree only exempts data controllers, not data processors.

A data processor is defined under the PDPA as a person who collects, uses or discloses personal data per an order or instruction from or on behalf of a data controller. Any data processor who collects, uses or discloses personal data in violation of the said order or instruction will be deemed a data controller for such acts of collection, use or disclosure.

2) Notification on security measure standards for personal data under the PDPA

On 17 July 2020, the MDES legislated and published the Notification of the Ministry of Digital Economy and Society prescribing Security Measure Standards for Personal Data B.E. 2563 ('Notification') in the Thai Government Gazette. The Notification prescribes that data controllers must arrange and implement security measure standards for personal data, covering the following three types of safeguards for accessing or controlling the use of personal data: (a) administrative, (b) technical, and (c) physical.

Under the Notification, security measures for personal data are acts of maintaining confidentiality, integrity, and availability of personal data for the purpose of preventing loss and unauthorised access, use, alteration, amendment, or disclosure of personal data.

The security measures must consist of at least the following aspects:

1. Controlling access to personal data and equipment used for collecting and processing personal data, while considering the usage and security.



2. Prescribing the approval or rights to access personal data.
3. Managing user access to personal data by limiting it to authorised persons only.
4. Prescribing user responsibilities to protect against unauthorised access to personal data, including the disclosure, learning or copying of personal data, or stealing equipment used for collecting or processing personal data.
5. Providing methods to investigate previous access, alteration, erasure, or transfer of personal data in accordance with the methods and means of collecting, using, or disclosing personal data.

Data controllers must announce these security measures to their personnel, employees or other relevant persons, and build awareness of why personal data protection is important. They must also ask their personnel to strictly comply with these security measures.

Data controllers are also welcomed to use other standard security measures as long as they do not have lower standards than those prescribed under the Notification. The MDES will have sole discretion in interpreting and determining any disputes arising from the Notification.

It's time to take action

Business operators should not overlook their PDPA compliance needs as there will be penalties imposed on those who violate the prescribed rules and regulations. While the PDPA enforcement is postponed, business operators should self-evaluate their current exposures and take measures to prepare business practices and employees to comply with the PDPA. If there is any uncertainty, business operators should consult professional legal services to ensure full compliance with the PDPA and mitigate any risks or exposure.



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