

PDPA enforcement: Latest updates

The following report may be of interest to :

All clients

Summary :

On 1st June 2022, the Personal Data Protection Act B.E. 2562 (PDPA) became fully enforceable against business operators both local and foreign in all industries. Business operators must collect, use, disclose, transfer or process personal data according to the PDPA stipulations. Violations may result in criminal, civil or administrative penalties imposing not only against violating business operators but also their directors, managers, or persons having power to act on their behalf.

On 20 June 2022, the Personal Data Protection Committee (PDPC) announced and publicised in the Royal Thai Government Gazette four new notifications covering:

- security measures requiring of data controllers
- exemption from the requirement of record of processing activities (ROPA) for small businesses
- rules and methods for preparing and maintaining ROPA for data processors
- rules for consideration by Expert Committee of issuing orders imposing administrative fines

Details of each notification are as follows:

1. Notification of the Personal Data Protection Committee, Re: Security measures of data controllers, B.E. 2565

In principle, data controllers must have in place and impose appropriate security measures to prevent loss, and unauthorised or illegal access, use, alteration, modification or disclosure of personal data. They must review such security measures when it is necessary to do so or when there is a change in related technology to help ensure that all personal data are always handled appropriately and in a secure manner. This notification specifies the minimum details of security measures that must be implemented; for example,

- appropriate organizational measures, technical measures or physical measures to protect personal data
- access control, user access management, user responsibilities or audit trails

Also, data controllers must enhance privacy and security awareness and notify policies, guidelines and appropriate personal data protection and security measures to personnel, staff, users or parties involved in personal data collection, use, alteration, modification, erasure or disclosure for reference and practice.

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2. **Notification of the Personal Data Protection Committee, Re: Exemption from the personal data activity recording requirement in the case of small enterprise data controllers, B.E. 2565**

In principle, data controllers must prepare and maintain a record of processing activities (ROPA). Under this notification, the ROPA requirement under items 1, 2, 3, 4, 5, 6 and 8 of Section 39 of the PDPA is exempt if the data controller falls into any of the following categories of small enterprises.

- A small or medium enterprise under the law on small and medium enterprises;
- A community enterprise or community enterprise network under the law on community enterprise promotion;
- A social enterprise or social business enterprise under the law on community enterprise promotion;
- A cooperative, community cooperative or farmer group under the law on cooperatives;
- A foundation, association, religious organizations or non-profit organizations; or
- A household enterprise or other enterprise of a similar nature.

The small enterprise data controller who is qualified for the exemption must not:

- be a service provider who is required to keep computer traffic data under the law on computer related crime, unless it is a service provider in the category of internet cafe service provider who shall be exempt from the requirement;
- collect, use or disclose personal data that is prone to a risk affecting the rights and freedom of the data subject;
- be an enterprise that does not from time to time collect, use or disclose personal data; or
- collect, use or disclose sensitive personal data.

3. **Notification of the Personal Data Protection Committee, Re: Rules and methods for data processors to prepare and maintain records of processing activities, B.E. 2565**

This notification specifies the minimum details for data processors to include in their ROPA:

- name and information of the data processor and its representative(s) (if any);
- name and information of the data controller and its representative(s) (if any);
- name and information of the data protection officer (DPO) including contact details (if any);
- types or nature of collection, use or disclosure of personal data including related personal data and purposes of processing under the instruction of the data controller;
- types of persons or entities that receive personal data in case of transmitting or transferring personal data overseas; and
- description of security measures.

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4. Notification of the Personal Data Protection Committee, Re: Rules for consideration of issuing orders imposing administrative fines by Expert Committee, B.E. 2565

This notification specifies procedures to be taken by the Expert Committee in issuing orders imposing administrative fines including other administrative enforcement such as seizure, confiscation, or auction.

Business operators should strictly follow the provisions under the PDPA and rules or regulations in order to avoid any risks that may occur for non-compliances, such as sanctions and other liabilities. As personal data handling is a delicate matter and involves public trust, professional legal consultation is highly recommended to help business operators comply with the PDPA and gain stakeholder trust that their personal data are in good hands.

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