



PDPC issued guidelines regarding consent request and purpose notification to data subject

On 7th September 2022, the Personal Data Protection Committee (“PDPC”) has issued two guidelines to provide guidance on the Personal Data Protection Act B.E. 2562 (A.D. 2019) (“PDPA”) for data controllers and practitioners and clarify the key requirements under Section 19 and 23 of the Personal Data Protection Act B.E. 2562 (A.D. 2019) (“PDPA”) from a practical perspective. These guidelines can be summarized as follows:

Guideline for Obtaining Consents from Data Subjects

When relying on consent, data controllers need to consider all lawful bases under Section 24 or exemption to process sensitive personal data as per Section 26, as applicable, before resorting to consent. In the event that the processing does not fall under Sections 24 or 26 and consent is required, in order to obtain lawful and valid consent, data controllers must satisfy the requirements under Section 19 of the PDPA as follows:

Experience the future of law today.

PDPA Alert

28 November 2022

- Consent must be obtained prior to or at the time of processing of personal data;
- Data subjects must be informed on purpose(s) and detail(s) of obtaining the consent prior to obtaining consent from the data subject;
- Purpose(s) of the consent must be specific;
- Consent request must be separated from other texts/documents;
- Wording used in the request must be unambiguous and use plain language and not be deceptive or misleading to the data subject;
- Consent from the data subject must be freely given; and
- Consent must not be used as a precondition for entering into a contract or for the provision of any services if such processing of personal data is not required or is not related to the contract or the provision of services in question.

It is also important that the data subject provides express statement of consent. One way to make sure consent is explicit would be to expressly confirm consent in a written statement. However, an express statement of consent can be done in other ways e.g., by using the data subject's username and password, digital signature, biometric data or any electronically means.

When obtaining a minor/quasi-incompetent/incompetent person's consent, data controller must take extra care and implement extraordinary measures to obtain consent from minors (those below the age of 20) and quasi-incompetent/incompetent person.

For minors, the data controller shall implement age-verification measures to verify the age of the data subject to determine the manner in which consent is to be obtained, which will differ depending on the age of the minor. Data controllers must therefore make reasonable effort to verify the age of the data subjects concerned by putting in place appropriate age verification measures to ensure that the consent obtained from the relevant data subjects are in line with the law.

In case of quasi-incompetent/incompetent person, consent must only be obtained from the custodian who has the power to act on behalf of the incompetent person or quasi-incompetent person.

A consent request to a minor or quasi-incompetent/incompetent person shall be made unambiguously and presented in plain and appropriate language so that they are able to understand how their personal data will be processed as well as the rights they have.

In view of ***withdrawal of consent***, data subjects must be able to withdraw their consents at any time. The steps and procedure required for the withdrawal of consent must be prominent and be just as easy for a data subject to withdraw consent as it is for the data subject to grant consent in the first instance. The process of withdrawal of consent shall not create any additional burden, cost or steps than those required for obtaining consent, and shall not adversely affect the quality of the services.

In the event the withdrawal of consent affects the data subject, the data controller shall inform the data subject of the consequences arising therefrom. For avoidance of doubt, the withdrawal of consent shall not impact the processing of personal data which has been done by the data controller prior to the withdrawal of the consent.

PDPA Alert

28 November 2022

Guideline for Informing the Purposes and Details on the Processing of Personal Data from the Data Subject

This guideline provides that data controller must inform data subject of the purpose(s) of the processing of the personal data prior to or at the time of such collection. This can be achieved in a number of ways, amongst which is by a privacy notice prepared by data controller, which must be unambiguous and use plain language that can be easily understood. Such privacy notice must include specific, explicit and legitimate purpose(s) of processing, as well as include other particulars mentioned in Section 23 of the PDPA. In this regard, data controllers should take into consideration the various legal bases available in the PDPA when preparing such privacy notice.

The notice can be given in several ways such as in writing, verbal, SMS, MMS e-mail, telephones or other electronics means (e.g., URL or QR code), and data controllers may choose to adopt a layered approach whereby a hyperlink is used to direct the data subjects to the relevant page with details of the privacy notice.

When collection of personal data from sources other than directly from the data subjects, the PDPA prohibits the collection by such mean, except where the following applies:

- (i) The data controller has informed (e.g., via privacy notice) the data subject of such collection of personal data from other source without delay but not exceeding 30 days from the date of collection, and the data controller has obtained consent from the data subject for such collection; or
- (ii) Such collection falls into the exemptions specified by sections 24 or 26 of the PDPA and does not require consent.

Prior to the collection of personal data from other sources, the data controller should conduct, among others, Data Protection Impact Assessment to identify potential risks or damages that might occur from the use or disclosure of personal data. In particular whether such use or disclosure of personal data would impact the rights and freedoms of the data subject.

Where other laws contain provisions concerning the method of requesting and obtaining consent, or notification of the particulars required pursuant to the PDPA, such provisions shall apply to the extent that it does not contradict with the provisions of the PDPA. For example, laws and regulations of the Bank of Thailand, the Securities and Exchange Commission or the Office of Insurance Commission.

Deloitte's observation

These guidelines provide further clarification on the requirements of the PDPA from a practical perspective, and data controllers should reassess their current undertakings, particularly regarding the collection of consent and the methods of notification to the data subjects and ensure they are compliant with the provisions of the PDPA, as failing to do so may result in criminal, civil, as well as administrative liabilities.

PDPA Alert

28 November 2022

About Deloitte Legal

Deloitte Legal means the legal practices of DTTL member firms, their affiliates or their related entities that provide legal services. The exact nature of these relationships and provision of legal services differs by jurisdiction, to allow compliance with local laws and professional regulations. Each Deloitte Legal practice is legally separate and independent, and cannot obligate any other Deloitte Legal practice. Each Deloitte Legal practice is liable only for its own acts and omissions, and not those of other Deloitte Legal practices. For legal, regulatory and other reasons, not all member firms, their affiliates or their related entities provide legal services or are associated with Deloitte Legal practices.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Thailand

In Thailand, services are provided by Deloitte Touche Tohmatsu Jaiyos Co., Ltd. and its subsidiaries and affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2022 Deloitte Touche Tohmatsu Jaiyos Advisory Co., Ltd.

For more information and how Deloitte can help you, please contact:

Anthony Visate Loh
Country Leader

Tel: + 66 (0) 2034 0112
Email: aloh@deloitte.com

Sutthika Ruchupan
Legal Counsel

Tel: + 66 (0) 2034 0000 Ext 11473
Email: sruchupan@deloitte.com

Rattanan Jaroenpornworanam
Legal Managing Associate

Tel: + 66 (0) 2034 0000 Ext 17208
Email: rjaroenpornworanam@deloitte.com