



PDPC issued guidelines regarding consent request and purpose notification to data subject 泰国个人数据保护委员会发布了关于向数据主体请求同意和目的告知的准则

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: 2022年9月7日，个人数据保护委员会 (“PDPC”) 发布了两份准则，为数据控制者和处理者提供关于《个人数据保护法》（佛历 2562 年/公历 2019 年） (“PDPA”) 的指引，并从实操角度澄清了《个人数据保护法》（2562/2019） (“PDPA”) 第 19 和 23 条的关键要求。准则的主要内容如下：

Guideline for Obtaining Consents from Data Subjects 关于获得数据主体同意的准则

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

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PDPA Alert

28 November 2022

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: 在征求同意时，数据控制者需根据具体情况，应先查看是否满足第 24 条规定的各项合法情形或第 26 条规定的可以豁免获取同意处理敏感个人数据的情形，然后再诉诸于征求同意。如果数据处理不属于第 24 条或第 26 条的规定、需要征得数据主体同意的，数据控制者必须根据《个人资料保护法》第 19 条的如下要求进行，以获得合法有效的同意：

- Consent must be obtained prior to or at the time of processing of personal data; 在处理个人数据当时或之前，必须征得同意；
- Data subjects must be informed on purpose(s) and detail(s) of obtaining the consent prior to obtaining consent from the data subject; 在获得数据主体的同意之前，必须告知数据主体征求同意的目的和细节；
- Purpose(s) of the consent must be specific; 同意的目的必须是具体的；
- Consent request must be separated from other texts/documents; 同意请求必须与其他文本/文件分开；
- Wording used in the request must be unambiguous and use plain language and not be deceptive or misleading to the data subject; 请求使用的措辞必须明确，使用通俗易懂的语言，不得欺骗或误导数据主体；
- Consent from the data subject must be freely given; and 数据主体的同意必须是自愿给予的；以及
- 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. 如果个人数据处理对一项合同或服务的提供而言不是必须的或者不相关，则不得将同意作为签订合同或提供任何服务的前提条件。

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. 此外很重要的一点是，数据主体应提供明确的同意声明。确保同意清晰明确的一种方式是通过书面声明明确地进行同意。此外，也可以通过其他方式取得明确同意，例如，通过使用数据主体的用户名和密码、电子签名、生物识别数据或任何其他电子方式。

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. 在获得未成年人/无行为能力者/欠缺行为能力者的同意时，数据控制者必须格外小心并采取非常措施，以获得未成年人（20 岁以下者）和无行为能力者/欠缺行为能力者的同意。

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. 对于未成年人，数据控制者应采取年龄验证措施对数据主体的年龄进行核实，以决定获取同意的方式。未成年人的年龄不同，采取的征求同意的方式亦有所不同。因此，数据控制者必须做

PDPA Alert

28 November 2022

出合理的努力，通过适当的措施来核实有关数据主体的年龄，从而确保从有关数据主体获得的同意符合法律规定。

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. 如果针对无行为能力者/欠缺行为能力者，只能从有权代表这类人的监护人那里获得同意。

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. 向未成年人/无行为能力者/欠缺行为能力者提出的同意请求应清晰明确，并以简单和适当的语言表述，以便他们能够理解其个人资料将如何被处理以及他们拥有的权利。

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. 针对同意的撤回，数据主体必须在任何时候均能够撤回他们的同意。对数据主体而言，撤回同意所需的步骤和程序必须醒目，且必须与当初征求其同意时一样容易操作。相较于征求同意的流程，撤回同意不应给数据主体带来额外负担、费用或步骤，并且不应应对服务质量产生不利影响。

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. 如果撤销同意会影响到数据主体的，数据控制者应将由此产生的相应后果告知数据主体。为避免疑问，撤销同意不应影响在撤销同意之前数据控制者已经进行的个人数据处理。

Guideline for Informing the Purposes and Details on the Processing of Personal Data from the Data Subject 关于告知数据主体处理其个人数据的 目的和细节的准则

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. 该准则规定，数据控制者必须在收集个人数据之前或之时告知数据主体处理该数据的目的。告知可以通过多种方式实现，其中包括由数据控制者准备隐私通知。隐私通知必须清晰明确，并使用通俗易懂的语言。此外，通知还必须包含具体、明确且合法的数据处理目的，以及《个人资料保护法》第 23 条中提到的其他细节。数据控制者在准备此类隐私通知时，应遵循《个人资料保护法》中的各项法规要求。

PDPA Alert

28 November 2022

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. 通知可以多种方式发出，如书面、口头、短信、电子邮件、电话或其他电子方式（如 URL 或二维码）。数据控制者可以选择采用分层方式，通过超链接将数据主体导向包含隐私通知细节的相关页面。

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: 《个人数据保护法》禁止从数据主体以外的来源收集个人数据，以下情况除外：

- (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 从收集之日起不超过 30 天内，数据控制者已及时通知（例如，通过隐私通知）数据主体从其他来源收集个人数据；并且数据控制者已获得数据主体对该收集的同意；或
- (ii) Such collection falls into the exemptions specified by sections 24 or 26 of the PDPA and does not require consent. 这种收集属于《个人数据保护法》第 24 或 26 条规定的豁免范围，不需要征得同意。

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. 在从其他来源收集个人数据之前，数据控制者应进行数据保护影响评估等，以确定使用或披露个人数据可能产生的潜在风险或损害，特别是这种个人数据的使用或披露是否会影响数据主体的权利和自由。

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. 如果其他法律中有针对《个人数据保护法》中征求同意的的方法或通知的细节进行规定，这些规定应在不与《个人数据保护法》的规定相冲突的情况下适用。例如，泰国银行、证券交易委员会或保险委员会办公室的法规和条例。

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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. 这些准则从实操角度进一步澄清了《个人数据保护法》的要求，数据控制者应重新评估其目前的数据处理行为，特别是关于征求同意和通知数据主体的方法，确保符合《个人数据保护法》的规定。违反相关规定可能会导致刑事、民事以及行政处罚。

PDPA Alert

28 November 2022

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