

## 7 Data Activities Relating to Minors

### When can a minor give valid consent on his own behalf under the PDPA?

- 7.1 The PDPA does not specify the situations in which a minor (that is, an individual who is less than 21 years of age) may give consent for the purposes of the PDPA. In general, whether a minor can give such consent would depend on other legislation and the common law. In this regard, organisations should keep in mind that Parts III to VI of the PDPA do not affect any legal rights or obligations under other laws<sup>21</sup>.
- 7.2 It is noted that the ages at which minors may conduct different types of activities on their own or are accorded certain legal protections vary across various local legislation<sup>22</sup>.
- 7.3 For situations where there is no legislation that affects whether a minor may give consent, the issue would be governed by the common law. In this regard, the Commission notes that there is no international norm on when minors may exercise their own rights under data protection laws. The Commission understands that in some countries, some kind of test of maturity is applied, taking into account factors such as the level of maturity of the minor, the minor's capacity to understand the nature of legal rights and whether there is any undue influence exerted on the minor, to determine if a minor can exercise legal rights. In addition, some countries have enacted legislation to specifically protect minors below a certain age. For example, in the United States, the Children's Online Privacy Protection Act ("COPPA") requires certain organisations to obtain verifiable parental consent to collect personal data from children under 13 years of age<sup>23</sup>.

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<sup>21</sup> Section 4(6)(a) of the PDPA.

<sup>22</sup> Provisions that set out age thresholds for the purpose of according certain legal protections to minors include:

- a) section 35(1) of the Civil Law Act (Cap. 43) which provides that, except as otherwise provided in that section or any other written law, a contract entered into by a minor who has attained the age of 18 years has effect as if he was of full age (that is, 21 years of age);
- b) section 67A of the Employment Act (Cap. 91), which defines a child as one below 15 years of age and a young person as one between 15 and 16 years of age for the purposes of according varying protections in respect of the different age groups; and
- c) section 2 of the Children and Young Persons Act (Cap. 38), which defines a child as one who is below 14 years of age and a young person as one that is between 14 and 16 years of age for purposes of according varying protections under that Act.

<sup>23</sup> See, for example: <http://www.ftc.gov/news-events/press-releases/2012/12/ftc-strengthens-kids-privacy-gives-parents-greater-control-over>

- 7.4 The Commission understands that the applicable test under English common law for when a minor can consent on his own behalf in matters relating to medical treatment (and several other areas)<sup>24</sup> would be the *Gillick* test. In brief, the *Gillick* test sets out that a minor may provide consent if he has sufficient understanding and intelligence to enable him to understand fully what is proposed. To-date, the *Gillick* test has not yet been expressly approved by a Singapore court<sup>25</sup>.
- 7.5 The Commission notes that the age threshold of 13 years appears to be a significant one in relation to according protection to minors. For example, under the Employment Act, a child 13 years of age or older may be employed in light work suited to his capacity in a non-industrial undertaking and no child who is below the age of 13 years shall be employed in any occupation (with a limited exception)<sup>26</sup>. Similarly, some film and video classification ratings set out age thresholds for audiences for such content, including Parental Guidance 13 (“PG13”)<sup>27</sup>. In addition, organisations that face exposure to COPPA (e.g. companies that provide online services to individuals in the US) may also already have policies and procedures that are premised on the age threshold of 13 years in relation to consent to the collection, use and disclosure of their personal data.
- 7.6 The Commission is of the view that organisations should generally consider whether a minor has sufficient understanding of the nature and consequences of giving consent, in determining if he can effectively provide consent on his own behalf for purposes of the PDPA. It is also noted that, as a practical matter, some organisations may already have policies or practices providing for an age threshold of 13 years in relation to consent. Bearing this in mind, the Commission will adopt the practical rule of thumb that a minor who is at least 13 years of age would typically have

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<sup>24</sup> While the holding in *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 may be argued to only apply narrowly in the context of consenting to medical treatment and advice, later UK cases have applied the *Gillick* principle to other areas. For instance, it was applied in determining if a minor was able to make a decision on divulging information about herself to the press. The Commission is however not aware of any UK cases which expressly applies the *Gillick* principle in the context of UK’s data protection laws and in particular, in determining whether a minor can consent to the sharing of his personal data.

<sup>25</sup> To-date, there are no Singapore cases that have expressly applied *Gillick*, whether in the context of a minor consenting to receiving medical treatment, or in any other context. It therefore remains an open question whether or not the Singapore court will find the *Gillick* principle to have any relevance in determining whether a minor can exercise his legal rights, especially in the context of Singapore’s own data protection framework.

<sup>26</sup> Please see section 68(3) of the Employment Act and Regulation 3 of the Employment (Children and Young Persons) Regulations.

<sup>27</sup> PG13 is an advisory rating that means “suitable for persons aged 13 and above but parental guidance is advised for children below 13”. More details of the film and video classification system are available at: <http://www.mda.gov.sg/RegulationsAndLicensing/ContentStandardsAndClassification/FilmsAndVideos/Pages/default.aspx>.

sufficient understanding to be able to consent on his own behalf. However, where, for example, an organisation has reason to believe or it can be shown that a minor does not have sufficient understanding of the nature and consequences of giving consent, the organisation should obtain consent from an individual, such as the minor's parent or guardian, who is legally able to provide consent on the minor's behalf.<sup>28</sup>

- 7.7 Overall, an organisation should take appropriate steps to ensure that the minor can effectively give consent on his own behalf, in light of the circumstances of the particular case including the impact on the minor in giving consent.

Can a minor's parents or other legal guardians provide valid consent on behalf of the minor under the PDPA?

- 7.8 Section 14(4) of the PDPA provides that consent given or deemed to have been given by an individual for the collection, use or disclosure of the individual's personal data includes consent given or deemed to have been given by any person validly acting on behalf of that individual for the collection, use or disclosure of such personal data. In situations where a minor does not have the requisite legal capacity to give consent for purposes of the PDPA, the minor's parents or other legal guardians may give consent on behalf of the minor. In general, the rights of parents in respect of their children are derived from the common law but there may be legislation that affects how and if they may exercise such rights<sup>29</sup>.

- 7.9 Where an organisation requires the consent of a minor for the collection, use or disclosure of his personal data, the organisation should consider whether it would be appropriate for the organisation to obtain consent given on behalf of the minor from an individual who can legally give consent on behalf of the minor. As a general guide, where the minor is under the age of 13 years, organisations may wish to obtain consent for the collection, use and disclosure of the minor's personal data from an individual that can legally give consent on behalf of the minor, such as the minor's parent or guardian.

When is a minor deemed to have given consent on his own behalf under the PDPA?

- 7.10 Under section 15(1) of the PDPA, an individual may be deemed to have consented to

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<sup>28</sup> For avoidance of doubt, the Commission's position does not affect any right of a parent or legal guardian of a minor to exercise any right or power conferred on the minor under the PDPA on behalf of the minor. Thus, if a parent or legal guardian is empowered to provide consent or refusal on behalf of a minor, an organisation should generally rely on such consent or refusal given by the parent or legal guardian.

<sup>29</sup> For example, Singapore legislation such as the Guardianship of Infants Act and Women's Charter may affect whether an individual has custody over a minor.

the collection, use or disclosure of his personal data for a purpose if he voluntarily provides his personal data for that purpose (without actually giving consent) and it is reasonable that the individual would voluntarily provide the data. In the case of a minor, the Commission is of the view that whether a minor provides his personal data for a purpose voluntarily would depend on various factors including the following:

- a) the minor's understanding of the purpose for which his personal data is provided;
- b) the minor's understanding of the effect of giving his personal data for that purpose; and
- c) whether there was any undue influence on the minor with respect to the provision of his personal data.

7.11 As noted in the preceding section, the Commission will, as a general guide, take the view that a minor who is at least 13 years of age would typically have sufficient understanding to be able to consent on his own behalf. This will similarly apply to deemed consent. In view of the potential difficulties of establishing whether deemed consent applies, the Commission is of the view that organisations that wish to rely on deemed consent in certain situations should take extra care to establish whether a minor has sufficient understanding of the purposes for which the organisation is collecting, using and disclosing personal data and the consequences of giving his personal data in such situations. Organisations should also refrain from exercising any undue influence to obtain personal data from minors.

Should organisations adopt a different treatment for the collection, use or disclosure of personal data about minors?

7.12 The PDPA does not contain provisions that specifically address the collection, use or disclosure of personal data about minors. However, given that there is generally greater sensitivity surrounding the treatment of minors, it may be prudent for organisations to consider putting in place relevant precautions if they are (or expect to be) collecting, using or disclosing personal data about minors. For example, organisations that provide services targeted at minors could state terms and conditions in language that is readily understandable by minors, or use pictures and other visual aids to make such terms and conditions easier to understand. Other good practices could include placing additional safeguards against unauthorised disclosure of, or unauthorised access to, personal data of minors, or anonymising personal data of minors before disclosure, where feasible.

Should organisations take extra measures to verify the accuracy of personal data about minors?

- 7.13 When establishing measures to comply with the Accuracy Obligation under the Data Protection Provisions, organisations should also consider taking extra steps to verify the accuracy of personal data about a minor, especially where such inaccuracy may have severe consequences for the minor.