

PART II: IMPORTANT TERMS USED IN THE PDPA

3 Definitions and related matters

3.1 Before considering the various Data Protection Provisions, it is important to take note of some terms which are used throughout the Data Protection Provisions and which bear particular meanings for the purposes of the PDPA. Some of these terms are defined in Part I of the PDPA (specifically, in section 2(1)).

3.2 A good starting point is the statement of the PDPA's purpose, which is found in section 3 of the PDPA. This states:

“The purpose of this Act is to govern the collection, use and disclosure of personal data by organisations in a manner that recognises both the right of individuals to protect their personal data and the need of organisations to collect, use or disclose personal data for purposes that a reasonable person would consider appropriate in the circumstances.” (emphasis added)

3.3 From the above statement of the PDPA's purpose, the following important terms should be noted:

- a) “individuals”
- b) “personal data”
- c) “organisations”
- d) “collection, use and disclosure”
- e) “purposes”
- f) “reasonable”

3.4 This section seeks to provide guidance on how the above terms may be understood and applied in the context of the Data Protection Provisions.

4 Individuals

- 4.1 The PDPA defines an individual as “a natural person, whether living or deceased”.
- 4.2 The term “natural person” refers to a human being. This may be distinguished from juridical persons or “legal persons” which are other entities that have their own legal personality and are capable of taking legal action in their own name. An example of such a “legal person” is a body corporate such as a company. The term “natural person” would also exclude unincorporated groups of individuals such as an association which may take legal action in its own name¹.
- 4.3 Accordingly, since the various Data Protection Provisions are concerned with the personal data of individuals, only the personal data of natural persons is protected under the PDPA. Data relating to corporate bodies and other entities are not covered.
- 4.4 As the term “individual” includes both living and deceased individuals, the PDPA applies in respect of deceased individuals. However, as will be explained later, the PDPA applies to a limited extent in respect of the personal data of deceased individuals.

¹ For example, a society registered under the Societies Act (Cap. 311) may sue or be sued in its registered name (Societies Act, section 35).

5 Personal data

- 5.1 Personal data is defined in the PDPA as “data, whether true or not, about an individual who can be identified —
- a) from that data; or
 - b) from that data and other information to which the organisation has or is likely to have access”.
- 5.2 The term “personal data” is not intended to be narrowly construed and may cover different types of data about an individual and from which an individual can be identified, regardless of such data being true or false or whether the data exists in electronic or other form.
- 5.3 The PDPA does not apply in relation to certain categories of personal data which are expressly excluded from the application of the PDPA. These are highlighted in the sections later. Please also refer to the chapter on “Anonymisation” in the Advisory Guidelines on the PDPA for Selected Topics, which describes the considerations and conditions under which personal data may be anonymised and no longer considered personal data for the purposes of the PDPA.

Data about an individual

- 5.4 The most basic requirement for data to constitute personal data is that it is data about an individual. Data about an individual includes any data that relates to the individual. Some examples of data that is about an individual include information about an individual’s health, educational and employment background, as well as an individual’s activities such as spending patterns.
- 5.5 Not all data that relates to an individual may identify the individual. For example, a residential address, on its own, relates to a particular place and there could be several individuals residing there. Hence, whether a residential address constitutes personal data would depend on whether the address is associated with a particular identifiable individual so as to form part of the individual’s personal data.
- 5.6 The content of individuals’ communications, such as email messages and text messages, in and of themselves may not be considered personal data, unless they

contain information about an individual that can identify the individual².

Individual who can be identified

5.7 Data constitutes personal data if it is data about an individual who can be identified from that data on its own, or from that data and other information to which the organisation has or is likely to have access.

Individual can be identified from that data on its own

5.8 Certain types of data can, on its own, identify an individual, for instance biometric identifiers which are inherently distinctive to an individual, such as the face geometry or fingerprint of an individual.

5.9 Similarly, data that has been assigned to an individual for the purposes of identifying the individual (e.g. NRIC or passport number of an individual) would be able to identify the individual from that data alone.

5.10 Such data which, on its own, constitutes personal data, is referred to as “unique identifier” in these guidelines. Data that the Commission generally considers unique identifiers include:

- Full name³
- NRIC Number or FIN (Foreign Identification Number)
- Passport number
- Personal mobile telephone number
- Facial image of an individual (e.g. in a photograph or video recording)
- Voice of an individual (e.g. in a voice recording)⁴
- Fingerprint
- Iris image
- DNA profile

² Please refer to the following:

- a) *Re Executive Coach International Pte. Ltd.* [2017] SGPDPC 3, in relation to personal history of an individual disclosed to participants in a WhatsApp Group;
- b) *Re Interflour Group Pte Ltd* [2017] PDP Digest, in relation to emails downloaded from a Hotmail account; and
- c) *Re Black Peony* [2017] PDP Digest, in relation to screenshots of WhatsApp messages disclosed on the Internet.

³ *Re Full House Communications Pte Ltd* [2016] SGPDPC 8, where it was found that a person’s full name in the drop down box alone would enable identification of the individual.

⁴ An individual may be identified from his voice, for example, where a voice clip is sufficiently clear and of a sufficient duration.

- 5.11 The above is not an exhaustive list of unique identifiers.

Example: Data that is personal data on its own

John picks up a passport photograph which clearly shows the facial image of an identifiable individual. The photograph is considered to constitute personal data of the individual, even though John does not know who the individual is.

Individual can be identified from that data and other information to which the organisation has or is likely to have access

- 5.12 Generic information, such as gender, nationality, age or blood group, alone is not usually able to identify a particular individual (e.g. gender alone cannot identify the individual). Nevertheless, such information may constitute part of the individual's personal data if it is combined with a unique identifier⁵ or other information such that it can be associated with, or made to relate to, an identifiable individual.
- 5.13 Whether any data or dataset constitutes personal data would depend on the specific facts of each case. Data or datasets that may identify an individual in a certain situation may not identify an individual in another situation. An organisation should consider the availability of other information it has or is likely to have access to, among other considerations.

Example: Dataset that is a combination of a unique identifier and other information

Organisation ABC conducts a street intercept survey to collect information from passers-by on the average amount spent on household items per month, their full name, gender, and age range.

The combination of data collected generally constitutes personal data of the individuals as it includes their full names.

If Organisation ABC only collects information on the average amount spent on household items, gender, and age range, the dataset may not constitute personal data as it is unlikely to identify the individuals.

⁵The Commission notes that so long as any combination of data contains a unique identifier of an individual, that combination of data will constitute personal data of the individual.

Example: Dataset comprising data points which, individually, cannot identify a particular person

Organisation DEF conducts a street intercept survey and collects the following information from passers-by:

- Age range
- Gender
- Occupation
- Place of work

Although each of these data points, on its own, would not be able to identify an individual, Organisation DEF should be mindful that the dataset, comprising a respondent's age range, gender, occupation and place of work may be able to identify the respondent.

Respondent A is a female individual who is between 20 and 30 years of age, and works as a retail salesperson at Orchard Road. This dataset may not be able to identify Respondent A since there could be many female salespersons in their 20s working in retail outlets at Orchard Road.

Respondent B is a male individual who is between 20 and 30 years of age, and works as a security officer at Bencoolen Street. This dataset may be able to identify respondent B if there are no other male security officers in their 20s working at Bencoolen Street.

Given that some of the respondents' datasets are likely to identify the respondents, Organisation DEF should treat the datasets as personal data and ensure they comply with the Data Protection Provisions.

True and false personal data

- 5.14 It should be noted that the PDPA's definition of personal data does not depend on whether the data is true or false. If organisations collect personal data which is false, or if the data collected has changed such that it is no longer true, such data will still be personal data, and organisations are required to comply with the Data Protection Provisions under the PDPA.
- 5.15 As explained in greater detail in the section on the Data Protection Provisions, organisations have an obligation in certain situations to make a reasonable effort to ensure that personal data collected is accurate and complete (the "Accuracy Obligation").

Personal data relating to more than one individual

- 5.16 Information about one individual may contain information about another individual.

In that circumstance, the same information could be personal data of both individuals.

- 5.17 Organisations should note that how they are required to handle personal data in such situations may differ for each individual or that such data will need to be handled collectively.

Example:

An adventure camp company records emergency contact information for all the participants in the adventure camp. This emergency contact information comprises the name, address and telephone number of the individual whom the organisation will contact in the event of an emergency. Bernie's emergency contact is her husband, Bernard, and she provides his contact details to the company as her emergency contact information. Bernard's name, address and telephone number form part of the personal data of Bernie. As such, the company is holding personal data about two individuals.

In addition, since Bernard's personal data also forms part of Bernie's personal data (specifically, the details of her emergency contact), organisations would need to protect it as part of Bernie's personal data.

Excluded personal data

- 5.18 The PDPA does not apply to, or applies to a limited extent to, certain categories of personal data.
- 5.19 The PDPA does not apply to the following categories of personal data:
- a) Personal data that is contained in a record that has been in existence for at least 100 years; and
 - b) Personal data about a deceased individual who has been dead for more than 10 years.
- 5.20 For personal data about a deceased individual who has been dead for 10 years or less, the PDPA applies to a limited extent. For such personal data, only the provisions relating to the disclosure and protection of personal data will apply. These provisions are considered further below.

Business contact information

- 5.21 The Data Protection Provisions do not apply to business contact information. Business contact information is defined in the PDPA as “an individual’s name, position name or title, business telephone number, business address, business electronic mail address or business fax number and any other similar information about the individual, not provided by the individual solely for his personal purposes”.
- 5.22 Organisations are not required to obtain consent before collecting, using or disclosing any business contact information or comply with any other obligation in the Data Protection Provisions in relation to business contact information.

Example:

At the registration booth of a corporate seminar, Sharon drops her business name card into a glass bowl by the side of the registration booth as she wishes to be on the seminar organiser’s mailing list for future invitations to similar seminars. Sharon’s business name card contains her name, position, business telephone number, business address, business electronic mail address and business fax number. As Sharon did not provide her business name card solely for personal purposes, the information on the card will be considered business contact information. Accordingly, the seminar organiser does not need to seek Sharon’s consent to contact her about future seminars through her business contact information. The seminar organiser is also not required to care for such information, or provide access to and correction of the business contact information collected.

- 5.23 The definition of business contact information is dependent on the purpose for which such contact information may be provided by an individual as it recognises that an individual may provide certain work-related contact information solely for personal purposes. In such situations, the information would not constitute business contact information and organisations would be required to comply with the Data Protection Provisions in respect of such information. However, in most circumstances, the Commission is likely to consider personal data provided on business/name cards as business contact information.

Example:

Sharon is signing up for a gym membership. She provides her business name card to the gym staff so that they can record her name and contact details in order to register her for the package. In this case, the information provided by Sharon would not be business contact information as she is providing it solely for her personal purposes. The PDPA would apply to the information contained in her business name card.

- 5.24 Since sole proprietorships and partnerships are also businesses, the contact information of sole proprietors and partners is considered business contact information where such information has not been provided solely for personal purposes.

Example:

Damien is a choral instructor who is the sole proprietor of a music studio. He decides to engage a salesperson, Tom, to assist him in searching for a suitable property unit as a second branch. Damien passes his contact details to Tom so that Tom can update him from time to time on property units which he might like. Tom shares Damien's contact details with his colleagues, so that more salespersons can assist Damien with his property search. Damien's consent to the sharing of his contact information is not required because it is business contact information. As Damien has provided his contact details for the purpose of a property search for his business, this information is considered business contact information and can be passed on by Tom subsequently without Damien's prior consent. In turn, other persons can also collect, use and disclose Damien's business contact information freely, without requiring Damien's consent.

Personal data of deceased individuals

- 5.25 As noted earlier, the term "individual" includes both living and deceased individuals. Hence, the provisions of the PDPA will apply to protect the personal data of deceased individuals to the extent provided in the PDPA.
- 5.26 Specifically, the PDPA provides that the obligations relating to the disclosure and protection of personal data will apply in respect of the personal data about an individual who has been dead 10 years or less. These provisions relate to the following matters, which are explained in greater detail later in the section on the Data Protection Provisions:
- a) Notification of purposes for disclosure of personal data (part of the "Notification Obligation" as explained later);

- b) Obtaining consent for disclosure of personal data (part of the “Consent Obligation” as explained later);
- c) Disclosing personal data for purposes which a reasonable person would consider appropriate in the circumstances (part of the “Purpose Limitation Obligation” as explained later);
- d) Making a reasonable effort to ensure the accuracy and completeness of personal data that is likely to be disclosed to another organisation (part of the “Accuracy Obligation” as explained later); and
- e) Making reasonable security arrangements to protect personal data (part of the “Protection Obligation” as explained later).

5.27 The above obligations will apply in respect of the personal data of a deceased individual for 10 years from the date of death. This is intended to minimise any adverse impact of unauthorised disclosure of such data on family members of the deceased.

5.28 When complying with their obligations under the PDPA, organisations should take note of the individuals who may act on behalf of the estate of the deceased individual in respect of matters relating to the deceased’s personal data, as prescribed in regulations to be issued under the PDPA.

5.29 Other than the provisions noted above, organisations do not have additional obligations relating to personal data of deceased individuals. Organisations should note that while the PDPA does not apply to personal data of individuals who have been deceased for more than 10 years, there may still be other legal or contractual requirements that organisations should be mindful of.

Ownership of personal data

5.30 Personal data, as used in the PDPA, refers to the information comprised in the personal data and not the physical form or medium in which it is stored, such as a database or a book. The PDPA does not specifically confer any property or ownership rights on personal data *per se* to individuals or organisations and also does not affect existing property rights in items in which personal data may be captured or stored.

5.31 For example, an individual John Tan lives at Block 123 Ang Mo Kio Avenue 456. The fact that the individual’s name is John Tan and that he lives at Block 123 Ang Mo Kio Avenue 456 is personal data of John Tan. However, John Tan does not own the information contained in the name “John Tan” or the information contained in the address “Block 123 Ang Mo Kio Avenue 456”. If John Tan’s name and address are written on a letter that is intended to be posted to him, the PDPA does not affect

ownership rights to the letter which bears John Tan's name and address.

- 5.32 Similarly, if organisation A takes a photograph of John Tan, the identifiable image of John Tan would constitute his personal data. However, John Tan would not be conferred ownership rights to that photograph under the PDPA. Instead, ownership would depend on existing laws such as property law and copyright law. Regardless of ownership rights, organisations must comply with the PDPA if they intend to collect, use or disclose personal data about an individual.

6 Organisations

- 6.1 The PDPA defines an organisation as “any individual, company, association or body of persons, corporate or unincorporated whether or not formed or recognised under the law of Singapore; or resident, or having an office or a place of business, in Singapore”.
- 6.2 The term “organisation” broadly covers natural persons, corporate bodies (such as companies) and unincorporated bodies of persons (such as associations), regardless of whether they are formed or recognised under the law of Singapore or whether they are resident or have an office or place of business in Singapore.
- 6.3 Every organisation is required to comply with the PDPA in respect of activities relating to the collection, use and disclosure of personal data in Singapore unless they fall within a category of organisations that is expressly excluded from the application of the PDPA. An organisation should ensure that it is able to adduce evidence to establish and demonstrate that it complied with the obligations under the PDPA in the event of an investigation.
- 6.4 Although individuals are included in the definition of an organisation, they would not be required to comply with the PDPA if they fall within one of the excluded categories as elaborated below.

Excluded organisations

- 6.5 The PDPA provides that the Data Protection Provisions do not impose any obligations on the following entities. These categories of organisations are therefore excluded from the application of the Data Protection Provisions:
- a) Any individual acting in a personal or domestic capacity;
 - b) Any employee acting in the course of his or her employment with an organisation;
 - c) Any public agency; and
 - d) Any organisation in the course of acting on behalf of a public agency in relation to the collection, use or disclosure of personal data.
- 6.6 In addition, organisations which are data intermediaries are partially excluded from the application of the Data Protection Provisions, as explained further below.
- 6.7 Organisations which are not within an excluded category should note that they are required to comply with the PDPA when dealing with an organisation that is within an excluded category.

Example:

A travel agency collects personal data from Tom about his wife, Jane, when Tom books a travel package for a family holiday. Tom is not subject to the Data Protection Provisions as he is acting in a personal or domestic capacity. However, the travel agency must comply with all the Data Protection Provisions with regard to both Tom and Jane's personal data, unless one or more exceptions apply.

In this case, the travel agency can collect Jane's personal data without her consent as the exception 1(m) in the Second Schedule applies – that is, the travel agency does not need to seek Jane's consent because her personal data was provided by Tom to the travel agency to provide a service for Tom's personal and domestic purposes. However the travel agency must comply with all its other obligations under the Data Protection Provisions, for example, adopting reasonable security arrangements to comply with the Protection Obligation in respect of Tom's and Jane's personal data.

Individuals acting in a personal or domestic capacity

- 6.8 Although individuals are included in the definition of an organisation, they benefit from two significant exclusions in the PDPA. The first is in relation to individuals who are acting in a personal or domestic capacity. Such individuals are not required to comply with the Data Protection Provisions.
- 6.9 An individual acts in a personal capacity if he or she undertakes activities for his or her own purposes.
- 6.10 The term "domestic" is defined in the PDPA as "related to home or family". Hence, an individual acts in a domestic capacity when undertaking activities for his home or family. Examples of such activities could include opening joint bank accounts between two or more family members, or purchasing life insurance policies on one's child.

Individuals acting as employees

- 6.11 The second significant exclusion for individuals in the PDPA relates to employees who are acting in the course of their employment with an organisation. Employees are excluded from the application of the Data Protection Provisions. The PDPA defines an employee to include a volunteer. Hence, individuals who undertake work without an expectation of payment would fall within the exclusion for employees.
- 6.12 Notwithstanding this exclusion for employees, organisations remain responsible for the actions of the employees (including volunteers) which result in a contravention of the Data Protection Provisions.

Public agencies and organisations acting on behalf of public agencies

- 6.13 The PDPA defines a public agency to include the following:
- a) the Government, including any ministry, department, agency, or organ of State;
 - b) any tribunal appointed under any written law; or
 - c) any statutory body specified by the Minister by notice in the *Gazette*⁶.
- 6.14 Public agencies are excluded from the application of the Data Protection Provisions. Organisations which are acting on behalf of a public agency in relation to the collection, use or disclosure of personal data are also excluded from the application of the Data Protection Provisions when they are so acting. However, such organisations may be subject to obligations under other laws and their contract with the relevant public agency. Such organisations also remain responsible to comply with the Data Protection Provisions in relation to other aspects of their business, for example, in relation to their employees' personal data or personal data of other customers.

Data intermediaries

- 6.15 The PDPA defines a data intermediary as "an organisation that processes personal data on behalf of another organisation but does not include an employee of that other organisation". In line with the exclusion for employees (noted above), a data intermediary does not include an employee.

Obligations of data intermediaries

- 6.16 The PDPA provides that a data intermediary that processes personal data on behalf of and for the purposes of another organisation pursuant to a contract which is evidenced or made in writing will only be subject to the Data Protection Provisions relating to protection of personal data (later referred to as the "Protection Obligation") and retention of personal data (later referred to as the "Retention Limitation Obligation") and not any of the other Data Protection Provisions.
- 6.17 A data intermediary remains responsible for complying with all Data Protection Provisions in respect of other activities which do not constitute processing of personal data on behalf of and for the purposes of another organisation pursuant to

⁶ The gazetted notification(s) of statutory bodies specified by the Minister to be public agencies for the purposes of the PDPA can be accessed through the Commission's website at www.pdpc.gov.sg.

a contract which is evidenced or made in writing.

- 6.18 The term “processing” is defined in the PDPA as “the carrying out of any operation or set of operations in relation to the personal data, and includes any of the following:
- a) recording;
 - b) holding;
 - c) organisation, adaptation or alteration;
 - d) retrieval;
 - e) combination;
 - f) transmission;
 - g) erasure or destruction.”

- 6.19 Items (a) to (g) above represent an indicative but non-exhaustive list of activities which could be considered processing. From the above list, it may be seen that activities which form part of processing by a data intermediary may also form part of collection, use or disclosure by the organisation on whose behalf they are acting. Please refer to the section below on “Collection, Use and Disclosure” for more details on this. As will be seen later, notwithstanding the partial exclusion for some data intermediaries, the PDPA provides that organisations shall have the same obligations under the PDPA in respect of personal data that is processed on its behalf and for its purposes by a data intermediary as if the personal data were processed by the organisation itself.

Considerations for organisations using data intermediaries

- 6.20 Section 4(3) provides that an organisation has the same obligations under the PDPA in respect of personal data processed on its behalf by a data intermediary as if the personal data were processed by the organisation itself. As such, it is good practice for an organisation to undertake an appropriate level of due diligence to assure itself that a potential data intermediary is capable of complying with the PDPA.

Determination of who the data intermediary is

- 6.21 There is a diverse range of scenarios in which organisations may be considered data intermediaries for another organisation. An organisation may be a data intermediary of another even if the written contract between the organisations does not clearly identify the data intermediary as such. The PDPA’s definition of “data intermediary”

would apply in respect of all organisations that process personal data on behalf of another. Hence it is very important that an organisation is clear as to its rights and obligations when dealing with another organisation and, where appropriate, include provisions in their written contracts to clearly set out each organisation's responsibilities and liabilities in relation to the personal data in question including whether one organisation is to process personal data on behalf of and for the purposes of the other organisation.

- 6.22 If Organisation A engages Organisation B to provide services relating to any processing of personal data on behalf of A and for A's purposes, then B may be considered a data intermediary of A in relation to the processing of such personal data. In such a case, A should ensure that its written contract with B clearly specifies B's obligations and responsibilities in order to ensure its own compliance with the PDPA. It is important to note that if B uses or discloses personal data in a manner which goes beyond the processing required by A under the contract, then B will not be considered a data intermediary in respect of such use or disclosure. Since B has exercised its own judgement in determining the purpose and manner of such use and disclosure of the personal data, B will be required to comply with all Data Protection Provisions.
- 6.23 In the situation where two or more organisations ("Organisations A and B") engage an organisation ("Organisation C") for the processing of personal data on behalf of and for the purposes of Organisations A and B, then Organisation C may be considered to be both Organisations A and B's data intermediary in relation to such processing. Organisations A and B are both responsible for compliance with the Data Protection Provisions in relation to the personal data processed on their behalf.
- 6.24 Where Organisation B is a data intermediary of Organisation A, Organisation A is responsible for the personal data collected, used and disclosed by B regardless of whether such personal data was actually transmitted to A, for example, personal data of prospective clients of A that may only reside with B.

Example:

Organisation ABC is a market research firm that has been engaged by Organisation XYZ. The written contract specifies that ABC has been engaged to collect personal data on behalf of XYZ and produce a report, exclusively for the use of XYZ, which illustrates the correlation between investment habits and income, profession and marital status of at least 1000 working Singaporeans aged 25 - 40. In addition to types of investments made, income, profession and marital status, the contract specifies that ABC has to collect the NRIC number and residential address of each person surveyed.

The contract neither specifies the methods or processes ABC should undertake to collect the data and produce the report, nor the specific individuals that ABC are to survey. However, all raw data collected are to be given to XYZ and ABC is not permitted to keep any copies of the data or use it for any other purpose. In this situation, ABC may still be considered a data intermediary of XYZ insofar as it is processing personal data for the sole purpose of producing the report for XYZ.

As ABC is XYZ's data intermediary, XYZ has the same obligations under the PDPA in respect of the personal data processed by ABC. Hence, it may wish to include additional requirements in its contract to ensure that ABC fulfils XYZ's obligations under the PDPA.

Example:

Organisation XYZ provides courier services. Organisation ABC engages XYZ to deliver a parcel and signs a contract with XYZ for delivery of the parcel. ABC provides XYZ with the name and address of the person to whom the parcel is to be delivered. In this case, XYZ will be considered ABC's data intermediary under the PDPA as it is processing personal data on behalf of ABC. Insofar as XYZ is processing the intended recipient's personal data on behalf of and for the purposes of ABC pursuant to the written contract between XYZ and ABC, XYZ will only be subject to the provisions in the PDPA relating to the Protection Obligation and Retention Limitation Obligation in respect of such personal data.

- 6.25 It is possible for an organisation that is part of a corporate group of organisations to act as a data intermediary for other members of the group.

Example:

Organisation XYZ undertakes payroll administration for a number of organisations, including organisations that belong to the same corporate group to which XYZ belongs. XYZ holds records of such organisations' employees, such as the employees' full names, duration of employment, salary and bank account numbers. XYZ processes such personal data solely for the purpose of payroll administration pursuant to instructions contained within its written contracts with these other organisations. Hence, XYZ is considered a data intermediary for these other organisations in relation to its processing of such personal data.

- 6.26 An organisation can be considered a data intermediary in respect of a set of personal data while at the same time be bound by all Data Protection Provisions in relation to other sets of personal data.

Example:

In the example above, XYZ is a data intermediary in relation to its processing of personal data of the employees of other organisations for payroll administration purposes. However, in respect of the personal data of XYZ's own employees, XYZ is not a data intermediary, and it is required to comply with all the Data Protection Provisions.

XYZ holds records of such organisations' employees, such as the employees' full names, salary and bank account numbers. XYZ does not take reasonable security arrangements to ensure that those records are secure, and unauthorised disclosure occurs to one of XYZ's employees. XYZ may be liable under the Protection Obligation for failing to protect personal data in its possession or control through the provision of reasonable security arrangements

- 6.27 In relation to network service providers, the Commission notes previous industry feedback clarifying the liabilities of network service providers that merely act as conduits for the transmission of personal data and highlights that section 67(2) of the PDPA amends the Electronic Transactions Act ("ETA") such that network service providers will not be liable under the PDPA in respect of third party material in the form of electronic records to which it merely provides access. Under the ETA, such access includes the automatic and temporary storage of the third party material for the purpose of providing access.

"Agents" who may be data intermediaries

- 6.28 Generally, the legal relationship of agency refers to a relationship that exists between two persons, an agent and a principal. An agent is considered in law to represent the principal, in such a way so as to be able to affect the principal's legal position in respect of contracts and certain other dealings with third parties, so long as the agent is acting within the scope of his authority ("legal definition of "agent").
- 6.29 Persons that carry the title of "agent" (e.g. "Insurance agent" or "Property agent") can fall within or outside the "legal definition of agent" depending on the particular circumstances at hand. Whether a person is an "agent" does not depend on whether he uses the title "agent" as part of his job title, e.g. a "sales agent", but on whether he is acting on behalf of the other person in a particular matter or transaction.
- 6.30 Persons who fall within the "legal definition of agent" or who carry the title of "agent" have to comply with all obligations in the PDPA except to the extent that it is processing personal data on behalf of and for purposes of another organisation pursuant to a contract which is evidenced or made in writing (i.e. they are considered

to be data intermediaries for another organisation). In short, there is no difference in how an agent or any other organisation is treated under the PDPA in relation to whether they qualify as a data intermediary.

- 6.31 As good practice, organisations should ensure that their agents are made aware of and exercise proper data protection practices in relation to the handling of personal data.

7 Collection, Use and Disclosure

- 7.1 Part IV of the PDPA sets out the obligations of organisations relating to the collection, use and disclosure of personal data. The PDPA does not define the terms “collection”, “use” and “disclosure”. These terms would apply as they are commonly understood to cover the common types of activities undertaken by organisations in respect of personal data that may fall under collection, use or disclosure respectively.
- 7.2 In general, the terms “collection”, “use” and “disclosure” may be understood to have the following meanings:
- a) *Collection* refers to any act or set of acts through which an organisation obtains control over or possession of personal data.
 - b) *Use* refers to any act or set of acts by which an organisation employs personal data. A particular use of personal data may occasionally involve collection or disclosure that is necessarily part of the use.
 - c) *Disclosure* refers to any act or set of acts by which an organisation discloses, transfers or otherwise makes available personal data that is under its control or in its possession to any other organisation.
- 7.3 Organisations should bear in mind that collection, use and disclosure may take place actively or passively. Both forms of collection, use and disclosure will be subject to the same obligations under the PDPA although what may be considered reasonable purposes may vary based on the circumstances of the collection, use or disclosure.

Example:

When applying for an insurance plan, Karen is interviewed by an insurance agent who asks her for various personal details, as well as information about her health. This is a form of active collection of personal data.

In comparison, Karen attends a reception and writes her name in the unattended guestbook placed near the entrance. This is a form of passive collection of personal data.

8 Purposes

- 8.1 The PDPA does not define the term “purpose”. As will be seen later, a number of Data Protection Provisions refer to the purposes for which an organisation collects, uses or discloses personal data. For example, an organisation is required to notify individuals of the purposes for which it is collecting, using or disclosing personal data (referred to later as the “Notification Obligation”). Hence in order to notify such purposes, an organisation would need to determine what its purposes are.
- 8.2 The term “purpose” does not refer to activities which an organisation may intend to undertake but rather to its objectives or reasons. Hence, when specifying its purposes relating to personal data, an organisation is not required to specify every activity which it may undertake, but its objectives or reasons relating to personal data.

Example:

A retailer intends to ask an individual for his name and residential address in order to arrange the delivery of certain products purchased from the retailer by the individual. The retailer may specify that it would like to collect, use and disclose the personal data as necessary for the purpose of delivering the products bought by the individual. The retailer need not specify activities relating to exactly how the personal data will be stored and used by the retailer, for example, that it will be entered into the retailer’s customer database, printed on delivery notes and packaging of the items to be delivered, transmitted to the delivery agent and so on.

9 Reasonableness

- 9.1 A number of provisions in the PDPA make reference to the concept of reasonableness. For example, section 11(1) states that an organisation shall, in meeting its responsibilities under the PDPA, consider what a reasonable person would consider appropriate in the circumstances. Other Data Protection Provisions similarly make reference to something or some set of circumstances which is reasonable.
- 9.2 Section 11(1) does not impose a separate obligation on organisations but requires them to consider “what a reasonable person would consider appropriate in the circumstances” when they undertake any action that is subject to the Data Protection Provisions. In seeking to comply with the Data Protection Provisions, organisations should therefore act based on what a reasonable person would consider appropriate in the circumstances.
- 9.3 The PDPA recognises that a balance needs to be struck between the need to protect individuals’ personal data and the need of organisations to collect, use or disclose personal data. The PDPA seeks to provide such a balance by allowing organisations to collect, use and disclose personal data for purposes which a reasonable person would consider appropriate in the circumstances and similarly requires organisations to act based on this standard of reasonableness.
- 9.4 In determining what a reasonable person would consider appropriate in the circumstances, an organisation should consider the particular circumstances it is facing. Taking those circumstances into consideration, the organisation should determine what would be the appropriate course of action to take in order to comply with its obligations under the PDPA based on what a reasonable person would consider appropriate.
- 9.5 A “reasonable person” is judged based on an objective standard and can be said to be a person who exercises the appropriate care and judgement in the particular circumstances. The Commission notes that the standard of reasonableness is expected to be evolutionary. Organisations should expect to take some time and exercise reasonable effort to determine what is reasonable in their circumstances. As being reasonable is not a black and white issue, organisations and individuals may find that there will be different expectations about what is reasonable. In assessing what is reasonable, a possible step that an organisation could take is to view the situation from the perspective of the individual and consider what the individual would think as fair.