

PART IV: OTHER RIGHTS, OBLIGATIONS AND USES

21 Overview

- 21.1 The Data Protection Provisions came into operation on a date specified by the Minister, referred to in the PDPA as the “appointed day”. Before the appointed day, organisations may have collected, used and disclosed personal data and there may be existing contracts, between organisations or between an organisation and an individual, which relate to the personal data of individuals in some way. In addition, there may be existing laws that confer rights or impose obligations relating to personal data.
- 21.2 Since the Data Protection Provisions took effect on the appointed day, organisations are required to comply with the Data Protection Provisions and some of the existing rights, obligations and legal relationships have hence been affected. In this regard, the PDPA includes provisions that specify how the Data Protection Provisions will apply in relation to, amongst other things, existing rights, obligations and uses of personal data. The PDPA’s provisions specify the following:
- a) The Data Protection Provisions will not affect any authority, right, privilege, immunity, obligation or limitation arising under the law, except that performance of a contractual obligation shall not be an excuse for contravening the PDPA;
 - b) Other written laws shall prevail over the Data Protection Provisions in the event of an inconsistency between them; and
 - c) An organisation may continue to use personal data that was collected before the appointed day for the purposes for which it was collected unless consent is withdrawn under the PDPA or the individual had otherwise indicated that he does not consent to such use.
- 21.3 Each of the above is considered in greater detail in the following sections.

22 Rights and obligations, etc under other laws

- 22.1 Section 4(6)(a) of the PDPA provides that the Data Protection Provisions will not affect any authority, right, privilege or immunity conferred, or obligation or limitation imposed, by or under the law, except that performance of a contractual obligation shall not be an excuse for contravening the PDPA. This applies whether such rights, obligations, etc. arise under any written law, such as obligations within codes of practice, licences, regulatory directives issued under written law, or under the common law.
- 22.2 However, section 4(6)(a) does not apply in respect of rights and obligations arising under a contract as an organisation's performance of a contractual obligation will not excuse it from complying with the PDPA. Hence, an organisation will not be able to claim that they are exempt from, or need not comply with, the PDPA while performing a contractual obligation.

Example:

A retailer has entered into a contract with a data aggregator under which it has agreed to sell certain personal data about its customers to the aggregator. The personal data involved includes the customers' names, contact details and certain information on products they have purchased from the retailer. However, the retailer did not obtain the consent of the customers to disclose their personal data. With effect from the appointed day, the retailer must comply with the Data Protection Provisions and cannot assert its contractual obligations to the aggregator as a reason that it does not need to obtain the consent of its customers.

- 22.3 Section 4(6)(b) of the PDPA provides that the provisions of other written law shall prevail over the Data Protection Provisions to the extent that any Data Protection Provision is inconsistent with the provisions of the other written law. Other written law includes the Constitution of Singapore, Acts of Parliament and subsidiary legislation such as regulations⁴⁰.
- 22.4 Under section 4(6)(b) of the PDPA, in the event that a particular provision in the PDPA is inconsistent with a provision in any other written law in some way, then the provision in the other written law will prevail to the extent of the inconsistency. That is, the provision of the other written law will apply only in respect of the matter(s) which is inconsistent between the two provisions. Other provisions in the PDPA

⁴⁰ More specifically, section 2(1) of the Interpretation Act (Cap. 1) defines "written law" as "the Constitution and all previous Constitutions having application to Singapore and all Acts, Ordinances and enactments by whatever name called and subsidiary legislation made thereunder for the time being in force in Singapore".

which are not inconsistent with the other written law will continue to apply.

Example:

Section 47 of the Banking Act (Cap. 19) permits a bank to disclose customer information for such purposes and to such persons as are specified in the Third Schedule to the Banking Act (subject to the conditions specified). To the extent that any of the Data Protection Provisions is inconsistent with a provision in the Third Schedule to the Banking Act, for example, in relation to obtaining consent for disclosure of personal data for a purpose specified in the Third Schedule to the Banking Act, the provisions in the Third Schedule shall prevail. However, the Data Protection Provisions will continue to apply in respect of other purposes which are not specified in the Third Schedule and also to the extent they are not inconsistent with the provisions of the Third Schedule.

23 Use of personal data collected before the appointed day

23.1 The Data Protection Provisions in the PDPA have taken effect from the appointed day. Section 19 of the PDPA provides that notwithstanding the other provisions of Part IV of the PDPA (which relate to collection, use and disclosure of personal data), an organisation may use personal data collected before the appointed day for the purposes for which the personal data was collected, unless consent for such use is withdrawn or the individual indicates or has indicated to the organisation that he does not consent to the use of the personal data. Such 'use' could include disclosure that is necessarily part of the organisation's use of such personal data. However, the PDPA does not include any similar provision in relation to the collection of or disclosure of such personal data.

23.2 Hence, in relation to personal data that was collected before the appointed day, the PDPA applies as follows:

- a) For collection:
 - i. the Data Protection Provisions do not apply to collection of personal data before the appointed day;
 - and
 - ii. if an organisation intends to collect the same type of personal data on or after the appointed day (e.g. where a service provider collects certain personal data from a customer before and after the appointed day), the organisation must comply with the Data Protection Provisions in relation to such collection;
- b) For use:
 - i. the Data Protection Provisions do not apply to any use of such personal data before the appointed day; and
 - ii. an organisation may use such personal data on or after the appointed day in accordance with section 19 (noted above) or otherwise in accordance with the other Data Protection Provisions (e.g. by obtaining consent for a new use); and
- c) For disclosure:
 - i. the Data Protection Provisions do not apply to any disclosure of such personal data before the appointed day; and

- ii. if an organisation intends to disclose the personal data on or after the appointed day (other than disclosure that is necessarily part of the organisation's use of the personal data), the organisation must comply with the Data Protection Provisions in relation to such disclosure.

23.3 The effect of section 19 is that organisations can continue to use personal data collected before the appointed day for the same purposes for which the personal data was collected without obtaining fresh consent, unless the individual has withdrawn consent (whether before on, or after the appointed day). Organisations should note that section 19 only applies to 'reasonable existing uses' of personal data collected before the appointed day.

23.4 For the avoidance of doubt, the purpose of telemarketing (i.e. sending a specified message to a Singapore telephone number) could be a reasonable existing use. Organisations must, however, ensure that they also comply with the Do Not Call Provisions in Part IX of the PDPA (which apply concurrently with the Data Protection Provisions). Before sending a specified message to a Singapore telephone number, the organisation must check with the Do Not Call Registry to confirm that the number is not listed on a Do Not Call Register, unless it has obtained "clear and unambiguous consent" in evidential form from the individual to the sending of the message. Certain organisations that are in an ongoing relationship with individuals may also be exempted from the obligation to check the Do Not Call Registry in respect of specified text or fax messages related to the subject of the ongoing relationship. Please see the Advisory Guidelines on the Do Not Call Provisions for more information.

23.5 It is not necessary that such purposes have been specified in some manner or notified to the individuals concerned. However, as such purposes may not necessarily have been made clear, an organisation should consider documenting such purposes so that it will have such information readily available in the event a question arises as to whether it is using personal data for the purposes for which the data was collected or other purposes (in which case, the organisation is required to comply with Part IV of the PDPA). In particular, when considering whether a specific activity falls within the scope of the original purposes for which personal data was collected, an organisation may consider the following:

- a) how the activity relates to the original purposes of collection e.g. whether it is necessary to fulfil the original purpose of collection; and
- b) whether it would be clear to the individual concerned that the activity falls

within the scope of the original purposes.

- 23.6 An organisation can use personal data under section 19 unless the individual withdraws consent in accordance with section 16 of the PDPA or the individual indicates, whether before or after the appointed day, that he does not consent to that use of his personal data. Hence if an individual had indicated at some point, for example, when he provided the personal data (before the appointed day) that he did not consent to a particular use, the organisation would not be able to use personal data in that manner. Similarly, if an individual withdraws consent to the use of his personal data, the organisation should cease to use the personal data and comply with the other obligations in section 16 of the PDPA.

Example:

Organisation ABC has been using the personal data of its customers to send them desktop calendars once every year. This would be considered a reasonable existing use so long as ABC's customers have not indicated to ABC that they no longer wish to receive these calendars (i.e. withdrawing their consent for the purpose of receiving calendars once every year), ABC can continue to do so without obtaining fresh consent after the appointed day.

Organisation XYZ has been selling databases containing personal data. This would be considered a disclosure of personal data and not a reasonable existing use under section 19. After the appointed day, XYZ needs to ensure that consent has been obtained before selling these databases again.

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