

19 The Transfer Limitation Obligation

19.1 Section 26 of the PDPA limits the ability of an organisation to transfer personal data outside Singapore. In particular, section 26(1) provides that an organisation must not transfer any personal data to a country or territory outside Singapore except in accordance with requirements prescribed under the PDPA to ensure that organisations provide a standard of protection to personal data so transferred that is comparable to the protection under the PDPA. This requirement not to transfer personal data unless in accordance with the prescribed requirements is referred to in these Guidelines as the Transfer Limitation Obligation.

Conditions for transfer of personal data overseas

19.2 Regulations issued under the PDPA will specify the conditions under which an organisation may transfer personal data overseas. In essence, an organisation may transfer personal data overseas if it has taken appropriate steps to ensure that it will comply with the Data Protection Provisions in respect of the transferred personal data while such personal data remains in its possession or under its control; and if the personal data is transferred to a recipient in a country or territory outside Singapore, that the recipient is bound by legally enforceable obligations to provide to the personal data transferred a standard of protection that is comparable to that under the PDPA. In this regard, legally enforceable obligations include obligations imposed on the recipient under:

- a) any law;
- b) any contract that:
 - i. requires the recipient to provide to the personal data transferred to the recipient a standard of protection that is at least comparable to the protection under the PDPA; and
 - ii. specifies the countries and territories to which the personal data may be transferred under the contract;
- c) any binding corporate rules that³³:

³³ Such binding corporate rules may be adopted in instances where a recipient is an organisation related to the transferring organisation and is not already subject to other legally enforceable obligations (as described in those Regulations) in relation to the transfer. The Regulations further provide that the recipient is related to the transferring organisation if:

- a) the recipient, directly or indirectly, controls the transferring organisation;
- b) the recipient is, directly or indirectly, controlled by the transferring organisation; or
- c) the recipient and the transferring organisation are, directly or indirectly, under the control of a common person.

- i. require every recipient of the transferred personal data to provide to the personal data transferred to the recipient a standard of protection that is at least comparable to the protection under the PDPA; and
 - ii. specify the recipients of the transferred personal data to which the binding corporate rules apply; the countries and territories to which the personal data may be transferred under the binding corporate rules; and the rights and obligations provided by the binding corporate rules; or
- d) any other legally binding instrument.

19.3 An organisation transferring personal data overseas is taken to have satisfied the requirement to take appropriate steps to ensure that the recipient is bound by legally enforceable obligations to provide to the personal data transferred a standard of protection that is comparable to that under the PDPA if:

- a) subject to conditions, the individual whose personal data is to be transferred gives his consent to the transfer of his personal data³⁴;
- b) the transfer is necessary for the performance of a contract between the organisation and the individual (for example, if the organisation is a data intermediary of the individual pursuant to a contract between them in relation to the transfer), or to do anything at the individual's request with a view to his entering a contract with the organisation;
- c) the transfer is necessary for the conclusion or performance of a contract between the organisation and a third party which is entered into at the individual's request, or which a reasonable person would consider to be in the individual's interest;
- d) the transfer is necessary for a use or disclosure in certain situations where the consent of the individual is not required under the PDPA, such as use or disclosure necessary to respond to an emergency that threatens the life, health or safety of an individual³⁵. In such cases, the organisation may only transfer personal data if it has taken reasonable steps to ensure that the

³⁴ In order to rely on consent given by the individual, the organisation should (among other things) provide the individual with a reasonable summary in writing of the extent to which the personal data transferred to those countries and territories will be protected to a standard comparable to the protection under the PDPA.

³⁵ The specific situations are if the transfer is necessary for the personal data to be used under paragraph 1(a), (b) or (d) of the Third Schedule to the PDPA or disclosed under paragraph 1(a), (b), (c), (e) or (o) of the Fourth Schedule to the PDPA.

personal data will not be used or disclosed by the recipient for any other purpose;

- e) the personal data is data in transit; or
- f) the personal data is publicly available in Singapore.

19.4 The examples below illustrate certain situations in which organisations may transfer personal data overseas in compliance with the Transfer Limitation Obligation.

Example:

Organisation ABC is transferring personal data of its customers to its parent company overseas via the group's centralised customer management system. The conditions of the transfer, including the protections that will be accorded to the personal data transferred, are set out in binding corporate rules that apply to both Organisation ABC and its head office. Organisation ABC has reviewed these binding corporate rules and assessed that they comply with the conditions prescribed under the regulations and would provide protection that is comparable to the standard under the PDPA. In this case, Organisation ABC's transfer of the personal data overseas would be in compliance with the Transfer Limitation Obligation.

Example:

Karen purchases an overseas tour with travel agency DEF. In order to perform its obligation under its contract with Karen to make the necessary hotel reservations, travel agency DEF is required to transfer her personal data (such as her name, nationality and passport number) overseas to the hotels that Karen will be staying at during the tour. Travel agency DEF's transfer of Karen's personal data in this case would be in compliance with the Transfer Limitation Obligation as it is necessary for the performance of the contract between travel agency DEF and Karen.

Example:

Cedric is a client of Organisation GHI. Organisation GHI notifies Cedric in writing that it is adopting a cloud-based solution to store and analyse its client data, which includes personal data such as clients' identification details, address, contact details and income range, and asks for Cedric's consent to move his client data to the cloud-based solution. Organisation GHI also provides Cedric with a written summary of the extent to which Cedric's personal data will be protected to a standard comparable to that under the PDPA, in the countries and territories that it will be transferred to. Should Cedric provide his consent, Organisation GHI would be able to transfer his personal data in compliance with the Transfer Limitation Obligation.

Example:

John is injured in an accident while travelling overseas. To aid John's treatment, his family doctor in Singapore transfers some of his medical records (including personal data such as his identification details, blood type, allergies, and existing medical conditions) to the hospital where John is receiving medical attention, after confirming with the hospital that the personal data will only be used for John's medical treatment. In this case, the transfer of John's personal data would be in compliance with the Transfer Limitation Obligation as the disclosure to the overseas hospital is necessary to respond to an emergency that threatens John's life, health or safety, and John's family doctor has taken reasonable steps to ensure that the personal data transferred will not be used or disclosed by the recipient for any other purpose.

Example:

Company JKL films a commercial at a location open to the public in Singapore. The commercial captures images of individuals who pass by the filming location. Company JKL wishes to transfer the commercial to its overseas partners for use in an advertising campaign. In this instance, Company JKL's transfer of the commercial would be in compliance with the Transfer Limitation Obligation as the personal data in the commercial would be publicly available to the extent that the filming of images would be reasonably expected at that location³⁶.

³⁶ While in this case the personal data may be publicly available, as noted in the sections on 'publicly available data', Company JKL should, as good practice, put up notices at appropriate spots (e.g. at the entrances to the location) to inform passers-by that filming is taking place.

Scope of contractual clauses

- 19.5 In setting out contractual clauses that require the recipient to comply with a standard of protection in relation to the personal data transferred to him that is at least comparable to the protection under the PDPA, a transferring organisation should minimally set out protections with regard to the following:

S/N	Area of protection	Recipient is:	
		Data Intermediary ³⁷	Organisation (except data intermediary)
1	Purpose of collection, use and disclosure by recipient		✓
2	Accuracy		✓
3	Protection	✓	✓
4	Retention limitation	✓	✓
5	Policies on personal data protection		✓
6	Access		✓
7	Correction		✓

- 19.6 The above table reflects the position under the PDPA that certain Data Protection Provisions are not imposed on a data intermediary in respect of its processing of personal data on behalf of and for the purposes of another organisation pursuant to a contract that is evidenced or made in writing. However, it is expected that organisations engaging such data intermediaries would generally have imposed obligations that ensure protection in the relevant areas in their processing contract.

Data in transit

- 19.7 Data in transit refers to personal data transferred through Singapore in the course of onward transportation to a country or territory outside Singapore, without the personal data being accessed or used by, or disclosed to, any organisation (other than the transferring organisation or an employee of the transferring organisation acting in the course of his employment with the transferring organisation) while the personal data is in Singapore, except for the purpose of such transportation. An example of data in transit would be data from overseas passing through servers within Singapore enroute to its destination overseas. An organisation transferring personal data overseas will be deemed to comply with the Transfer Limitation Obligation in respect of data in transit.

³⁷ For the purposes of this table, the term 'data intermediary' refers to a data intermediary processing the personal data on behalf of and for the purposes of the transferring organisation pursuant to a contract evidenced or made in writing.