

Dated 1 April 2013

RHTLAW TAYLOR WESSING LLP

FEEDBACK ON

- 1. PROPOSED REGULATIONS; AND**
- 2. PROPOSED ADVISORY GUIDELINES ON**

KEY CONCEPTS AND SELECTED TOPICS

ON THE PERSONAL DATA PROTECTION ACT 2012

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1. Summary of Major Points

1.1 We are pleased to submit our views and comments on the proposed Advisory Guidelines and Regulations on the Personal Data Protection Act (the “**PDPA**”) issued on 5 February 2013 (the “**Draft Guidelines**”) by the Personal Data Protection Commission (the “**PDPC**”).

1.2 Our submissions will focus only on the following specific areas in the Draft Regulations:-

- (a) We believe there should be sectorial-specific guidelines prescribed on the standards of reasonableness expected in respect of the transfer and protection of personal data.
- (b) We also believe there should be additional measures imposed to safeguard the outflow of personal data overseas, especially to countries that do not have the equivalent regulatory protection of personal data.

2. Comments and Proposals

We set out below our detailed comments on the areas of concerns, together with our proposals for consideration.

2.1 Standards of Reasonableness (Paragraph 9 of the Advisory Guidelines on Key Concepts)

- (a) We understand that the concept of “reasonableness” underpins the standards with which an organisation is expected to carry out for several obligations under the PDPA. We also understand the need for flexibility as the standards of reasonableness are relative for each organisation.
- (b) We believe there is some benefit in providing some prescriptive measures to set guidelines on the expectations of reasonableness. To this end, may we offer the following views:-

(i) Transfer

The concerns regarding the transfer of personal data overseas have been well documented. We understand this is not easy to address because of the international elements involved, so our view is that it might be useful to prescribe minimum standards required to address the transfer of personal data generally, which applies to all industries, and then further prescribe specific regulations and or guidelines for specific key industries, such as the biotech/biomedical industry, financial sector, hospitality and tourism industries, to name but a few. This would recognise that different industries have different needs and considerations, but at the same time provide some clarity and guidance to assist with compliance. Please also see our comments in **Paragraph 2.2** below.

(ii) Security

Section 24 of the PDPA provides that protection of personal data should be by “*reasonable security arrangements*”.

We believe the position taken by the Information Commissioner’s Office of the United Kingdom (the “**ICO**”) is useful. The prescription of minimum security measures as a general application to all industries, without details, would go some way towards assisting organisations towards compliance.

We also believe that it would also be useful to promulgate specific regulations and or guidelines for specific key industries, as set out above, to provide some clarity and guidance to assist with compliance. An alternative would be to set out guidelines according to the size and reach of the organisation. For example, the expectations of reasonableness of larger organisations or multi-nationals on what constitutes reasonable security measures would be higher and or different from smaller or medium-sized enterprises.

The monetary penalty imposed by the ICO onto ***Sony Entertainment Europe Limited*** on January 2013 on the serious breach of the UK Data Protection Act for a “hacking” incident in 2011 provides a recent and timely example of the security measures a large organisation is expected to have.

2.2 Minimum standards imposed on the outflow of data to other countries (Paragraph 7 of the Proposed Regulations)

- (a) We share the concerns raised in the Draft Regulations regarding the enforcement of the provisions of the Personal Data Protection Law in respect of personal data transferred outside of Singapore.
- (b) We agree with the proposal to impose minimum standard contractual clauses onto organisations, similar to the manner currently set out in Europe. Whilst it is not a panacea to all issues that may arise, but it would provide some measure of comfort that there is an obligation and duty placed on the party transferring the personal data out of jurisdiction to ensure compliance with its obligations under the PDPA.
- (c) May we propose to require organisations that transfer personal data out of jurisdiction to allow data subjects the right to take legal action against the receiving party under such contracts for being in breach of providing adequate standard of protection under the PDPA.

We also note that there is already a provision to allow a private action in respect of contravention against an organisation after decision made by PDPC that there has been contravention of the PDPA, and the decision becomes final because of no further right of appeal.

- (d) We would also add that the extent and enforceability of such inter-company clauses should be a factor to consider when deciding whether an organisation is behaving reasonably in the circumstances.

3. Conclusion and overview

We welcome the issues raised by the Draft Regulations and look forward to the finalised regulations and guidelines.

We believe that the law in this area is constantly evolving. There must be flexibility in adapting to changes. At the same time, as this area of law transcends almost all industries, we also believe it would be helpful to provide for sectorial-specific regulations and guidelines. We would be happy to share our thoughts and views on the concerns of each sector.

Should you have any further queries, please contact Mr Rizwi Wun, Co-Head of Intellectual Property and Technology Practice at RHTLaw Taylor Wessing LLP via the channels below:

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