

PDPC PUBLIC CONSULTATION FOR APPROACHES TO MANAGING PERSONAL DATA
IN THE DIGITAL ECONOMY- 27 July 2017

Feedback from Sheela Awat, AT Law Practice LLP

Question 1: Should the PDPA provide for Notification of Purpose as a basis for collecting, using and disclosing personal data without consent?

Question 2: Should the proposed Notification of Purpose approach be subject to conditions? If so, what are your views on the proposed conditions (i.e., impractical to obtain consent and not expected to have any adverse impact on the individual)?

Feedback for Q1 and Q2:

The right balance (protection of individual rights re their personal data cf need for organisations to collect, use and disclose personal data) is never easy to achieve but in my humble opinion that must remain the goal of the PDPA regardless of the passage of time. The current exemptions for consent are well thought out.

If the PDPA provides for Notification of Purpose without consent, in my humble opinion it must necessarily come with conditions otherwise effectively the PDPA would be doing away with the requirement for consent - the balance would tilt too much to the latter camp.

The difficulty lies in phrasing the conditions. The conditions being proposed "impractical" and "not expected to have any adverse impact" are very difficult to evaluate (and the objective reasonable man test is not really much help in this case when implementing PDPA compliance program) and in practice a lot of businesses are going to use this cop out because of its vagueness to avoid obtaining consent.

In light of the above, my view is – if possible (and it allows for more certainty and consistency) rather than provide for Notification of Purpose as a basis for collecting, using and disclosing personal data without consent, PDPA should consider widening the scope of exemptions to cover additional circumstances that the PDPC wishes to allow without needing consent - by coming up with a hybrid category ie a list of circumstances exempting requirement to obtain consent but still requiring notification.

Question 3: Should the PDPA provide for Legal or Business Purpose as a basis for collecting, using and disclosing personal data without consent and notification?

Question 4: Should the proposed Legal or Business Purpose approach be subject to conditions? If so, what are your views on the proposed conditions (i.e., not desirable or appropriate to obtain consent and benefits to the public clearly outweigh any adverse impact or risks to the individual)?

Feedback for Q3 & Q4:

Question 3 - Yes, provided it is subject to the two conditions proposed in question 4, otherwise no. The second condition (benefits to the public clearly outweigh any adverse impact or risks to the individual) gives the comfort that this wider scope without consent and notification cannot be easily abused. The balance relating to the two objectives of the PDPA is maintained.

Feedback Remaining Questions

The rest of the questions in the paper relate to PDPC's proposal to introduce a mandatory data breach notification regime under the PDPA.

I support the introduction a mandatory data breach notification regime under the PDPA to strengthen protection for individuals and build confidence in organisations' management and protection of personal data.

I have no strong views about the scope and details of this regime because the scope and the details of this regime should be an administrative decision in my opinion. The public would already be comforted merely by the introduction of this new requirement – public interest for protection has been addressed. PDPC should decide the details and the scope based on feedback from businesses and what the PDPC thinks is administratively reasonably manageable.