

## RESPONSE TO PUBLIC CONSULTATION ON REVIEW OF PROPOSED DATA PORTABILITY AND DATA INNOVATION PROVISIONS IN THE PERSONAL DATA PROTECTION ACT 2012

3PL welcomes the opportunity to provide feedback to the Personal Data Protection Commission (PDPC) and input on the proposal to introduce provisions for data portability and data innovation under Singapore's Personal Data Protection Act 2012 (PDPA). 3PL is grateful for the opportunity to provide our comments for this public consultation. We look forward to continuing to engage on this strategic initiative.

### **Question 1. What are your views on the impact of data portability, specifically on consumers, market and economy?**

While data portability would potentially be useful in certain cases for both the data subject and the organization receiving such data, 3PL believes that in general customers do not wish for organizations to share their data, and prefer to tightly control different unique data sets for each organization that they interact with. From 3PL's perspective, we do not see significant changes in our customer behaviour as a result of this law.

The impact will probably be more qualitative, in that it has the potential to uphold the reputation of Singapore's personal data laws as being proactively thought through and balanced in their approach while also being at the forefront of personal data protection.

3PL feels that the number of direct requests from customers to transfer their data to another party or organizations will be minimal. At the same time, we also note that there are several technical considerations to be taken into account such as data format, data content, secure data transfer, media handling and so on.

Ensuring the security of personal data is paramount. Therefore, the introduction of data portability must not result in the compromise of such security even as additional steps are introduced in the handling of personal data. We therefore suggest that consideration is given to data security when the PDPC decides the extent and complexity of data portability requirements in the new law.

### **Question 2. What are your views on the proposed Data Portability Obligation, specifically –**

#### **a) scope of organizations covered; and**

#### **b) scope of data covered?**

- a. The scope of organizations covered seems to be comparable to other similar laws such as the General Data Protection Regulation (GDPR), enacted in the European Union, and seemingly covers both individuals and organizations that collect personal data.
- b. The scope of data covered offers a balanced approach that provides consumers more choice and control over their data but is also notably unique in that there is some consideration for a "business friendly" approach by limiting the scope to electronic,

primary (non-derived) data, which includes the consideration to exclude data that could compromise an organizations competitive advantage. (For details, please refer to response to Question 3a.)

It is 3PL's view that data shared should only include personally identifiable data. It should also be noted that organizations should not be obliged to port learnings obtained lawfully from their customer (e.g. customer profiles) as this could result in a competitive disadvantage. Third party organizations could encourage a customer to have all their data transferred from a competitor. Utilising the data thus obtained, the receiving organization could then expand their own data portfolio accordingly to target specific areas of growth. Additionally, in order to mitigate risks such as crime, money laundering, fraud, and terrorism financing, it is important that data shared does not include sensitive data collected through internal processes, or through processes required by government or legal mandates.

**Question 3. What are your views on the proposed exceptions to the Data Portability Obligation, specifically –**

**a) the proposed exception relating to commercial confidential information that could harm the competitive position of the organization, to strike a balance between consumer interests and preserving the incentive for first movers' business innovation; and**

**b) the proposed exception for "derived data"?**

- a. Generally, we agree with and support the proposed portability exception for commercial confidential information. However, depending on the specific use of data, it could be argued that all data is in some way economically sensitive to an organization, especially as competitors can obtain unique insights into an organization's processes and technology from ported data by analysing data fields and data outputs.

On this basis, there could be instances where the scope of data covered could be demonstrated to be competitively sensitive, thereby releasing organizations from the obligation to comply with the requirements. For example, a financial institution could claim that transferring customers' financial data to a competitor could provide the competitor an advantage in terms of lower risk and faster customer response time based on the data obtained. Many financial service companies invest a significant amount of time and money into establishing risk management frameworks to review data and assess client credit worthiness. Transferring such customer data profiles potentially lowers the cost of doing business for the data recipient unfairly.

To guard against this possibility, we suggest that the term "commercial confidential information" be defined clearly so as to place organizations in a position to clearly define the scope of what is covered by that term.

- b. Overall, 3PL agrees with an exception for 'derived data'. Nonetheless, based on the examples of Derived Data provided, the definitions of what could be derived versus

primary data could fall into many grey areas and become open to interpretation. As mentioned above in the context of “commercial confidential information”, the term “derived data” must be clearly defined and explained in detail to help organizations understand the scope of what is covered by this new term.

**Question 4. What are your views on the proposed requirements for handling data portability requests?**

The law suggests that data portability requests should be handled within 7 days. More than 7 days may be needed to fulfil the requests given the uncertainty of the scope due to the undefined terms “commercial confidential information” and “derived data” as well as clarity on secure data handling requirements. Moreover “verifying the data to be ported” is a time consuming process that may delay the portability process, as this would, unless technology to assist was developed at significant expense, involve a manual process which is open to errors.

3PL suggests extending the same timeframe for data portability requests similar to other data subject requests such as deletion and objection of processing which usually have a deadline of 30 days. For more complicated requests, existing frameworks also account for a deadline extension to another 60 days as long as the organization informs the data subject that the request needs more time.

**Question 5. What are your views on the proposed powers for PDPC to review an organization's refusal to port data, failure to port data within a reasonable time, and fees for porting data?**

It is important that these powers of review are vested with the PDPC in order for the ordinance to have proper effectiveness. However, it is hoped that any potential audit and reviews are done so with due consideration of the areas of derived data and portability requests that may have been subject to interpretation on its applicability. In such cases, it would be beneficial if PDPC could establish a regular forum to disseminate interesting cases and lessons learnt. Experience shows that, especially in the beginning of a newly implemented law, continuous cooperation between organizations and the regulator is key to establishing a framework which ensures that the individuals’ rights are respected while organizations’ processes and interpretations are also taken into account.

**Question 6. What are your views on the proposed binding codes of practices that set out specific requirements and standards for the porting of data in specific clusters or sectors?**

3PL’s preference would be that any legislation on data portability would be applied equally across Singapore. However, should such clustering be required, 3PL suggests that an industry forum and advisory group be formed so that new policies are developed in close collaboration and consultation with industry.

**Question 7. What are your views on the proposed approach for organizations to use personal data for the specified businesses innovation purposes, without the requirement to notify and seek consent to use the personal data for these purpose?**

No comments at this time.

**Question 8. What are your views on the proposed definition of “derived data”?**

The main concerns are whether some of the derived data is subject to interpretation. As stated in some of the examples in the consultation paper, social media "likes" are subject to data portability obligations but friends suggestions may not be. Organizations should be given guidelines on how to draft the privacy policies that will apply to derived and innovation data.

**Question 9. What are your views on the proposal for the Access, Correction and proposed Data Portability Obligations not to apply to derived personal data?**

In our view, it makes sense to ring fence personal data definition to the data that is provided by the subject. Any other data that is a result of the organization's own analysis and algorithms should not be classified as personal data. It should also be clarified whether this applies to cookies and other automated decision making tools as well.