

Singapore Airlines Limited’s response to  
Public Consultation on Proposed Data Portability and Data Innovation Provisions

This submission sets out Singapore Airlines Limited (“SIA”)’s comments on the public consultation by the Personal Data Protection Commission (“PDPC”) on review of the Personal Data Protection Act 2012 – Proposed data portability and data innovation provisions (“Consultation Paper”).

In addition to responding to PDPC’s questions in the Consultation Paper, SIA has provided comments on other issues.

PDPC’s question	Relevant Paragraph	SIA’s comments
<b><i>Proposed Data Portability Obligation</i></b>		
<b>Q1. What are your views on the impact of data portability, specifically on consumers, market and economy?</b>		<p>Data portability is a new data protection right introduced by the European Union (EU) General Data Protection Regulation (GDPR) in May 2018. To date, only the EU Member States provides such a right to individuals. It is therefore difficult at this stage to assess the impact of such a right on the market and economy.</p> <p>We note that data protection laws exist in Europe since the 90’s while data portability was only recently introduced. This has given ample time to European companies to adapt themselves to more stringent data protection requirements. As highlighted in the Consultation Paper, data portability obligations may result in compliance costs for organisations but also involve additional investments as data portability requires common technical standards to facilitate the transfer from one organisation to another one.</p> <p>Before implementing data portability obligations in Singapore, we respectfully recommend the PDPC to review the impact of the GDPR’s portability right first. Alternatively, the PDPC may consider adopting a phased implementation where data portability obligations apply to a limited number of industries first.</p>

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<p><b>Q2. What are your views on the proposed Data Portability Obligation, specifically –</b></p> <p><b>a) scope of organisations covered; and</b></p> <p><b>b) scope of data covered?</b></p>	2.18	<p>We note that organisations will only be required to transmit data to other organisations that have a presence in Singapore. Organisations will not be required, as a matter of compliance with the proposed obligation, to transmit data to overseas receiving organisations. SIA agrees with such approach as this will limit the risk of transferring data to a country which does not have the same level of data protection as Singapore.</p> <p>In order to ensure data protection, we would suggest the PDPC to adopt eligibility criteria to determine porting organisations and receiving organisations. This may include: the size of the organisation, whether the organisation has a data protection officer based in Singapore or a certification to demonstrate accountable data protection practices, etc.</p> <p>Finally, to assist individuals when exercising their data portability rights, the PDPC may consider providing a list which identifies all organisations that qualify as “receiving organisations” and “porting organisations”.</p> <p>We note that under the access obligation, an individual may request information about the ways in which the personal data has been used or disclosed by the organisation within a year before the date of request. We would suggest the PDPC to adopt a similar time period for data portability obligations.</p>
	Annex B	<p>In addition to the exceptions to the data portability obligations identified in annex B of the Consultation Paper, we would suggest the PDPC to add the following items:</p> <ul style="list-style-type: none"> <li>• User activity data when processed for the purposes of investigation (e.g. logs, investigation report, call recordings, etc.);</li> <li>• Data including in correspondences between customers and organisations;</li> <li>• Collected data can be highly proprietary in how it can be used for the company's commercial activities, for example, analytics work. Competitors may deduce useful insights if such user activity data is ported (e.g, website logs and interactive call centre logs);</li> <li>• Legal claims;</li> <li>• Future transactions; and</li> </ul>

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		<ul style="list-style-type: none"> <li>• Information involving third parties' data where the portability would adversely affect the rights and freedoms of those third parties.</li> </ul> <p>It is our view that the transfer of the above items will not benefit individuals and/or assist receiving organisations to provide better services to a particular individual.</p>
<p><b>Q3. What are your views on the proposed exceptions to the Data Portability Obligation, specifically –</b></p> <p><b>a) the proposed exception relating to commercial confidential information that could harm the competitive position of the organisation, to strike a balance between consumer interests and preserving the incentive for first movers' business innovation; and</b></p> <p><b>b) the proposed exception for "derived data"?</b></p>	<p>2.27</p> <p>2.28</p>	<p>We note that the PDPC is proposing to provide an exception for data which, if disclosed, would reveal confidential commercial information that could harm the competitive position of the organisation.</p> <p>SIA is in favour with such restriction as the disclosure of such data may affect innovation.</p> <p>In order to assist organisations and in consistency with the issuance of codes of practice, we would suggest the PDPC together with relevant stakeholders of each industry to provide a list of such data per industry.</p> <p>We note that "derived data" which refers to new data element that is created through the processing of other data by applying business-specific rules are not subject to the data portability obligations.</p> <p>SIA welcomes this exception proposed by the PDPC. It should be highlighted that derived data also include data which have been created by an organisation as part of the data processing, e.g. by a personalisation or recommendation process, by user categorisation or profiling.</p> <p>In order to assist organisations and in consistency with the issuance of codes of practice, we would suggest the PDPC together with relevant stakeholders of each industry to provide a list of such data per industry.</p>

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	2.31	<p>We note that the PDPC takes the view that the porting of personal data of third parties is unlikely to have any adverse impact on the third parties if the receiving organisation provides for adequate protection of the personal data. The processing of such personal data of third parties by the receiving organisation would only be allowed to the extent that the data is under the control of the requesting individual and used only for that individual's own personal or domestic purposes. Consent must be obtained from the third parties involved to collect, use or disclose their personal data for the receiving organisation's other purposes.</p> <p>SIA is of the view that if the requested information includes information about third parties, it is necessary to consider whether transmitting that data would adversely affect the rights and freedoms of these third parties, regardless of how the data will be used by the receiving organisation. This includes for example third parties' personal data in case of litigation.</p>
	2.34	<p>We would suggest the PDPC to clarify that data portability must not be imposed by a receiving company as a binding condition for sale/promotion.</p>
	2.35	<p>We note that where organisations are required by law to collect personal data of individuals for compliance purposes, such data would not be subject to the proposed Data Portability Obligation.</p> <p>SIA agrees with such exception. In order to assist organisations and in consistency with the issuance of codes of practice, we would suggest the PDPC together with relevant stakeholders of each industry to provide a list of such data per industry.</p>
<b>Q4. What are your views on the proposed requirements for handling data portability requests?</b>	2.37(c)	<p>We note that the porting organisation should allow the requesting individual to view the data (or a sample of the data which the individual has requested to be ported) before transmitting it to the receiving organisation. The requesting individual may remove data that he or she does not wish to port (e.g. unnecessary personal data of third parties).</p> <p>We respectfully submit that such review is unnecessary as it will create complexity to the process. If a data must not be ported, this must be identified by the PDPC as an exception in</p>

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		<p>the legislation and not by the individuals who may abuse of their right. Further, it is our understanding that such review by individuals is not applicable under the GDPR.</p>
	2.37d(i)	<p>We note that the fees may be paid by the requesting individual or the receiving organisation.</p> <p>We respectfully submit that only the requesting individual should be paying the fees as this will prevent abusive, unfounded or excessive portability request.</p>
	2.37d(ii)	<p>We note that the period from the time the individual requests for the data to be ported to the time the data is ported must be within a reasonable period. The PDPC is also proposing to prescribe a period of no longer than 7 calendar days for the porting of data upon confirmation of the data (or any other periods as specified under the codes of practice).</p> <p>We respectfully request the PDPC to clarify what is the time limit imposed to answer a portability request.</p> <p>SIA notes that under the GDPR, article 12(3) requires that the data controller provides "information on action taken" to the data subject "without undue delay" and in any event "within one month of receipt of the request". This one month period can be extended to a maximum of three months for complex cases, provided that the data subject has been informed about the reasons for such delay within one month of the original request.</p> <p>We would suggest the PDPC to adopt a period which is not shorter to the one recommended under the GDPR. This is because porting data is a long process given the necessity (i) to verify identity of the requesting individual, (ii) to review all electronic systems which contain personal data and (iii) to identify relevant data to be provided.</p>

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	2.37(e)	<p>We note that given the wide range of types of data that could be processed by organisations, the PDPC will not prescribe the data formats that an organisation should adopt for transmitting data.</p> <p>In order to assist organisations and in consistency with the issuance of codes of practice, we would suggest the PDPC together with relevant stakeholders of each industry to provide a list of recommended data formats.</p>
	2.37(g)	<p>We note that where the organisation rejects a data porting request (including when the individual does not agree to pay the fees), the organisation must continue to preserve a copy of the requested data for a reasonable period - minimally 30 calendar days after rejecting the request. However, this does not impose an obligation on organisations to retain data just for the purpose of meeting possible data portability requests.</p> <p>SIA would suggest the PDPC to confirm that the porting company is still entitled to keep the information once ported.</p>
	2.37(h)	<p>We note that the requesting individual may withdraw the request to port his or her data any time before the data is transmitted, in which case the porting organisation must take reasonable steps to cease (and cause its data intermediaries or agents to cease) to transmit the data.</p> <p>SIA respectfully submits that such right of withdrawal may lead to abusive request by requesting individuals. If the PDPC maintains such a right, we suggest the PDPC to consider:</p> <ul style="list-style-type: none"> <li>• including an obligation for individual to justify their portability request; and/or</li> <li>• imposing a time period, after which individuals are no longer entitled to with draw their request; and/or</li> <li>• allowing organisation to impose a minimal fee for withdrawal.</li> </ul>

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	2.38	<p>We note that the porting organisation should check that the data transmitted has been received by the receiving organisation and assist with any queries it may have with regard to the data transmitted once ported.</p> <p>We suggest the PDPC to clarify that the porting organisations are not responsible for the processing handled by the individuals or by receiving company. In this respect, the porting organisation is not responsible for compliance of the receiving organisation with data protection law, considering that it is not the one that chooses the recipient.</p>
	2.41	<p>We note that where the receiving organisation encounters issues accessing the transmitted data, the receiving organisation should contact the porting organisation.</p> <p>We suggest the PDPC to set (i) a duty of cooperation between the receiving organisation and the porting organisation and (ii) the allocation of liability.</p>
	2.45	<p>We note that exceptions to the data portability obligation will be aligned to exceptions to access obligations except for the prohibitions provided for situations where it could (i) reveal personal data about another individual; or (ii) reveal the identity of the individual who has provided the personal data and that individual does not consent to the disclosure of his identity.</p> <p>We respectfully submit that exceptions to the data portability obligation should be broader than the exceptions to access obligation. This is because data portability obligation involves a third party which may be a competitor of the porting organisation. For more information on the types of exception, please refer to our response to question 2.</p>
<p><b>Q5. What are your views on the proposed powers for PDPC to review an organisation's refusal to port data, failure to port data within a reasonable time, and fees for porting data?</b></p>		<p>No comment.</p>

PDPC's question	Relevant Paragraph	SIA's comments
<b>Q6. 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?</b>	2.49	<p>We note that the PDPC is proposing to introduce the power for the PDPC to prescribe binding codes of practices for data portability that may apply to organisations in specific clusters or sectors. The proposed codes of practices will be issued as subsidiary legislation under the PDPA and will be legally binding. The PDPC intends to develop these codes of practice in consultation with the relevant sector regulators and industry stakeholders.</p> <p>SIA is of the view that such binding codes of practices will be very helpful to assist organisations in implementing data portability obligations and would recommend that such binding codes to be issued before implementing data portability obligations.</p>
<b>Q7. What are your views on the proposed approach for organisations 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 purposes?</b>		<p>We note that the PDPC intends to introduce provisions in the PDPA to clarify that organisations can use personal data for business innovation purposes, without the requirement to notify and seek consent from relevant individuals. SIA is in favour of such proposal as this is likely to have a positive impact on both consumers and economy.</p> <p>Further, we note that the PDPC issued “Response to feedback on the public consultation on approaches to managing personal data in the digital economy” in February 2018 in which it explains that it intends to provide for “Legitimate Interests” as a basis to collect, use or disclose personal data regardless of consent. The intent is to enable organisations to collect, use or disclose personal data in circumstances where there is a need to protect legitimate interests that will have economic, social, security or other benefits for the public (or a section thereof), and such processing should not be subject to consent since individuals may not provide consent in such circumstances (e.g. to avoid fraud detection).</p> <p>We would appreciate if the PDPC could please explain how the proposed “Data Innovation Provisions” will work together with the “Legitimate Interest” basis, noting that the concept of legitimate interest basis has a broad scope and may include processing for “data innovation” purposes.</p>
<b>Q8. What are your views on the proposed definition of “derived data”?</b>		Please refer to response to question 3.

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<b>Q9. What are your views on the proposal for the Access, Correction and proposed Data Portability Obligations not to apply to derived personal data?</b>		Please refer to response to question 3.
<p><b><u>Conclusion:</u></b></p> <p>SIA respectfully submits the following:</p> <ol style="list-style-type: none"> <li>1. to consider the impact of the GDPR's data portability right first before implementing data portability obligations in Singapore</li> <li>2. to only port personal data collected during the last 12 months</li> <li>3. to prohibit the use of data portability as a condition of sale/marketing promotion by the receiving organisation</li> <li>4. to establish eligibility criteria for both porting and receiving organisations</li> <li>5. to issue binding codes of practice for each industry before implementing data portability obligations</li> <li>6. to broaden the scope of exceptions to the data portability obligations</li> </ol>		