Overview

The Personal Data Protection Bill has been passed into law by Parliament on 15 October 2012. The Personal Data Protection Act 2012 ("PDPA") came into its present form after three rounds of public consultation by the Ministry of Information, Communications and the Arts ("MICA") and various companies and individuals views had been taken into account in that exercise.

The PDPA is intended to be a baseline law applicable to all organisations in Singapore, except for organisations in the public sector.

The objective of the PDPA is to circumscribe an organisation’s activities relating to the collection, use and disclosure of personal data. The PDPA seeks to balance an individual’s right to protect his / her personal data versus the commercial or operational need of organisations to process personal data. The PDPA will bring about the establishment of the Data Protection Commission. Further, a Do Not Call ("DNC") Register mechanism will be put in place to allow individuals to be able to register their Singapore telephone number if they do not wish to receive marketing voice calls, smses / mmses (short message service / multimedia messaging service) or facsimiles.

Key Features of the Act

Coverage of the PDPA

Key to the coverage of the PDPA is the definition of personal data. Data that is not captured by the said definition will not fall under the ambit of the PDPA. Personal data is defined widely in the PDPA to refer to all data, whether true or not, from which an individual, living or deceased, can be identified, whether from that data or from other information to which the organisation is likely to have access. The latter casts the net wide on the extent of data that will fall within the definition of personal data and consequently under the ambit of the PDPA. The PDPA will apply to both electronic and non-electronic data.
The PDPA applies to all organisations save for any public agency (defined to include the Government and any statutory body) and certain other specified exceptions, which will not be the ambit of this general introductory paper. The word ‘organisation’ has been defined widely to include all forms of entities including an individual, whether or not formed or recognised under the law of Singapore or resident or having an office or a place of business, in Singapore. Hence, it would mean that entities such as private limited companies, listed companies, partnerships, charities, to name a few, would be subject to the application of the PDPA. Furthermore, the definition brings about the extra-territorial effect of the PDPA. For example, a body corporate incorporated outside Singapore operating an e-commerce online business that collects personal data from an individual who is physically present in Singapore will be subject to the ambit of the PDPA.

General Compliance

The PDPA imposes an express obligation on an organisation to designate one or more individuals to be responsible for ensuring that the organisation complies with the PDPA. The organisation is also expressly required to develop and implement policies and practices for compliance with the PDPA. This logically translates into a requirement for each organisation to have in place compliance manuals or policies that would deal with the various aspects of the PDPA and their application to the organisation’s business practices and processes. Predictably, such a process would require some time for an appropriate team to audit the organisation’s business processes and put in place such compliance manuals and policies. It is therefore in the interest of the organisation to start this process as soon as possible, in light of the PDPA having already been passed into law.

Criminal and / or civil sanctions may be meted out for non-compliance with the PDPA. The Data Protection Commission may impose financial penalties of up to S$1 million. Further, officers of body corporates could be liable criminally for the offence committed by the body corporate, where that offence is committed with the consent, connivance, or neglect of the officer.

Consent

The PDPA mandates that an individual’s consent be obtained before an organisation can collect, use or disclose personal data, unless required or authorised by law. Consent under the PDPA may be express or deemed. There are exceptions from obtaining consent. For example, personal data about an individual may be collected without the individual’s consent if the collection is necessary to respond to an emergency that threatens the life, health or safety of an individual. The individual who had given his / her consent has the right to withdraw his / her consent. Once the individual has withdrawn his / her consent, the organisation is required to cease processing of his / her personal data.
Purpose

When seeking an individual’s consent, organisations are required to inform an individual the purposes for which they are collecting, using or disclosing his / her personal data.

Organisations may collect, use or disclose personal data only for purposes:

- that a reasonable person would consider appropriate in the circumstances; and
- that was informed to the individual on or before collecting the personal data.

If consent was obtained for a specified purpose, fresh consent would need to be obtained if the personal data collected is to be used for a different purpose.

Care of Personal Data

Accuracy

Organisations must make reasonable efforts to ensure that personal data collected is accurate and complete, if the personal data is likely to be used to make a decision that affects the particular individual, or is likely to be disclosed to another organisation.

Protection

Organisations are required to safeguard personal data within their control by making reasonable security arrangements to prevent unauthorised access, use, disclosure or similar risks.

Retention

Organisations are no longer permitted to simply store or archive personal data within their possession perpetually.

Organisations must destroy or anonymize documents containing personal data as soon as it is reasonable to assume that the purpose for which the data was collected is no longer being served by its retention and retention is no longer necessary for legal or business purposes.
Access and Correction Rights

Individuals have been given various rights under the PDPA. Individuals will have the right to request for their personal data that is in the possession or control of the organisation and to obtain information about the use of such data. Individuals will also have the right to request the organisation to correct any inaccurate data unless there are reasonable grounds to refuse to do so. Needless to say, organisations are required under the PDPA to respond to such requests from individuals. There are various exceptions. For example, an exception to an individual’s access right applies in the case of opinion data about the individual kept solely for an evaluative purpose.

Transfer of Data Outside Singapore

Under the PDPA, organisations are not allowed to transfer personal data outside of Singapore, except in accordance with the requirements prescribed in the PDPA, so as to ensure that organisations provide a standard of protection that is comparable to the protection under the PDPA. However, organisations may apply to the Data Protection Commission to request for an exemption from this requirement.

Enforcement

A Data Protection Commission (“DPC”) will be set up to oversee the implementation of the PDPA. The DPC will be given the powers to:

- issue guidelines
- give directions to remedy non-compliance
- review complaints
- initiate investigations
- impose financial penalties of up to S$1 million

DNC Register

The PDPA will bring about the setting up of the DNC Register. It is intended to allow individuals to opt-out of receiving marketing messages by registering their Singapore phone numbers. It is targeted at messages that contain marketing elements, that can be received by recipients via voice calls, text messages (including SMS / MMS) and facsimile.

With regard to the types of messages that contain marketing elements and consequently that will be covered by the PDPA, the net has been cast wide. It includes messages which
have the purpose (not necessarily the exclusive purpose) of offering to supply goods or services, advertising or promoting goods or services, advertising or promoting a supplier, supplying land or an interest in land, promoting or advertising a business opportunity or investment opportunity etc. Goods and services have in turn been defined widely and they include financial products or financial services (collectively, “Specified Marketing Messages”). The PDPA has deemed certain messages to not be Specified Marketing Messages. For example, any message sent by an individual acting in a personal or domestic capacity.

Under the proposed PDPA, it is an offence for any person or organisation to send a Specified Marketing Message to a Singapore telephone number unless that person or organisation had checked with the relevant DNC Register that the recipient’s Singapore telephone number has not been registered on the said register and that the intended recipient’s Singapore telephone number is indeed not registered. The check must be done within the prescribed period prior to sending the Specified Marketing Message.

Notwithstanding that an individual has registered his or her Singapore telephone number on the said register, he or she may still expressly consent to receiving such Specified Marketing Messages from an organisation. However, the individual may withdraw his or her consent at any time upon giving notice to the organisation.

Unsolicited business-to-business Specified Marketing Messages are not within the ambit of the PDPA.

**Enforcement and Penalty**

Under the PDPA, persons in breach of the DNC Register requirements would be liable to penalties of up to S$10,000 per breach.

**Sunrise Period**

The PDPA is expected to come into force in January 2013. Organisations will be given 18 months to comply with the PDPA. During this sunrise period, the DPC will also be expected to focus on awareness-building activities to educate consumers and organisations about the PDPA and issue advisory guidelines to help organisations comply with the PDPA.

The DNC Registry is expected to be ready for public sign-up by early 2014.