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THAILAND

Newsletter

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Thailand PDPA Update: Requirements on Cross-border Transfer

Late December most of the world was winding down for Christmas and New Year, but here in Thailand things kept going. On Christmas Day (25 December 2023), the Personal Data Protection Committee (PDPC) published two notifications in the Royal Gazette regarding cross-border transfer (i.e., transfer of personal data to outside of Thailand) in relation to Section 28 (on criteria for adequacy country) and Section 29 (on appropriate safeguards) of the Personal Data Protection Act, B.E. 2562 (2019) (PDPA). These notifications finally address certain missing parts of the requirements and procedures for data controllers and processors on the processing of personal data which involves the transfer of such data to outside of Thailand, including the requirements and minimum standard of the destination country. These two notifications will become effective on 24 March 2024.

A brief outline of the key elements of each notification is set out below.

A. “Section 28 Notification”: Criteria for whether a destination country offers an adequate level of data protection (i.e. comparable to that under the PDPA) (“Adequacy Country”)

Once any country has been recognized as an Adequacy Country by the PDPC, the operators can transfer personal data there, without the need for additional safeguards. Two key criteria to consider if a destination country is qualified are as follows:

- (1) Whether the legal safeguards on personal data protection in such country are at the same standard as or higher than those under the PDPA; and
- (2) Whether such country has a proper authority or organization to enforce the above-mentioned personal data protection legal safeguards.

If a company requires confirmation on any issues regarding the qualifications of a destination country, it can submit an inquiry to the PDPC. The PDPC will consider



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and issue the list of adequacy counties in the near future. In this regard, if you wish to propose any country for inclusion on this list, please feel free to contact us.

B. “Section 29 Notification”: Appropriate safeguards for cross-border transfer

In the absence of an official list of adequacy counties, cross border transfer may only take place where the data exporters have put in place appropriate safeguards for the protection of the personal data. This is to ensure that the protection standards required under the PDPA are not undermined. This notification lists certain acceptable safeguards that can be taken, including a binding corporate rule (BCR), a standard contractual clause (SCC), certification, and an agreement between the countries. Below, we will discuss the two best-known safeguards for international entities which will normally be used for the private sector, i.e., BCR and SCC.

1. **Criteria for BCR:** A BCR is a data protection adhered to by related companies in relation to cross-border data transfer. The notification requires that a BCR shall be legally binding upon the relevant parties, including related groups or affiliated companies, data controllers, data processors, data sharing and receiving entities, provided that such BCR complies with data protection laws that are relevant to the parties involved in terms of, for example, data protection measures and standards, and procedures regarding the data subject's rights and any relevant requests to exercise such rights. On top of that, if a company wishes to apply for such BCR it shall first obtain an approval from the PDPC.
2. **Criteria for SCC:** An SCC is an appropriate safeguard which is considered to be a standardized model data protection provision for data processing entities to set out their compliance to be in accordance with data protection laws. The notification requires the SCC to address issues regarding data processing activities and legal compliance of data protection measures, and to regulate data controllers and processors to ensure data security standards are maintained.

The notification allows a company to reference its SCC from the ASEAN Model Contractual Clauses for Cross Border Data Flows and the GDPR Standard Contractual Clauses for the Transfer of Personal Data to Third Countries.

In addition, the notification suggests that a company may consider obtaining a certification for its cross-border data transfer and related processing activities, details of which will be updated in further announcements. CMHM will closely monitor the progress of and further announcements from the PDPC regarding these notifications and will keep you updated. In the meantime, if you have any questions, please feel free to contact the authors listed in the left-hand column.

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