



Thailand Personal Data Protection Act has now come into force.

Personal Data Protection Act (“PDPA”) has been finally published in the Royal on 27 May 2019, and most of its provisions will come into force 1 year after the date of its publication. This Act has key provisions in accordance with the General Data Protection Regulation (“GDPR”). The purposes of this Act are to protect the rights of the data subject and to centralize law regarding data protection.

Under the Act, Personal Data means any data relating to an identified or identifiable natural person whether directly or indirectly, but not including the corporate data. However, persons under this Act shall mean a natural person only, not a corporate entity.

Scope of enforcement

This Act shall take effect to Data Controller and Data Processor. The Data Controller has the powers and duties to collect, use or disclose Personal Data. The Data Processor carries on collection, use or disclosure of the personal data at instruction or in the name of the Data Controller. The Companies which may have major impact from this Act are Hotel, Airline Company, Telecoms, Financial institution.

Who are controlled under this Act?

Right of Data Owner

Under this Act, the data owner is entitled to the rights as follows:

1. The right to access his/her own personal data or to make a copy of his/her own personal data;
2. The right to withdraw his/her consent at any time. However, it shall not affect the collection, usage or disclosure of personal information that the data owner of

personal information has already given his/her consent;

3. The right to portability; and
4. The right to anonymize his/her personal data.

Collection of personal data

To collect personal data, the data controller is required to obtain a clearly expressed consent for collection, usage, and disclosure of such personal data, excepting in some cases as specified in the Act such as for conducting research, statistic, public interest or historical research. Moreover, the data controller is required to clearly inform the purpose and the period of collection, usage, and disclosure including to whom the personal data will be disclosed to. The consent from a minor, incompetent person, quasi incompetent person shall be obtained from any person as prescribed in the Commercial and Civil Code of Thailand.

Use or Disclosure of Personal Data

The Data Controller shall not use or disclose personal data without consent of the data subject except for personal data collected falls within exceptions such as an exception for prevention or suspension of injury to life, body or health of the data subject or for public interest.

Duties of Data controller/Data Processor

The data controller is required to provide appropriate security measure to the personal data from unlawful access and other duties as prescribed in the Act. The data processor shall only collect, use, or disclose the personal data in accordance with the instruction of the data controller. Furthermore, the data controller and the data possessor are required to appoint a Data Protection Officer who ensures that the processing of personal data is in accordance with provisions of the Act.

Transfer information to Third Countries

The personal data can be transferred to a third country only when such receiving country has a sufficient standard of data protection upon the explicit consent of the data owner.

Penalty

The data controller or the data processor who fails to comply with provisions of this act shall be liable to pay compensation to the data subject. In addition, this Act imposes fines and imprisonment penalties as well as administrative penalty.

3 more Restricted Businesses under the FBA has been unlocked.

In June 2019, the Ministry of Commerce announced the new ministerial regulation No.4 which will amend the Foreign Business Act of Thailand on the matter of the exemption of three categories of service business. The regulation allows the foreigner from now on to freely engage in the previously restricted business. The details are set forth as follows:

- 1) The Company is currently allowed to make loans to its affiliated companies;
- 2) The Company is able to provide leasing office space and utilities to its affiliated companies; and
- 3) The Company is no longer restricted to the provision of consultancy services relating to advice on management, human resources, marketing and information technology to its affiliated companies.

Therefore, any foreigner operating such businesses will no longer have to apply for a foreign business license.

Private hospitals were ordered to disclose medicine prices and medical service charges.

On 4 June 2019, the Notification of the Central Committee on Prices of Goods and Services of the Ministry of Commerce regarding requirement for private hospitals to display the prices of medicine, medical supplies, medical service charges, and other service charges (“the announcement”) was

published in the Royal Gazette with its significant provisions as set forth below;

1. The private hospitals must display the price lists of drugs, medical supplies, and medical service charges according to Universal Coverage Emergency Patients (UCEP) either on website or via QR codes within 45 days after the effective date (5 June 2019) which may be extended;
2. Prices showing at hospital must be easily visible and understandable;
3. The hospital shall inform the estimated price of medicine, medical supplies, medical service charges to patients before providing services;
4. In case a hospital wishes to sell medicine in a different price list, the hospital must inform the Internal Trade Department of the Ministry of Commerce of the prices for 15 days in advance; and
5. Prices of Goods and Services Act, B.E. 2542 imposes the fine and imprisonment penalty for any hospital which fails to comply with this announcement.

Bank of Thailand issued new regulation relating to Peer-to-Peer Lending Business.

On April 29, 2019, the Notification 4/2562 Re: The Determination of Rules, Procedures, and Conditions for Peer-to-Peer Lending Business or Peer-to-Peer Lending Platform was issued by Bank of Thailand which can be effective on April 30, 2019. The significant provisions of the notification are below;

Peer-to-Peer Platform Provider

The BOT has set the qualification of peer-to-peer platform provider as platform provider must be a private company or public company incorporated in Thailand which has paid-in capital at least THB 5 million throughout whole operation, and at least 75% of total shareholders must be Thai.

The directors must be fit and proper, must not be involved in dispute relating to fraud or corruption, skillful, must meet the professional standards and good financial status.

Borrower

The borrower must be natural person who has ability to pay debt, is not platform provider, not director or an authorized person, or a major shareholder of platform provider, and must not receive personal loans exceeding the limit.

Lender

The lender can be either juristic or natural person with highly understanding of loans and risk via peer-to-peer lending platform by passing client suitability assessments before providing loans. The lender must not be platform provider, in case director or an authorized person or related person from platform provider act as lender, the lending amount is limited at 10% of loan in each contract. Unlimited credit is for financial institution or others under notification. As for individual lender, the limit amount is THB 500,000 per 12 Months.

Thailand's Legal Update on Electronic Transaction Act B.E. 2544(2011)

On May 22, 2019, the Government Gazette published Electronic Transaction Act (No.4) B.E. 2562 (2019) ("Act"). The aim is to accelerate Thailand's law on electronic transactions in accordance with the international standards, namely, the United Nations Convention on the Use of Electronic Communications in International Contracts. Also, such change pays an importance part in contract law and court procedure in Thailand. The significant amendments of the ACT are summarized as follows;

1. The Act introduces the definition of "Digital Identity (Digital ID)" and "National Digital ID Platform"
2. the Minister of the Ministry of Digital Economy and Society is in charge of the Act
3. The Act stipulates that the Digital Identity is able to conduct via the National Digital ID Platform. Also, any person who wishes to use such platform to verify other person is required to inform an owner of information in advance. When verification process is completed , it is believed that

such person is exactly the same person on the National Digital ID Platform.

4. The Act indicates to issue a royal decree on the business relating to National Digital ID Platform.

The New Law of Public Private Partnership in Thailand has become effective

On 6 March 2019, The Public Private Partnership Act ("New PPP" law) has been published in the Royal Gazette, and it has replaced the Private Investments in State Undertakings Act provision ("PISU" Act) that has been applied from 2013. The New PPP law is aim to provide clear definitions and scopes of PPP project arrangement such as indicating type of infrastructures and public services which shall be subjected to the New PPP law while deducting certain types of projects from the PISU Act. Moreover, the New PPP law also boosts additional benefits for private investors whereby the private investors receive more privileges on investment and the value of the PPP project that will be applied under the New PPP act is lower than that as specified in the PISU Act. Under the New PPP law, the state agencies can propose the project to foreign and domestic private investors to engage in the proposed project. Furthermore, any private investor, who engages in the projects, is entitled to supportive measures as follows:

1. Obtain privileges under the Board of Investment Promotion Act.
2. Receive rights to lease land or immovable properties relating to a project with a maximum term of 50 years.
3. Receive other financial and non-financial support with close monitoring from the public sector.

Should you have any question, please do not hesitate to contact us via info@bgloballaw.com

