Taiwan Data Protection Regime: CPDA to PIPA

1. Background

1.1 The Computer Processed Personal Data Protection Act and its Enforcement Rules provide for the current data protection framework in Taiwan. The Computer Processed Personal Data Protection Act has been widely viewed as inadequate in terms of its coverage, protections and enforcement. Substantive revisions were enacted in May 2010 and are expected to come into force in 2012.

1.2 Pursuant to the amendments, the Computer Processed Personal Data Protection Act will be renamed the Personal Data Protection Act and its scope, protections, and application will be significantly broadened. Obligations concerning consent and notification of data subjects are substantially expanded under the new Act. Sanctions are increased under the new Act, as is the risk of civil and criminal liabilities. This brief highlights the key changes to Taiwan's data protection law on the horizon that are of particular relevance to the private sector.

2. Computer Processed Personal Data Protection Act (CDPA)

2.1 Taiwan introduced the CDPA in 1995. The Act, however, only applies to the collection, processing, and use of personal data by computer by certain classes of public and private entities with a legal entity in Taiwan. Private entities in eight specified industries, including hospital, financial, telecommunication and insurance, are subject to the CDPA. Enterprises not falling under the regulation of the CDPA still have potential liability under Taiwan's Criminal Code and Civil Code for the collection, use, and disclosure of personal data.

2.2 The Act requires that Taiwanese non-public entities within all of the above-prescribed sectors must register and obtain a license from the competent authority if engaged in the collection and processing of personal data by computer.

2.3 The CDPA defines "personal data" as the name, date of birth, National I.D.

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Card number, characteristics, fingerprints, marital status, family, educational, occupational, and health status, medical history, financial conditions, social activities of a natural person and other data that can serve to directly or indirectly identify a specific person.

2.4 The CDPA restricts the use of personal data collected to those purposes specified for the business type by the competent authority and by the business' specific registration.

3. Personal Information Protection Act (PIPA)

3.1 *Fundamental principles*

Taiwan's data protection regime is aimed at regulating the collection, processing and use of personal data and preventing harm to data subjects. A core principle of the regime is that the collection, processing and use of personal data should respect the rights and interests of the subject. Moreover, data should be handled in accordance with the principles of honesty and credibility so as not to exceed the scope of the "specific purpose" of the collection. Protections afforded the data subject include the right to review, copy, supplement, correct, request cessation of processing or use, and request deletion of his or her personal data - such rights may not be waived in advance or limited by agreement.

3.2 *Universal application*

The PIPA extends application of the data protection regime to any individual, organization or enterprise that collects, processes, or uses personal data as well as to agents or others retained to collect, process, or use personal data.

3.3 *Scope*

3.4 "Personal data" under the PIPA encompasses all data formats, not merely computer-processed personal data as stipulated in the CPDA. "Personal data" means a natural person's name, date of birth, national identification number, passport number, characteristics, fingerprints, marital, family, educational, and occupational status, history of illness, medical treatment, genetics, sexual life, health examinations, criminal record, contact information, financial status, social activities, and other data that could directly or indirectly identify that person.

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3.5 *Legitimate grounds to collect, process and use personal data*

The collection, processing and use of personal data must be for specific purposes (as communicated to the data subject) and must meet one of several requirements to comply with the PIPA, including being based on a contractual or semi-contractual relationship with the data subject, or by written consent provided by the subject.

3.6 *Obligations to inform*

In most cases, when collecting personal data, the data collector must identify itself and inform the subject of certain details including the purposes of collection, the duration, location and methods of use of the data and any intended recipients of the data. For any personal data obtained from a source other than the data subject, the data collector must inform the subject of same prior to processing or using the personal data.

3.7 Like the CDPA, the PIPA requires data controllers to implement reasonable measures to prevent unauthorized disclosure, loss, theft or damage of personal data. The PIPA further requires data controllers to inform subjects of any loss, disclosure, theft or other infringement of their personal data.

3.8 *Registration*

The PIPA abolishes the current registration and public announcement requirements for non-government data controllers as universal application of the PIPA obviates the need for registration, and the use of obligations to inform replaces public announcement as a more direct and fair means of informing subjects of the intended purpose of collecting, processing or using their personal data.

3.9 *Prohibited data*

Personal data related to medical treatment, genetics, sexual life, health examinations, and criminal records (none of which are defined in the PIPA) may not be collected, processed, or used. However, this restriction shall not apply under any of the following circumstances:

(a) as expressly provided by law;

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(b) as necessary for a public agency to exercise its statutory duties or a non-public agency to perform its statutory obligations, and where appropriate measures are taken to maintain security;

(c) the personal data has voluntarily been made public by the subject or otherwise has already lawfully been made public;

(d) the personal data is collected, processed, or used by a public agency or academic research institution, for medical, health, or crime-prevention purposes, as necessary for statistical or academic research, and where specific procedures are followed.

3.10 The competent authority may restrict international transmission of personal data by a non-public agency where:

(a) such transmission involves a material national interest;

(b) such transmission is subject to special provisions of an international treaty or agreement;

(c) the receiving nation lacks sound laws and regulations to adequately protect personal data, such that the rights and interests of subjects are likely to be injured;

(d) personal data is transmitted to a third country (or region) by a circuitous means to evade this Act.

3.11 *Use outside specified purposes / "opt out"*

The use of personal data must be within the scope of the original specified purposes for collecting the data. In most cases, a data controller would need to obtain the data subject's written informed consent to exceed this scope. There are exceptional circumstances listed in the PIPA, however, including where such use prevents harm to the data subject or a third party.

If use outside the specified purpose is for marketing purposes, the data controller must at its own expense provide the data subject a means to "opt out".

3.12 *Sanctions*

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The PIPA grants administrative authorities various means to sanction data controllers that violate the act. Authorities may prohibit the collection, processing or use of personal data, order the deletion of data, seize or destroy data collected illegally and publicly announce the details of the violation and identify the data collector. Authorities may also impose fines ranging from NTD 20,000 to NTD500,000 on offenders over and above such measures. It should be noted a company representative would be subject to the same fine imposed on a company for contravention of the PIPA unless the representative can prove that he or she took measures to prevent the violation.

3.13 The PIPA increases criminal penalties for violations with "intent to profit" and removes "actual damage" thresholds required to establish criminal liability under the CDPA. Under the PIPA, criminal liability is initiated where a data controller illegally collects, processes or uses personal data in a way that is likely to harm the data subject. Where such illegal activity is undertaken with intent to profit, offenders face more severe punishment of detention of up to five years and a fine of up to NTD1 million.

3.14 Under the PIPA, an injured party may claim actual and non-pecuniary damages. The maximum total damages that may be claimed under the PIPA is NTD200 million, ten times that under the CDPA, for a breach arising from the same facts. An injured party may also claim measures to restore damage to their reputation. The PIPA also allows for class action suits whereby 20 or more claimants may collectively bring suit through a foundation or public interest association.

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