



COMMENTS ON DRAFT NOTIFICATIONS ON THE PROTECTION OF PERSONAL DATA TRANSFERRED TO A FOREIGN COUNTRY PURSUANT THE PERSONAL DATA PROTECTION ACT 2019

November 10, 2023

On behalf of BSA | The Software Alliance (**BSA**)¹ and the Global Data Alliance (**GDA**),² we thank the Office of the Personal Data Protection Committee (**PDPC Office**) for soliciting feedback from the private sector on the Draft Notification of the Personal Data Protection Committee on Criteria for the Protection of Personal Data Sent or Transferred to a Foreign Country Pursuant to Section 28 of the Personal Data Protection Act 2019 (**Notification Pursuant to Section 28**), and the Draft Notification of the PDPC on Criteria for the Protection of Personal Data Sent or Transferred to a Foreign Country Pursuant to Section 29 of the Personal Data Protection Act 2019 (**Notification Pursuant to Section 29**).³

I. Introduction

We recently provided comments to the PDPC Office on the Draft Notification of Appropriate Personal Data Protection for International Transfer Under the Personal Data Protection Act 2019 (BSA comments⁴)(GDA comments⁵). We have been following with great interest developments related to the Personal Data Protection Act (**PDPA**). We value our engagements with the PDPC Office and are glad to continue discussions that started since 2022. This submission adds to the list of recommendations BSA has provided on the PDPA and its draft subordinate regulations and implementing rules, with a listing of the submissions and the respective online links below:

- BSA Comments on the Draft Notification on Rules and Methods of Personal Data Breach Notification under the Personal Data Protection Act 2019⁶
- BSA Comments on the Draft Notification of Appropriate Personal Data Protection for International Transfer Under the Personal Data Protection Act 2019⁷

¹ BSA's members include: Adobe, Alteryx, Altium, Amazon Web Services, Asana, Atlassian, Autodesk, Bentley Systems, Box, Cisco, Cloudflare, CNC/Mastecam, Dassault, Databricks, DocuSign, Dropbox, Elastic, Graphisoft, IBM, Informatica, Juniper Networks, Kyndryl, MathWorks, Microsoft, Nikon, Okta, Oracle, Palo Alto Networks, Prokon, PTC, Rockwell, Rubrik, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, TriNet, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc.

² GDA members are headquartered across the globe and are active in many different sectors. See www.globaldataalliance.org.

³ See http://law.go.th/listeningDetail?survey_id=MjgyNERHQV9MQVdfRIJPTIRFTkQ= and http://law.go.th/listeningDetail?survey_id=MjgyM0RHQV9MQVdfRIJPTIRFTkQ=.

⁴ See <https://www.bsa.org/policy-filings/thailand-bsa-comments-on-the-draft-notification-of-appropriate-personal-data-protection-for-international-transfer-under-the-personal-data-protection-act-2019>.

⁵ Global Data Alliance, Comments on Draft Notification of Appropriate Personal Data Protection for International Transfer Under the Personal Data Protection Act 2019 (October 24, 2022), <https://globaldataalliance.org/wp-content/uploads/2022/10/10242022gdathint.pdf>.

⁶ See <https://www.bsa.org/policy-filings/thailand-bsa-comments-on-the-draft-notification-on-rules-and-methods-of-personal-data-breach-notification-under-the-personal-data-protection-act-2019>.

⁷ See <https://www.bsa.org/policy-filings/thailand-bsa-comments-on-the-draft-notification-of-appropriate-personal-data-protection-for-international-transfer-under-the-personal-data-protection-act-2019>.

- BSA Comments on Thailand’s Personal Data Protection Act 2019 Draft Implementing Rules⁸
- Third Group of Draft Subordinate Regulations under the Personal Data Protection Act 2019⁹
- Second Group of Draft Subordinate Regulations under the Personal Data Protection Act 2019¹⁰
- BSA’s Comments on the Draft Subordinate Regulations under the Personal Data Protection Act 2019¹¹

We offer four main comments in this submission:

1. We recommend establishing a trusted mechanism for the review of Binding Corporate Rules (**BCRs**), and accepting BCRs that have already been reviewed and approved by Data Protection Authorities in other jurisdictions;
2. We welcome the recognition of contracts as valid transfer mechanisms;
3. We recommend including internationally recognized mechanisms under certifications; and
4. We welcome the clarification on roles and responsibilities of data controllers and data processors.

II. About BSA and GDA

BSA is the leading advocate for the global software industry. Our members are enterprise software companies that create business-to-business technologies that help organizations of all sizes and kinds to innovate and grow. For example, BSA members develop and provide tools including cloud storage and data processing services, customer relationship management software, human resource management programs, identity management services, and collaboration software. BSA offers our extensive global experience in technology policy to serve as a resource and we hope that our comments in this submission will be helpful to the PDPC Office.

The GDA is a cross-industry coalition of companies that are active in many sectors of the economy and headquartered around the world. GDA member companies are committed to high standards of data privacy, data security, and data responsibility which relies on the ability to transfer data in real time across digital networks to innovate and create jobs. The GDA supports policies that help instill trust in the digital economy while safeguarding the ability to access technology and share knowledge and information data across borders.

BSA and GDA members share a deep and long-standing commitment to protecting data across technologies and business models as they recognize that today’s cross-border economy depends on the trust of customers and the public.

⁸ See <https://www.bsa.org/policy-filings/thailand-bsa-comments-on-thailands-personal-data-protection-act-2019-draft-implementing-rules>.

⁹ See <https://www.bsa.org/policy-filings/thailand-third-group-of-draft-subordinate-regulations-under-the-personal-data-protection-act-2019>.

¹⁰ See <https://www.bsa.org/policy-filings/thailand-second-group-of-draft-subordinate-regulations-under-the-personal-data-protection-act-2019>.

¹¹ See <https://www.bsa.org/policy-filings/thailand-bsas-comments-on-the-draft-subordinate-regulations-under-the-personal-data-protection-act-2019>.

III. General Comments

As reflected in the GDA's Cross-Border Data Policy Index,¹² the ability to access technology and transfer data securely across international digital networks is of central importance to both economic¹³ and other governmental policy objectives.¹⁴ We therefore welcome the recognition of multiple mechanisms for the transfer of personal data outside of Thailand within the Draft Notifications Pursuant to Sections 28 and 29.

IV. Recommendations on Binding Corporate Rules

We appreciate the additional clarification on BCRs and the intention of the PDPC Office to review and certify them.¹⁵ We appreciate that Clause 7 of the Draft Notification Pursuant to Section 29 states that the PDPC Office shall assess the content and substance of the BCR ensuring that it complies with the criteria within Clause 7. However, one significant concern is the potential exposure of sensitive business information within the BCR during the review and approval process. BCRs often contain proprietary information and trade secrets crucial to the functioning and competitiveness of the group of undertakings or affiliated institutions, or group of enterprises engaged in a joint economic activity. We respectfully suggest that the PDPC Office establish a trusted mechanism, including robust safeguards and protective measures during the review and approval process, that prevents unauthorized disclosure of proprietary information. Additionally, the PDPC Office should establish clear guidelines and oversight mechanisms to prevent any potential conflicts of interest among its personnel responsible for reviewing these confidential materials. This will not only promote confidence in the certification process but also protect the intellectual property and proprietary data of organizations seeking compliance.

Furthermore, we respectfully recommend that the PDPC Office consider the acceptance of the BCRs that have already been reviewed and approved by Data Protection Authorities in other jurisdictions. This will enable interoperability and legal certainty for companies that have already undergone a stringent review process.

V. Recommendations on Appropriate Safeguards

We Welcome the Recognition of Contracts as Valid Transfer Mechanisms

In particular, we welcome the clarifications provided in the Draft Notification Pursuant to Section 29 that contracts are recognized as valid mechanisms for the protection of personal data sent or transferred to a foreign country. This provides flexibility for organizations to structure data transfer agreements to meet their specific needs and situations and does not confine them to use standard contractual clauses.

We also appreciate the recognition of widely recognized standard contractual clauses, specifically the ASEAN Model Contractual Clauses and the EU Standard Contractual Clauses, as valid mechanisms for the transfer of personal data outside of Thailand. This allows many organizations that operate across the EU and ASEAN regions to use existing standard contractual clauses, allowing them to streamline operations and conform to Thailand's cross-border transfer requirements with minimal additional administrative burden. It is also a step towards interoperability in data protection in the region and beyond.

¹² See <https://globaldataalliance.org/resource/cross-border-data-policy-index/>.

¹³ See <https://globaldataalliance.org/wp-content/uploads/2021/07/gdafactsandfigures.pdf>.

¹⁴ See <https://globaldataalliance.org/issues/>.

¹⁵ See Clauses 5 to 7 of the Draft Notification Pursuant to Section 29.

Recommendation: Include Internationally Recognized Mechanisms for Certification

We appreciate the approach taken in recognizing widely accepted standard contractual clauses and recommend a similar approach for certifications. Likewise, certifications should include internationally recognized mechanisms such as the Global and APEC Cross Border Privacy Rules (CBPR) and Privacy Recognition for Processors (PRP), and the ISO 27701 by the International Standards Organization.

We Welcome the Clarification on Roles and Responsibilities of Data Controllers and Data Processors

We welcome the clarifications regarding the roles and responsibilities of data controllers and data processors in specific situations, particularly Clause 10(1)(c) and Clause 10(1)(d) of the Draft Notification Pursuant to Section 29 respectively. This allows the transferor and recipient of personal data to work out their respective obligations according to their roles of data controller or data processor accordingly.

VI. Conclusion

We appreciate the opportunity to provide our comments and recommendations on the Draft Notifications Pursuant to Section 28 and Section 29. We support the Government of Thailand's efforts in implementing the PDPA successfully and look forward to continuing working with the PDPC Office on privacy and personal data protection policies. Please do not hesitate to contact the undersigned at waisanw@bsa.org if you have any questions or comments regarding our suggestions.

Yours faithfully,

Wong Wai San

Wong Wai San
Senior Manager, Policy – APAC