

Personal Data Protection Act Amendments

In response to the Constitutional Court’s 2022 statement in case No. 111-Xian-Pan-13, the Health Insurance Database Case, as to how “in collectively observing the Personal Data Protection Act or other pertinent laws, there **lacks an independent supervisory mechanism for protecting personal data**, and exists insufficient protection on rights to personal data privacy, as well as a likelihood of violating the constitution, therefore relevant authorities shall, within three years of the announcement of this verdict, enact or amend any pertinent laws to establish a pertinent legal system,” and additionally, considering the frequency of personal information leakage incidents in both the public and private sectors recently, the Legislative Yuan passed the amendments of Article 1-1, Article 48 and Article 56 of the Personal Data Protection Act (“PDPA”) on May 16th, 2023 after three readings. The two key details from these amendments are summarized below:

I. The Addition of Article 1-1 to the PDPA: Implement a Comprehensive and Independent Supervisory Mechanism, the Personal Data Protection Commission (“PDPC”), to Act as the Competent Authority of the PDPA

Before the amendments were made, the PDPA did not have a designated competent authority, but instead they had different authorities operate jointly while the National Development Council was responsible for addressing relevant inquiries. However, as society technologically advances, personal data is no longer limited to hardcopies but is mostly stored as digital bits in the cloud storage or in company servers wherein being leaked by a malicious party can happen in the snap of a finger, yet before the current law was amended, there was no clear mechanism for supervising or protecting personal data— not even a competent statutory authority—which is seen as a huge flaw in the protection of personal data. Additionally, before the amendments, the unclear regulatory authority during the major information security crisis became another problem that was difficult to remedy in a clear-cut and timely manner; the Constitutional Court had then just released ruling No. 111-Xian-Pan-13, also to address the aforementioned issues, in the Health Insurance Database Leakage case and they ordered relevant authorities to enact or amend any pertinent laws within three years. In response to the issues stated

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above, the addition of Article 1-1 established the PDPC as the competent authority for the PDPA, coordinated the nation's many issues and affairs related to personal data protection and pioneered the government's involvement in personal data protection.

II. Amendment to Article 48 of the PDPA: Changing the Penalty System and Increasing Penalties

According to the previous iteration of Article 48, the penalty enforcement authority shall initially order parties belonging to non-government agencies that violate the PDPA to make rectifications before an issued deadline, and if the party fails to make the rectifications before the deadline, they are to be penalized according to law, but if improvements are made, then penalization is not necessary; with the maximum penalty only reaching NT\$200,000, and since such a small fine does very little to deter the juridical persons that are most prone to violating the PDPA, it was difficult to compel corporations to establish the appropriate internal control systems to protect personal data—a long-standing criticism of the law. Based on this, after the new amendment, parties belonging to non-government agencies who fail to adopt the appropriate security measures to protect personal data files under their retention, or have not established a strategy to maintain the security of personal data files or protocols for handling personal data after termination of employment, are subject to **direct fines and rectification orders** from the competent authorities and local governments without needing to first issue a rectification order before the penalty. The range of the fines was adjusted from NT\$20,000 to NT\$200,000 to a range of NT20,000 to NT\$2,000,000, and if rectifications are still not made within the allotted period, then a cumulative fine of NT\$150,000 to NT\$15,000,000 is imposed; for serious offences, an initial fine of NT\$150,000 to NT\$15,000,000 may be imposed. This new law establishes a specialized managerial authority and significantly increases monetary penalties in hopes of alerting the people to the importance of personal data protection and strengthening the state of Taiwan's information security.

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Appendix: Comparison Chart of Articles (Latest vs Original)

Amendment	Original Article
<p>Article 1-1 The PDPC will act as the competent authority of the PDPA. From the date of the PDPC's establishment, central government authorities, municipalities, county (city) governments as listed in this Act, as well as regulatory authorities listed in Articles 53 and 55 are under the jurisdiction of the PDPC.</p>	<p>(Newly added article)</p>
<p>Article 48 If a non-government entity (i.e., private entity) violates any of the following provisions, the central government authority in charge of the industry concerned or the municipality/city/county government concerned may order the non-government entity to rectify the violation within a specified period of time; if the non-government entity fails to rectify the violation in time, a fine between NT\$20,000 and NT\$200,000 shall be imposed on the non-government entity for each occurrence of the violation: 1. Article 8 or Article 9; 2. Article 10, Article 11, Article 12, or Article 13; 3. Paragraph 2 or Paragraph 3, Article 20 (Taiwan, National Development Council); Non-government entities that violate Paragraph 1 of Article 27 or have not established a strategy to maintain the security</p>	<p>Article 48 If a non-government entity violates any of the following provisions, the central government authority in charge of the industry concerned or the municipality/city/county government concerned may order the non-government entity to rectify the violation within a specified period of time; if the non-government entity fails to rectify the violation in time, a fine between NT\$20,000 and NT\$200,000 shall be imposed on the non-government entity for each occurrence of the violation: 1. Article 8 or Article 9; 2. Article 10, Article 11, Article 12, or Article 13; 3. Paragraph 2 or Paragraph 3, Article 20; and/or 4. Paragraph 1, Article 27, or failure to establish a security and maintenance plan for the protection of personal data files or a guideline on disposing personal data</p>

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<p>of personal data files or protocols for handling personal data after termination of employment pursuant to Paragraph 2 are subject to fines starting from NT\$20,000 to NT\$2,000,000 and a rectification order deadline issued by central government authorities, municipalities, and county (city) governments. Failure to rectify by the deadline will result in cumulative fines of NT\$150,000 to NT\$15,000,000.</p> <p>For material (serious) offences where non-government entities violate Paragraph 1 of Article 27 or have not established a strategy to maintain the security of personal data files or protocols for handling personal data after termination of employment pursuant to Paragraph 2, fines starting from NT\$150,000 to NT\$15,000,000 and a rectification order deadline will be issued by central government authorities, municipalities, and county (city) governments. Failure to rectify by the deadline will result in cumulative penalties.</p>	<p>following a business termination under Paragraph 2, Article 27 (Taiwan, National Development Council).</p>
<p>Article 56 The enforcement date of the PDPA shall be set by the Executive Yuan. The deletion of the current Articles 19 to 22 and Article 43 (amendments announced on May 26th, 2010) along with the amendment to Article 48 (announced on May 16th, 2023) become effective on the date of</p>	<p>Article 56 The enforcement date of the PDPA shall be set by the Executive Yuan. The deletion of Articles 19 to 22 and Article 43 under the pre-amendment PDPA becomes effective on the date of promulgation. If the date of promulgation as referred to in the preceding paragraph falls within the six</p>

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<p>promulgation.</p>	<p>month period within which the enterprises, groups or individuals designated in Paragraph 2 of Article 43 under the pre-amended PDPA are required to complete the registration or obtain the permit, such designated enterprises, groups or individuals may file an application to terminate the registration process. Upon the termination, the government authority in charge of the industry concerned shall refund the fees that have been paid. Those who have completed the registration may also apply for the refund.</p> <p>The fees referred to in the preceding paragraph shall be refunded together with the total daily interest incurred from the date of payment by the applicant to the date of the termination by the government authority based on the fixed annual interest rate for a one-year time deposit announced by the Department of Savings and Remittances, Chunghwa Post Co., Ltd. on the date of the payment. The same applies to the refund where the registration process has been completed. The interest thereon shall be incurred from the date of payment of the fee to the date when the government authority in charge of the industry concerned approves the registration (Taiwan, National Development Council).</p>
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