

Client Alert

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For further information, please contact:

Chew Kherk Ying
Partner
+603 2298 7933
kherk.ying.chew@wongpartners.com

Chen Hong Sze
Associate
+603 2298 7918
hong.sze.chen@wongpartners.com

Florence Tan
Associate
+603 2298 7986
florence.tan@wongpartners.com

Adeline Lew
Associate
+603 2298 7813
adeline.lew@wongpartners.com

www.wongpartners.com

Wong & Partners
Level 21, Suite 21.01
The Gardens South Tower
Mid Valley City
Lingkaran Syed Putra
59200 Kuala Lumpur

Personal Data Protection (Compounding of Offences) Regulations 2016

The Personal Data Protection (Compounding of Offences) Regulations 2016 ("the Regulations") came into effect on 16 March 2016.

The Regulations sets out the offences that may be compounded under Section 132 of the Personal Data Protection Act 2010 ("PDPA") and prescribes the manner in which offer, acceptance and payment of compounds may be made.

Where an offence has been compounded, no prosecution may be instituted against the person to whom the offer to compound was made, in respect of that offence.

The Commissioner may make an offer to compound a compoundable offence at any time after the offence has been committed but before any prosecution has been instituted. Although the value of the offer is at the discretion of the Commissioner, Section 132 of the PDPA limits the value of the compound offer to an amount not exceeding 50 percent of the maximum fine for the relevant offence.

The Regulations will ease backlog of prosecution cases and may signal the start of a stronger enforcement of the PDPA.

Compoundable Offences

The offences set out in Schedule 1 of the Regulations have been prescribed to be compoundable offences. These are:

| Subsection | Offence |
|-------------------|--|
| subsection 5(2) | Contravention of the data protection principles |
| subsection 16(4) | Processing of personal data even after the certificate of registration (for data users which need to be registered) has been revoked |
| subsection 18(4) | Continuing to process personal data even after its registration (for data users which need to be registered) has been revoked |
| subsection 19(2) | Failure to surrender the certificate of registration to Commissioner where the certificate of registration has been revoked |
| subsection 37(4) | With regard to requests for correction of expressions of opinion, failure to make a note in the appropriate manner that the requestor has considered that expression of opinion to be inaccurate, incomplete or misleading |
| subsection 38(4) | Failure to cease processing of personal data upon receiving notice that the data subject has withdrawn consent to such processing |
| subsection 40(3) | Failure to process sensitive personal data according to the restrictions set out in Section 40 (1) |
| subsection 43(4) | Failure to cease processing personal data for purposes of direct marketing upon receiving directions from the Commissioner to comply with the data subject's notice |
| subsection 108(8) | Failure to comply with an enforcement notice. |