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An overview of data protection requirements. What does good practice look like?

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AN OVERVIEW OF DATA PROTECTION REQUIREMENTS

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Legal bases for personal data processing

PRIOR NOTICE

DATA SUBJECT'S VALID CONSENT

- **Freely given**
- **informed and affirmative** i.e., the data subject must be aware of and agree to:
  1. the type of data to be processed (especially sensitive personal data)
  2. purposes, method, and start & end dates of processing
  3. Information of the entities related to the processing purposes
  4. Potential undesirable consequences/damages
  5. Rights and obligations of data subject.
- **unambiguous** i.e., consent must be expressed by a written or an oral statement, by ticking an 'Agree' box, text message using consent syntax etc.
- expressed in **printable** or **reproducible format**, including in electronic form or verifiable formats.

➔ The burdens of proving a consent is valid falls on the data controllers as well as data controller* cum *processors

1 | AN OVERVIEW OF DATA PROTECTION REQUIREMENTS

Processing Of Personal Data Without Consent

- **Emergency situations** where the immediate processing of personal data is necessary to the protection of the life and health of the data subject or others
- **Statutory disclosure**
- The processing by state authorities in emergency situations of **national defence/security, social order and safety**, among other
- The processing of personal data obtained **from audio and video recording activities** in public places for reasons of national security, social order and safety, and for protecting the legitimate rights and interests of entities and individuals as provided by laws
- Other cases as provided by the PDPD and/or other specialised legislations.

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Notable differences between GDPR and Decree 13 (PDPD)

Criteria	GDPR	Decree 13 (PDPD)
'Data controller *cum* processor' concept	None-existent. However, both the EC and ICO acknowledge that there are situations where an entity can be both a data controller and a data processor, but not for the same processing activity.	An entity that determines the purposes and method of data processing and directly processes personal data.
Consent requirements	GDPR elaborates on when a consent is freely given i.e., the individual must have a free choice and must be able to refuse or withdraw consent without being at a disadvantage.	The PDPD is silent on this matter.
Processing of children personal data	-Requires any information addressed specifically to a child should be adapted to be easily accessible, using clear and plain language. -Age threshold for obtaining parental consent is typically between 13 and 16.	-No requirements for the language to be used when addressing specifically to a child. -Requires consent from a child of 7 and above in addition to parental consent.
When is a DPIA required?	Whenever processing is likely to result in a high risk to the rights and freedoms of individuals	As soon as the commencement of personal data processing

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PRACTICAL EXPERIENCE

2 | PRACTICAL EXPERIENCE – WHAT DOES GOOD PRACTICE LOOK LIKE?

Typical requests by A05 in respect of a Data Protection Impact Assessment (DPIA)

FORMALITY

- Legalisation of documents issued overseas and certified Vietnamese translation
- A05 may in practice accept copies certified / affixed with the applicant's corporate stamp

SUBSTANCE

- Details of data processors and third parties in a DPIA
- Data processing/transfer agreement between the applicant and data processor(s)
- Consent form(s) applicable to each type of data subjects
- In the event of cross-border data transfer: the DPIA for data processing of overseas data recipients

Thank you!