

**Memorandum of Principles and Rationale of  
[Draft] Personal Data Protection Act  
B.E. ...**

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**Principles**

To enact the law on personal data protection.

**Rationale**

The advancement of information technology, including communications system, has increased the ease, convenience and swiftness of the collection, use and disclosure of personal data, which may cause nuisance or damage in case where such personal data is commercialised or disclosed without prior consent or notice. Despite the enactment of laws covering certain areas of personal data protection, there has not been any rule, mechanism, or measure regulating personal data protection existing as a matter of general principles, therefore, it is necessary to enact this Act.

**[Draft]**  
**Personal Data Protection Act**  
**B.E. ...**

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Whereas it is expedient to have the law on personal data protection.

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Section 1 This Act is called “Personal Data Protection Act, B.E. ...”

Section 2 This Act shall come into force after the expiration of two hundred and forty days from the date of its publication in the Government Gazette.

Section 3 Any person shall be entitled to have their personal data protected under this Act, except where a specific law or rules has/have been enacted to regulate particular areas of personal data protection and where such law/rules has/have a guarantee of fairness and standards which are not inferior to those prescribed by this Act.

Section 4 This Act shall be enforced against Personal Data Administrators, except where a Royal Decree prescribes that this Act shall not be enforced, either in whole or in part, against Personal Data Administrators in a certain manner or as regards a certain activity.

Section 5 In this Act,

- “Personal Data” means any data pertaining to a person, which enables the identification of such person, whether direct or indirect;
- “Personal Data Administrator” means a person having the powers and duties to make decisions regarding the management of personal data, including its collection, use, and disclosure under this Act;
- “Data Owner” means the person owning the personal data;
- “Person” means a natural person or a juristic person;
- “Committee” means the Personal Data Protection Committee;
- “Competent Official” means any person appointed by the Secretary to perform acts under this Act;
- “Office” means the Office of the National Cybersecurity Committee;
- “Secretary” means the Secretary of the Office of the National Cybersecurity Committee;
- “Minister” means the minister having the charge and control of the execution of this Act.

Section 6 The Minister of Digital Economy and Society shall have the charge and control of the execution of this Act.

## **Chapter I**

### **Personal Data Protection Committee**

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Section 7 There shall be a committee called “Personal Data Protection Committee”, consisting of:

(1) a Chairperson appointed by the Council of Ministers from the persons having distinguished knowledge, skills, and experience in the field of personal data protection, or information and communication technology, or any other field that is relevant and useful for the protection of personal data;

(2) 4 *ex officio* members consisting of the Permanent Secretary of the Office of the Prime Minister, the Permanent Secretary of the Ministry of Digital Economy and Society, the Permanent Secretary of the Ministry of Interior, and the Secretary of the National Security Council;

(3) not more than 4 qualified members, appointed by the Council of Ministers from the persons having distinguished knowledge, skills, and experience in the field of person data protection, consumer protection, social sciences, information and communication technology or law, or any other field that is relevant and useful for the protection of personal data.

The Secretary shall *ex officio* be member and secretary and shall have the power to appoint assistant secretary as deemed necessary.

The rules and procedures on the selection of persons to be appointed as Chairman and qualified members, including the selection of persons to replace the qualified members who vacate office before the expiration of the term under section 10, shall be as prescribed by the Rules issued by the Minister.

The Office shall perform the duties as the secretary agency for the Committee established under this Act and shall have the duties to perform acts in order to carry out the resolutions of the Committee, including performing any other acts in accordance with the objectives of this Act.

Section 8 The Chairperson and qualified members shall have the qualifications and not be under the prohibitions, as follows:

- (1) being of Thai nationality;
- (2) not being bankrupt or having been dishonestly bankrupt;
- (3) not being an incompetent or quasi-incompetent;
- (4) not having been sentenced by a final judgment to imprisonment, except for an offence committed through negligence or a petty offence.

Section 9 The Chairperson and qualified members shall hold office for a term of three years.

Upon the expiration of the term of office under Paragraph one, if a new Chairperson or member has not yet been appointed, the Chairperson or member whose term of office has expired shall be in office to continue to perform his or her duties until a new Chairperson or member assumes his or her duties.

The Chairperson or a member who vacates office upon the expiration of the term may be reappointed, but may not be appointed for more than two consecutive terms.

Section 10 In addition to vacating office upon the expiration of the term under section 9, the Chairperson or a member vacates office upon:

- (1) death;
- (2) resignation;
- (3) being dismissed by the Council of Ministers due to negligence in the performance of duty, disgraceful behaviour, or incapability;
- (4) being disqualified or under any of the prohibitions under section 8.

In case where the Chairperson or a qualified member vacates office before the expiration of the term or where there is an appointment of an additional qualified member while the appointed qualified members remain in office, the person appointed to replace the vacated member or the additional appointee shall be in office for the unexpired term of office of the Chairperson or the qualified members already appointed, except where the unexpired term of office is less than ninety days, the appointment of the new Chairperson or a new qualified member may not have to be made.

In case where the Chairperson or a qualified member vacates office before the expiration of the term, the Committee shall consist of all existing members until a new Chairperson or a new qualified member has been appointed, and in case where the Chairperson vacates office before the expiration of the term, the remaining members shall elect one among themselves to temporarily perform the duties of the Chairperson.

Section 11 At a meeting of the Committee, the presence of not less than one-half of members is required to constitute a quorum.

The Chairperson shall preside over the meeting. In case where the Chairperson does not attend the meeting or is unable to perform the duties, the Vice-Chairperson shall preside over the meeting. In case where the Chairperson or the Vice-Chairperson does not attend the meeting or is unable to perform the duties, the members present shall elect one among themselves to preside over the meeting.

A decision of the meeting shall be made by a majority of votes. In casting a vote, each member shall have one vote. In the case of an equality of votes, the presiding member shall have an additional vote as the casting vote.

The meetings of the Committee may be conducted via electronic means or any other means as prescribed by the Committee.

Section 12 Any member having direct or indirect interest in the matter being considered in the meeting shall inform the meeting of such interest prior to the meeting, and such member shall be prohibited from attending the meeting considering such matter.

Section 13 The Committee shall have the following powers and duties:

(1) to make strategic plans on the operation for the support and protection of personal data which are coherent with relevant policies and national plans, including proposing measures for solving issues and obstacles arising from the execution of such policies and strategic plans;

(2) to support and assist government agencies, the private sector, and the civil society in the carrying out of activities in accordance with the policies and strategic plans under (1), including conducting the assessment of the implementation of such policies and strategic plans, for the submission to the Committee.

(3) to determine measures or approaches of the operation in relation to personal data protection so as to ensure compliance with this Act;

(4) to monitor the protection of personal data so as to ensure compliance with this Act;

(5) to grant the mark certifying practice on personal data protection;

(6) to issue Notifications or Rules for the execution of this Act;

(7) to make recommendations to the Council of Ministers on the enactment or revision of parts of the laws or rules applicable to the protection of personal data which are already in force;

(8) to provide advice or consultancy on any operation for the protection of personal data either by the government or private agencies;

(9) to support and assist the building of learning skills and understanding on the protection of personal data among the public;

(10) to support and assist researches for the development of technology relating to the protection of personal data;

(11) to regulate and monitor the Competent Officials, government agencies, or Personal Data Administrators so that they exercise their powers and perform their duties as prescribed by law;

(12) to examine the complaints made by the persons concerned under this Act, including ruling on disputes arising between the persons concerned;

(13) to appoint sub-committees, working groups, or Competent Officials for the purpose of considering or performing any act as entrusted by the Committee;

(14) to perform other acts for the fulfilment of the objectives under this Act.

In the performance of duties under this section, the Committee may entrust the Office to perform acts or submit proposals to the Committee for its consideration for further action.

Section 14 The Official Information Commission shall have the powers under section 13 (11) - (13) in case where the Personal Data Administrator is a government agency under the law on official information, with the exception of state enterprises under the law on budget procedures.

Section 15 The Committee shall receive meeting allowance and other benefits in accordance with the rules prescribed by the Council of Ministers.

The sub-committees and working groups shall receive meeting allowance and other benefits in accordance with the rules prescribed by the Committee.

Section 16 The Committee shall have the power to order any person to submit documents or information regarding a matter being subject to a complaint or any other matter relating to the protection of the rights of persons under this Act. For this purpose, a person may also be summoned to explain facts.

Section 17 In the performance of duties under this Act, the Committee shall give the person accused or suspected of having committed an act in violation of the provisions of this Act an opportunity to explain facts, express opinions, and challenge and present his/her own evidence as appropriate, except in case of necessity and urgency.

The provisions of Paragraph one shall not be enforced in the following cases, except where the Committee deems otherwise:

- (1) where necessary and urgency dictate that any delay shall cause serious damage to any person or affect the public interest;
- (2) where it will result in the specified timeframe in a law or rules being exceeded;
- (3) where they are facts submitted by the other party in a request, testimony or statement;
- (4) where it is apparent in itself that such opportunity is not possible;
- (5) any other case as prescribed by the Committee.

In prescribing or issuing orders under this Act, the Committee shall have regard to the damage that may occur to the persons concerned and in case where it is deemed appropriate, the Committee may prescribe provisional conditions or procedures to enforce such orders.

Section 18 In the performance of duties under this Act, the Committee, sub-committees, and consultants appointed by the Committee shall be officials under the Criminal Code.

In case where the persons under Paragraph one honestly perform their duties, they shall be exempt from civil and criminal liabilities.

## **Chapter II**

### **Personal Data Protection**

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#### Part 1

#### General Provisions

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Section 19 The collection, use, disclosure, alteration, or any action on personal data shall be lawful insofar as it is conducted in accordance with the rules provided under this Act.

Section 20 An operation on personal data shall be permitted insofar as it complies with the purpose of its collection, use, or disclosure.

If there is any change to the purpose under Paragraph one, the Personal Data Administrator shall inform the Data Owner or obtain the Data Owner's consent, depending on the circumstances.

## Part 2 Personal Data Collection

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Section 21 Any collection of personal data is not permitted, except where:

(1) the collection falls within a lawful purpose which is directly related to the activities of the Personal Data Administrator; and

(2) such collection of data is only carried out to the extent that it is necessary, considering the scope of the purpose, or is done for the benefit that is directly related to the purpose of such collection.

Section 22 In collecting personal data, the Personal Data Administrator shall inform the Data Owner, either prior to or during such collection, of the following details:

(1) the purpose of the collection;

(2) the data to be collected;

(3) the categories of persons or agencies to whom the collected personal data may be disclosed;

(4) information regarding the Personal Data Administrator, contact address, and means of contact;

(5) the rights of the Data Owner under section 28, section 29 and section 32.

In case where there is reasonable cause preventing the performance required under Paragraph one, the Personal Data Administrator shall inform the Data Owner of the details under Paragraph one without delay.

Section 23 In collecting personal data, the Personal Data Administrator shall be exempt from complying with section 22 in any of the following cases:

(1) where it is for the benefit that is related to the planning, or the collecting of statistics, or making of census by government agencies;

(2) where it is for the benefit of an investigation and interrogation by officials in accordance with the law or of a court trial;

(3) where it is to prevent or suppress a danger to a person's life, body or health;

(4) where the data is lawfully disclosed to the public;

(5) where it is a performance prescribed by law, or ordered by the Court;

(6) where it is as otherwise prescribed by the Ministerial Regulation.

Section 24 The Personal Data Administrator shall not collect personal data from any other source apart from the Data Owner, except where:

(1) the Personal Data Administrator has informed the Data Owner of the collection of personal data from another source prior to or during such collection without delay;

- (2) it is a collection of personal data from the use and disclosure which falls within any of the exceptions under section 23;
- (3) the data is disclosed to the public.

Section 25 Any collection of personal data pertaining to ethnicity, race, political opinions, doctrinal, religious or philosophical beliefs, sexual behaviour, criminal records, health records, or of any data which may upset another person's or the people's feelings as prescribed by the Committee, without the consent of the Data Owner or the person(s) concerned, is prohibited, except where:

- (1) any of the exceptions under section 23 (2), (3), or (5) applies;
- (2) it is as otherwise prescribed by the Ministerial Regulation.

### Part 3 Use or Disclosure of Personal Data

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Section 26 The Personal Data Administrator shall not use or disclose personal data, except where the use or disclosure is in accordance with its purpose or is necessary for the benefit that is directly related to the purpose of the collection, and where the Data Owner has given consent prior to or during such use or disclosure.

In case where any of the exceptions under section 23 applies, the Personal Data Administrator may not comply with the provisions of Paragraph one.

If there is a use or disclosure of personal data under Paragraph 2, the Personal Data Administrator shall keep note of such use or disclosure and subsequently inform the Data Owner of such use or disclosure without delay.

The person or agency who obtains personal data as a result of the disclosure under Paragraph one shall not use or disclose such personal data for any purpose other than the purpose for which such personal data has been originally obtained.

The person or agency who obtains personal data as a result of the disclosure under Paragraph two shall not use or disclose such personal for any purpose other than the purpose for which the personal data has been obtained from such use or disclosure.

Section 27 There shall not be any delivery or transfer of personal data to another country whose rules on the protection of personal data is substantively inferior to the standards afforded under this Act, except in the following cases:

- (1) where the law so prescribes;
- (2) where the consent of the Data Owner has been obtained;
- (3) where it is necessary for the purpose of performing an obligation arising from a contract to which the Data Owner is a party, or from a contract that exists for the benefit of the Data Owner;
- (4) where it is for the benefit of a person incapable of giving consent;
- (5) where it is a transfer to a person who has been granted the mark certifying practice on personal data protection by the Committee, or under the framework of an international co-operation or an international mission.



The Committee may prescribe a list of countries whose rules on the protection of personal data are not substantively inferior to the standards afforded under this Act.

Part 4  
Rights of Data Owner  
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Section 28 A Data Owner is entitled to request access to the personal data pertaining to him/herself which is under the responsibility of the Personal Data Administrator, except in the following cases:

- (1) where it is inconsistent with the provisions of another law or a court order;
- (2) where it impacts the Kingdom's security;
- (3) where it impacts the country's economy and commerce;
- (4) where it affects the investigation and interrogation of officials in accordance with the law or court trials;
- (5) where it is to protect the Data Owner or the rights and freedoms of another person.

Section 29 In case where the Personal Data Administrator fails to comply with the rules under this Act, the Data Owner is entitled to request the Personal Data Administrator to destroy, or temporarily suspend the use of the personal data, or convert the personal data into a form with anonymity.

In case where the Personal Data Administrator fails to act in compliance with Paragraph one, the Data Owner may request the Committee to order the Personal Data Administrator to act.

Section 30 The Personal Data Administrator shall ensure that the personal data remains correct, up-to-date, complete, and not misleading, except where the law prescribes otherwise.

In case where the Data Owner requests the Personal Data Administrator to act in compliance with Paragraph one, if the Personal Data Administrator fails to comply with such request and there is no law prescribing the Personal Data Administrator to so act, the Personal Data Administrator shall keep record of such request of the Data Owner with the personal data.

Section 31 The Personal Data Administrator shall have the following duties:

- (1) to issue appropriate security measures for the purpose of preventing loss, access to, alteration, correction or disclosure of personal data without powers, or unlawful use of personal data;
- (2) in case where the personal data is required to be passed on to another person, to take action to prevent such person from using or disclosing such personal data without powers;

(3) to destroy personal data once the period of storage expires, or the personal data which is irrelevant to or exceeds the scope of necessity of the purpose for which it has been collected, or the personal data to which the Data Owner has withdrawn consent;

(4) to inform the Data Owner of any incident of violation of personal data without delay and of the plan to remedy the damage caused by such violation, except where the number of persons affected by such violation of personal data exceeds ten thousand, the Personal Data Administrator shall have the duty to report such incident of violation of personal data and the result of the remedial measure to the Data Owners and the Committee.

Section 32 The Personal Data Administrator shall put together the following items so that the Data Owner or the Committee can examine, except where the law prescribes otherwise:

- (1) the personal data collected;
- (2) the purpose of the collection of personal data in each category;
- (3) details of the Personal Data Administrator;
- (4) the period of storage of personal data;
- (5) conditions relating to the persons entitled to access to personal data and conditions for such access to personal data;
- (6) details on the rights to and means of access to personal data.

### **Chapter III** **Practice on Personal Data Protection**

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Section 33 In the collection, use, or disclosure of personal data under this Act, the Personal Data Administrator may issue a practice on personal data protection to determine the procedures for personal data protection.

Section 34 the Committee may produce and disseminate guidelines on personal data protection so that the Personal Data Administrator can use as an approach in producing their practice on personal data protection which falls within their responsibility.

The Committee may revise the guidelines under Paragraph one, provided they take into account the appropriateness to and coherence with the measures on personal data protection which have been developed or changed.

Section 35 The Committee may grant the mark certifying practice of personal data protection to a Personal Data Administrator who has applied for such mark and who has a practice on personal data protection with standards that are not inferior to those of the guidelines under section 34.

The Committee may summon the Personal Data Administrator who has applied for the mark certifying practice of personal data protection to give any information or submit any documents relating to their practice on personal data protection.

The rules and procedures for the application for the mark under Paragraph one shall be as prescribed by the Committee.

## **Chapter IV Complaints**

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Section 36 When there is cause for suspicion that any operation in relation to personal data may cause damage to the Data Owner, the Committee may order the Personal Data Administrator to prove such operation. If the Personal Data Administrator fails to prove such operation or delays such proof without reasonable cause, the Committee may arrange for a proof with expenses to be paid by the Personal Data Administrator.

If the outcome of the proof shows that any operation in relation to personal data may cause damage to the person concerned or any other person and in case where the prevention, as required under this law or any other law, of the damage that may arise from such operation is not possible, the Committee shall have the power to prohibit such operation and if it is deemed appropriate, the Committee may order the agency or the Personal Data Administrator to perform any act subject to the conditions prescribed by the Committee.

In case where any operation in relation to personal data cannot be corrected or altered, the Committee shall have the power to order the Personal Data Administrator to destroy the personal data, with expenses to be paid by the Personal Data Administrator.

In case of necessity and urgency, if the Committee has a reasonable cause to believe that any operation in relation to personal data may cause damage to the person concerned or any other person, the Committee shall have to power to prohibit any operation in relation to personal data in accordance with Paragraph one, Paragraph two, or Paragraph three.

Section 37 In case where a right of the Data Owner under this Act has been affected or may be affected, the Data Owner may file a complaint to the Committee and the Committee may order the Personal Data Administrator to perform or not perform any act so as to give effect to such right.

The rules and procedures for the filing of complaint under Paragraph one shall be as prescribed by the Committee.

Section 38 For the benefit of facilitation to the public, costs saving and efficiency in operations, the Committee shall prescribe rules regarding the duration and process in the examination of complaints as appropriate to the circumstances, provided that these are not inconsistent with the rules under this Act.

Section 39 Once a complaint has been filed under this Act, the Committee shall complete its examination without delay and shall give the person filing the complaint or the person concerned an opportunity to explain and submit evidence together with their explanation as appropriate.

The Committee shall inform the person filing the complaint of rejection or termination of such complaint with reason for such decision.

Section 40 Any person is entitled to file a complaint against the Committee in accordance with the provisions of this Act. The filing of complaint under this Act shall not

deprive the person filing the complaint of their right to take action in accordance with other laws.

Section 41 In the execution of this Act, the Competent Officials shall have the following powers and duties:

- (1) to examine the location connected to the complaint by notifying the owner or possessor of such location within reasonable time in advance;
- (2) to seize or attach assets, documents or any object in connection with the committing of offence under this Act, for the benefit of examination or prosecution;
- (3) to perform any act as entrusted by the Committee.

## **Chapter V Civil Liabilities**

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Section 42 The Personal Data Administrator shall compensate for any damage caused to the Data Owner as a result of any operation in relation to personal data, regardless of whether the Personal Data Administrator was acting intentionally or negligently in such operation, except where the Personal Data Administrator proves that such operation was a result of:

- (1) a force majeure;
- (2) an action taken in compliance with an order of the Government or a government official;
- (3) an act or omission of the person concerned or another person;
- (4) an action taken in full compliance with the practice on personal data protection issued by the Personal Data Administrator.

The compensation under Paragraph one includes all expenses borne by the Committee and government agencies in the prevention of such damage.

## **Chapter VI Penalties**

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Section 43 The Personal Data Administrator who fails to comply with the orders of the Committee under section 36 or section 37 shall be liable to a fine not exceeding two hundred thousand baht, and to additional fine at a daily rate not exceeding five thousand baht until due compliance with legal requirements.

Section 44 The Personal Data Administrator who violates or fails to comply with section 22 Paragraph one, section 24, section 25, section 26, section 27, section 30, section 31, or section 32 shall be liable to imprisonment for a term of not exceeding six months, or to a fine not exceeding three hundred thousand baht, or to both.

If the offence under Paragraph one is committed in order to unlawfully benefit himself/herself or another person, or to cause damage to another person, the Personal Data

Administrator shall be liable to imprisonment for a term of not exceeding two years, or to a fine not exceeding two million baht, or to both.

Section 45 Any person who comes to know of personal data of another person as a result of the performing of duties under this Act and discloses it to any other person shall be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding twenty thousand baht, or to both.

The provisions of Paragraph one shall not be enforced against disclosures in any of the following cases:

- (1) where it is a performance of duty;
- (2) where it is for the benefit of an investigation and interrogation of officials under the law or of a court trial;
- (3) where it is for the benefit of the prosecution against a person committing an offence under this Act;
- (4) where it is for the benefit of a correction in order to comply with the rules on personal data protection prescribed by the Committee;
- (5) where it is a disclosure to a domestic or foreign government agency involved in such matter;
- (6) where written consent of such person has been obtained.

Section 46 Any person who requests the alteration of personal data which leads to a misunderstanding as to its substance shall be liable to imprisonment for a term of not exceeding three years, or to a fine not exceeding sixty thousand baht, or to both.

### **Transitional Provisions**

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Section 47 The Office shall arrange for the appointment of the Chairperson and qualified members within ninety days from the date of coming into force of this Act.

Section 48 During such time that the Secretary has not yet been appointed, the Secretary of the Electronic Transactions Development Agency shall perform the duties as member and secretary of the Committee.

Section 49 During such time that the Office has not yet been established, the Electronic Transactions Development Agency shall perform the duties as secretary office of the Committee.

Section 50 Any person who has been a Personal Data Administrator under this Act before the date of coming into force of this Act shall comply with the provisions of this Act, or the Regulations, Rules, and Notifications issued under this Act, except:

- (1) as regards the personal data in their possession before the date of coming into force of this Act, which shall be exempt from compliance with section 22, section 23, section 24, section 25 to the extent that it relates to the collection of personal data;

(2) as regards section 31(1) with which compliance is required within ninety days from the date of the publication in the Government Gazette of this Act.

Countersigned by:

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Prime Minister