

**Do you meet the requirements under the Personal Data Protection Act?**

Does your company provide personal data to a country outside the European Union, and do you meet the requirements under the Personal Data Protection Act (*Wet Bescherming Persoonsgegevens*) ("PDPA") for international data transfers? Does it have a privacy statement? Does it comply with the obligation to notify the Dutch Data Protection Board (*College Bescherming Persoonsgegevens*) ("DPB"), or is it exempted?

On Wednesday 23 June 2004, the DPB, the supervisory body in this field, announced that, with immediate effect, it will commence its annual spot checks of compliance with the notification obligation. The first checks will be carried out at debt collection agencies. Investigations into compliance with the notification obligation will also be carried out in other sectors. If you process personal data, it is therefore crucial to ensure that you meet the obligations under the PDPA. The DPB announced some time ago that it intended to become stricter in supervising compliance with, for example, the notification obligation, one of the obligations laid down in the Act.

In 2003, the DPB first started with spot checks of compliance with the notification obligation, focussing on a number of municipalities, health insurers, health and safety services and direct marketing companies. According to the DPB, these checks resulted in the first fines, which were imposed on a municipality and two companies and ranged from EUR 3,000 to EUR 15,000. The investigations that started in 2003 are expected to be completed this summer, at which time the DPB will publish an overview of the results.

If your company processes personal data – and which company doesn't – the obligations under the PDPA must be complied with. The Privacy Specialist Group advises clients on all issues related to the processing of personal data, including preparing privacy statements, transferring personal data internationally, drawing up email and internet protocols, camera supervision, recording of telephone conversations, option plans, the notification obligation and marketing activities. If you have any further questions, please contact Jacqueline van Essen (Corporate, Amsterdam) and/or Judith Lichtenberg (IP/ICT/Telecom, Amsterdam), both members of the Privacy Specialist Group. Below you will find general information on the Act.

## **General information about the PDPA**

The PDPA, which implements the European Privacy Directive, entered into force in the Netherlands on 1 September 2001, and replaced the Personal Data Files Act (*Wet Persoonsregistraties*).

The PDPA imposes a large number of obligations on those who are responsible for data processing (the data controllers) in order to ensure the transparent and careful use of personal data. For example, the data subject must be informed of the identity of the data controller and the purposes of the data processing. Providing this information is only one of the many obligations imposed on the data controller.

Another important obligation of the data controller is to notify the Data Protection Board (DPB) of the data processing in advance. In principle, this applies to any fully or partly automated data processing (and non-automated processing where a prior investigation by the DPB is prescribed by the PDPA).

The most common forms of data processing – such as the personnel and/or salary administration – are exempted from the notification obligation pursuant to the Exemption Decree, provided that all the conditions laid down in the Decree are met. Among other things, these conditions impose limitations on the types of personal data that may be processed and on the purposes for which the processing may be carried out.

In addition, stricter rules apply to the processing of special data, for example data relating to health and/or race (e.g. collecting photographs). Subject to certain exceptions, the processing of this data is, in principle, prohibited. Furthermore, particular rules apply, e.g., to marketing activities, data collection through the internet (which requires drawing up a privacy statement that meets certain requirements) and the transfer of personal data to countries outside the EU.

Sanctions can be imposed if the Act is violated. The DPB can issue an administrative order setting a deadline for rectification of the infringement by the data controller and imposing a periodic penalty if the deadline is not met. The rectification may involve, for example, notifying the data processing for the first time or correcting and/or completing a notification that was deficient.

The DPB can impose an administrative fine not exceeding EUR 4,500 for each failure to notify or notification that was inaccurate or incomplete.

The failure to comply with the notification obligation and/or the filing of an inaccurate or incomplete notification and/or the transfer of data in violation of an order of the Justice Minister also constitutes a criminal offence. The right to prosecute, however, lapses if the DPB has already imposed an administrative fine (and vice versa). If this failure is intentional (including conditional intent), the data

controller can be punished with a prison sentence for a maximum of six months and/or a fine not exceeding EUR 4,500 (with intent) or EUR 2,250 (without intent). If the data controller is a legal entity, the maximum fines can be increased to EUR 11,250 and EUR 4,500 respectively.

A person whose privacy has been violated can also claim damages in tort. Furthermore, non-compliance with the PDPA may lead to negative publicity.

**More information?**

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This client memo contains general information on current issues but does not give legal advice.