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Ministry of Communications and Information
Personal Data Protection Commission

Sent via email: DataRegulation@mci.gov.sg

28 May 2020

Dear Sir or Madam

Public Consultation for the Personal Data Protection (Amendment) Bill (the "Bill")

The Alternative Investment Management Association ("**AIMA**")[1] and our members support the efforts of the Ministry of Communications and Information ("**MCI**") and the Personal Data Protection Commission ("**PDPC**") in developing Singapore's data protection regulatory framework to take into account technological advances, new business models and global developments in data protection legislation.

AIMA welcomes the opportunity to comment on the draft Bill which proposes four key areas of amendments to the Personal Data Protection Act 2012 ("**PDPA**") to strengthen the accountability of organisations, enable meaningful consent, provide for greater consumer autonomy, and strengthen the effectiveness of the Personal Data Protection Commission's ("**PDPC**") enforcement efforts.

In view of the impact of some of the proposals on our members, AIMA organized a members-only session on 27 May 2020 to gather feedback to the Public Consultation Paper and the draft Bill. In particular, members were of the view that it may be helpful to clarify some aspects of the mandatory breach notification requirements and enhanced financial penalties, and we reflect the feedback in our response below.

Mandatory Breach Notification

AIMA notes that the draft Bill introduces a mandatory data breach notification regime, whereby organisations are required to notify the PDPC in the case of a data breach that either results in, or is likely to result in, significant harm to affected individuals, or is of a significant scale. Organisations may also need to notify affected individuals if the data breach is likely to result in significant harm to them.

[1]AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with around 2,000 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than US$2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 170 members that manage US$400 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co- founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

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In this regard, paragraph 18 of the Public Consultation Paper prescribes categories of personal data which, if compromised in a data breach, will be considered likely to result in significant harm to the affected individuals. To provide further guidance for organisations, our members were of the view that it would be helpful if MCI/PDPC could provide further guidance and examples as to what would constitute "significant harm" such that the reporting threshold will be crossed. For example, there may be value in having the PDPC share observations on the adequacy of content and quality of notifications that it has received following its publication of the Guide to Managing Data Breaches 2.0 ("**Data Breach Guide**") which was updated in May 2019.

We note that while the proposed breach notification requirements are broadly similar to those specified in the Data Breach Guide, one key difference is the assessment period for organisations to determine whether a breach is notifiable. Under the Data Breach Guide, organisations have up to 30 days to assess whether a data breach incident is notifiable. This time period has been removed and replaced with a duty to *"conduct, in a reasonable and expeditious manner, an assessment of whether the data breach is a notifiable data breach".* As such, our members have queried whether the previous 30 days timeline still applies, and whether organisations may have the flexibility of a longer timeline to investigate potential data breaches.

Further, it would also be helpful if PDPC could share guidance on expected reporting requirements for data intermediaries, and whether the PDPC will allow for greater flexibility where notifications are filed late due to late reporting by data intermediaries.

A key challenge for fund managers, fund servicers and other market participants is grappling with multiple reporting requirements with different timelines and expectations across different jurisdictions and regulatory authorities. As such, we would urge the MCI/PDPC to work together with other regional and global authorities to achieve greater consistency of reporting expectations, timelines and standards, so as to facilitate more effective and transparent reporting by members.

Enhanced Financial Penalties

AIMA notes that that the draft Bill provides for an increased maximum financial penalty of (i) up to 10% of an organisation's annual gross turnover in Singapore; or (ii) $1 million, whichever is higher. Paragraph 59 of the Public Consultation Paper noted that the higher cap will serve as a stronger deterrent, and provide PDPC with more flexibility in meting out financial penalties based on the circumstances and seriousness of a breach.

In comparison, the General Data Protection Regulation ("**GDPR**") in the European Union provides for a revenue-based maximum financial penalty (20 million euros or 4% of the entity's global annual turnover of the previous financial year, whichever is higher). However, we also note that there is a lower tier of fines for breach of controller or processor obligations.

In this regard, AIMA notes that the PDPC has previously published guidance in its Guide on Active Enforcement as to its enforcement policy which is based on an assessment of the seriousness of the breach. To provide further guidance to organisations, it would be helpful if PDPC could provide further clarification as to how the enforcement penalties may be applicable on an extraterritorial basis to international organisations which may be collecting, using and disclosing personal data in Singapore, or sharing personal data obtained from Singapore

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residents within the group for risk management or other intra-group customer screening purposes.

In particular, it was not clear in the Public Consultation Paper and draft Bill whether the increased maximum financial penalty may be imposed at the entity's group level based on group revenue (similar to GDPR) or whether it will be applicable to only the organisations within the entity's group that process data of Singapore residents. As such, it would be helpful to have further clarification as to the extraterritorial applicability of the enhanced financial penalties, and whether they may also be applicable to an entity that may have limited nexus to Singapore in its business operations, or to third party service providers such as cloud or other administrative service providers that may be processing personal data.

Conclusion

We thank you in advance for your consideration of this important matter. We would be happy to provide further information or engage in dialogue which would be helpful to this purpose, and propose a meeting to further share and elaborate on our feedback and share some practical insights from our members as to the key challenges and issues faced by fund managers, asset servicers and other financial institutions. Please let us know if this may be of interest and we would be happy to set up a meeting / call for this purpose with our members.

Yours faithfully,

Lee Kher Sheng
Managing Director
Co-Head of APAC
Deputy Global Head of Government Affairs