

MCI (P) 070/07/2021

29 October 2021

KEY POINTS

- Introduction of Data Protection legislation in the BVI.
- Rights of access, correction and deletion of personal data.
- Creation of the office of Information Commissioner to monitor compliance with the Data Protection legislation.
- Right to lodge complaints.
- Security and retention of personal data.



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DATA PROTECTION ACT, 2021

The BVI introduced data protection legislation, the Data Protection Act, 2021 ("the DPA"), which came into force on 9 July 2021.

OBJECTIVES OF THE DPA

The objectives of the DPA are to:

(a) safeguard personal data processed by public bodies and private bodies; and(b) to promote transparency and accountability in the processing of personal data.

WHO DOES THE DPA APPLY TO?

The DPA applies to:

- Public bodies such as Government ministries, local authorities and statutory bodies.
- the Crown and the BVI Government
- Private bodies that carry on trade, business or a profession but only in that capacity or has legal personality.
- Persons not established in the BVI, but who use equipment in the BVI for processing personal data.

the DPA will apply to you if you are a public or private body and processes personal data of a data subject in respect of commercial transactions.

EXEMPTIONS UNDER THE DPA

The DPA does not apply to personal data processed by an individual only for the purposes of that individual's personal, family or household affairs, including recreational purposes. Other exemptions apply in respect of personal data processed for the prevention or detection of crime or for the purpose of investigation.

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A data controller may process personal data without the express consent of a data subject where such processing is necessary:

- for the performance of a contract to which the data subject is a party;
- for compliance with any legal obligation to which the data controller is the subject, other than an obligation imposed by a contract;
- for the exercise of any functions conferred on a person by or under any law; or
- for a lawful purpose directly related to an activity of the data controller.

RIGHTS OF DATA SUBJECTS

A data subject has the following rights:

- Right of access to personal data upon written request
- Right to prevent processing for the purposes of direct marketing
- Right to withdraw consent previously given in respect of the collection, use or disclosure of his/her personal data
- Right to request correction, deletion or amendment of personal data
- Right to lodge a complaint with the Information Commissioner in relation to the denial of access/correction to/of personal data.
- Right to institute civil proceedings

No personal data shall be disclosed without the consent of the data subject and shall not be used for any other purpose other than the original purpose for which the personal data was disclosed.

However, personal data may be disclosed in the following circumstances:

- for the purpose of preventing, investigating or detecting a crime;
- by or under any law or by the order of a court;
- where Portcullis reasonably believes that it has in law the right to disclose the personal data;

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- where Portcullis reasonably believes that it has the consent of the data subject; or
- the disclosure was justified as being in the public interest in circumstances as determined by the Minister.

SECURITY OF DATA

Portcullis has taken robust steps to protect all personal data from any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction. Portcullis will continue to review and monitor its security systems to ensure optimum protection of personal data at all times.

Personal data shall not be kept longer than is necessary for the original purpose for which the personal data was provided.

Portcullis shall take all reasonable steps to ensure that all personal data is destroyed or permanently deleted if it is no longer required for the purpose for which it was obtained.

KEY DEFINITIONS UNDER THE DPA

"Data subject" is a natural person (whether living or deceased).

"Personal data" means any information in respect of commercial transactions, such as matters relating to the supply or exchange of goods or services, investments and banking which:

- (a) is being processed wholly or partly by means of equipment operating automatically in response to instructions given for that purpose;
- (b) is recorded with the intention that it should wholly or partly be processed by means of such equipment; or

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(c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, that relates directly or indirectly to a data subject.

"Process or processing" means, in relation to personal data, collecting, recording, holding or storing the personal data or carrying out any operation or set of operations on the personal data, including:

- (a) the organisation, adaption or alteration of personal data;
- (b) the retrieval, consultation or use of personal data;
- (c) disclosure of personal data by transmission, transfer, dissemination or otherwise making available; or
- (d) alignment, combination, correction, erasure or destruction of personal data.

"Sensitive personal data" means any personal data about a data subject's physical or mental health, sexual orientation, political opinions, religious beliefs or other similar nature, criminal convictions, the commission or alleged commission of any offence or any other personal data prescribed by the Government.

"Information Commissioner" means the person appointed as the data protection regulator.

Please contact your Portcullis Relationship Manager or one of our representatives for assistance or further information should you have any questions or difficulty in meeting these regulatory requirements.

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