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THE IMPLEMENTATION
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OF TRAVEL BANS:
A CASE STUDY OF
THAILAND

A STUDY OF THE
NECESSITY OF AND
APPROACHES TO THE
PREPARATION OF
PERSONAL DATA
PROTECTION
GUIDELINES



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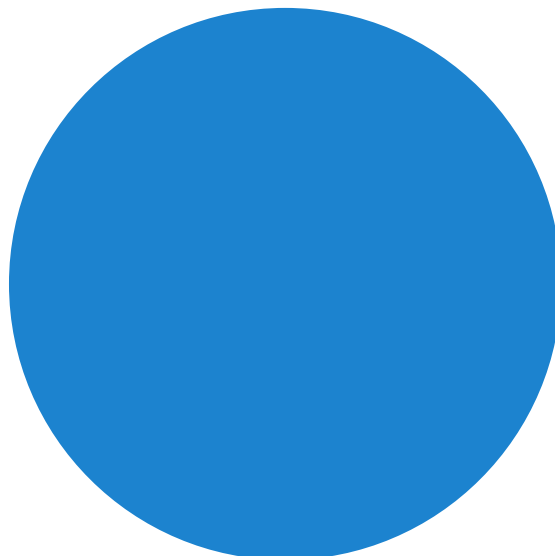
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THE IMPLEMENTATION AND PHASE-OUT OF TRAVEL BANS: A CASE STUDY OF THAILAND*

Saliltorn Thongmeensuk

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ABSTRACT

Many countries have implemented strict travel bans to contain the COVID-19 pandemic at the international level. In Thailand, these COVID-19 containment measures have proven to be challenging to maintain over time as the pandemic has seriously damaged the Thai economy, particularly the tourism industry, due to the dramatic decrease in the number of international visitors. This situation has led to the related establishments' suspension or permanent closure in some service sectors. As a result, Thailand

* Presented at an online workshop on "Towards Building a Sustainable and Resilient Society in Southeast Asia: Unmasking Opportunities and Lessons Learned during the COVID-19 Pandemic," organized by Asia-Japan Research Institute, Ritsumeikan University, on March 8, 2022.

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is about to revoke these measures. The Phuket Sandbox, which was launched on July 1, 2021, was a significant step toward recovery from the pandemic and a measure that other countries in the Asia-Pacific region may wish to imitate. This article discusses the compatibility of the pandemic containment measures imposed by the Thai government with the World Health Organization International Health Regulations, which were established to balance public health protection and international mobility. Moreover, as the COVID-19 pandemic caused a sudden suspension in tourism flows and a severe contraction in the Thai economy, this article is focused on the impacts of the various COVID-19 containment measures on Thailand's tourism industry. It discusses the effectiveness of the Phuket Sandbox as a means to drive the economic recovery after approximately two years of contraction due to the pandemic.

Keyword: COVID-19, Phuket Sandbox, International Health Regulations, economic impacts

1. INTRODUCTION

Severe acute respiratory syndrome coronavirus-2 (SARS-CoV-2), the viral agent that causes the disease known as COVID-19, is responsible for the current global pandemic, which is characterized by a relatively high mortality rate and is the cause of economic recessions in many countries around the world. This viral disease originated in Wuhan, China, toward the end of 2019. At the time, the World Health Organization (WHO)

described it as an emerging disease. In early 2020, WHO recommended that international travelers take the usual precautions to protect themselves, such as frequent hand-washing, but it refrained from calling for any travel or trade restrictions on China.¹ However, the safety measures introduced could not hinder the dissemination of what was initially called a novel coronavirus, and it rapidly spread across the world, resulting in the launch of lockdown measures by several countries, an action which had many adverse effects both economic and social, as previously mentioned.

At the end of January in 2020, WHO declared the outbreak a Public Health Emergency of International Concern and issued Temporary Recommendations under the International Health Regulations (IHR, 2005), while continually opposing any travel or trade restrictions.² However, one month later, the WHO International Committee on Taxonomy of Viruses named the novel virus “severe acute respiratory syndrome coronavirus 2 (SARS-

CoV-2)”, and WHO termed the disease COVID-19. It further updated its advice, advocating that restrictions should be instantaneously implemented but should be feasible in specific circumstances.³

WHO officially declared the COVID-19 outbreak as a global pandemic on March 11, 2020,⁴ strongly suggesting the institution of appropriate travel measures with consideration of public health benefits and international restrictions.⁵ Unfortunately, several states still imposed travel restrictions as a mandatory measure despite this being an ineffective infection-control measure which risked violating IHR principles; some travel restrictions remained in effect for a year.

In Thailand, the authorities initially decided to not close the country’s international borders, but after the first infected person outside China was

¹ “WHO Advice for International Travel and Trade in Relation to the Outbreak of Pneumonia Caused by a New Coronavirus in China,” World Health Organization (WHO), accessed May 13, 2022, <https://www.who.int/news-room/articles-detail/who-advice-for-international-travel-and-trade-in-relation-to-the-outbreak-of-pneumonia-caused-by-a-new-coronavirus-in-china>.

² “Statement on the Second Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-Ncov),” World Health Organization (WHO), accessed May 13, 2022, [https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)).

³ “Updated WHO Recommendations for International Traffic in Relation to Covid-19 Outbreak,” World Health Organization (WHO), accessed May 14, 2022, <https://www.who.int/news-room/articles-detail/updated-who-recommendations-for-international-traffic-in-relation-to-covid-19-outbreak>.

⁴ “WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19 – 11 March 2020,” World Health Organization (WHO), accessed May 13, 2022, <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁵ “Statement on the Third Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Coronavirus Disease (Covid-19),” World Health Organization (WHO), accessed May 9, 2022, [https://www.who.int/news/item/01-05-2020-statement-on-the-third-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-coronavirus-disease-\(covid-19\)](https://www.who.int/news/item/01-05-2020-statement-on-the-third-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-coronavirus-disease-(covid-19)).

identified in Thailand,⁶ the government declared a state of emergency and imposed a travel ban on foreigners at all points of entry.⁷

However, these strict measures implemented by the Thai government caused massive damage to the economy. Pre-COVID-19, Thailand had been one of the most famous destinations in the world for international tourists, especially for Chinese visitors. Therefore, when the authorities imposed an international travel ban, the number of foreign visitors entering Thailand declined significantly, leading to a dramatic drop in foreign arrival revenue for the tourism industry.⁸ To solve this problem, the Thai government planned to ease some of the restrictions by launching a pilot tourism program in the country's most popular tourist destination, officially called the "Phuket Sandbox," to promote and help the tourism industry recover. Later, the government lifted other exemptions from the quarantine program, aiming to support the tourism sector that has been shattered by the global pandemic.

⁶ "Thailand Confirms First Case of Wuhan Virus Outside China," *South China Morning Post*, January 13, 2020, <https://web.archive.org/web/20200113130102/https://www.scmp.com/news/hong-kong/health-environment/article/3045902/wuhan-pneumonia-thailand-confirms-first-case>.

⁷ Bangprapa, Mongkol, and Wassana Nanuam, "All Doors Closed to Foreigners," *Bangkok Post*, March 26, 2020, <https://www.bangkokpost.com/thailand/general/1886395/all-doors-closed-to-foreigners>.

⁸ "Thailand: Covid-19 Delta Wave Disrupts Economic Recovery," *IHS Markit*, September 16, 2021, <https://ihsmarkit.com/research-analysis/thailand-covid19-delta-wave-disrupts-economic-recovery-Sep21.html>.

During these uncertain circumstances, Thailand has implemented various mechanisms in order to monitor exposure to the coronavirus and to support economic recovery at the same time. Thus, a research paper analyzing legal and economic issues related to the global pandemic with a specific case study analysis of Thailand is challenging and interminably valuable. This paper seeks to analyze the compatibility between the pandemic containment measures imposed by the Thai government and the International Health Regulations, and to assess the impacts of the various COVID-19 containment measures on Thailand's tourism industry. Lastly, it seeks to draw on lessons from the Phuket Sandbox implemented by the Thai government as a means to drive economic recovery, particularly in the tourism sector, and to identify the key factors in its success or failure.

2. COVID-19 CONTAINMENT MEASURES FOR INTERNATIONAL TRAVELERS TO THAILAND

Before November 1, 2021, if travelers wished to travel or return to Thailand, they were required to submit a number of necessary documents and to acquire a certificate of entry (COE) from the Thai government. Afterwards, the government launched the Thailand Pass system, which replaced the COE.⁹ Essentially, the Thailand Pass was a way for people to upload their documents, gain

⁹ *Monaworld*, "Thailand Pass System to Replace COE," *THAIest*, October 24, 2021, <https://thaiest.com/blog/coe-to-be-replaced-by-thailand-pass>.

entry approval and receive a QR code as proof of successfully completing the requirements, after which international tourists could then enter Thailand.¹⁰

Further, since November 1, 2021, international travelers could enter Thailand, choosing one of the following three schemes:

(a) Exemption from quarantine – Test & Go

Tourists traveling from one of 63 countries¹¹ were exempted from quarantine after having a negative result from a COVID-19 test issued at a Thai airport.¹² However, to qualify, tourists had to be fully vaccinated against COVID-19 no fewer than 14 days before traveling and they had to have a negative RT-PCR (real time polymerase chain reaction) test result within 72 hours before traveling.¹³ Upon arrival in Thailand, international tourists were required to show their passport, Thai visa, a vaccine certificate, and proof of a SHA Extra+

hotel reservation for the first day after landing.¹⁴ Travelers also had to show COVID-19 insurance with a minimum coverage of \$50,000 from a registered insurance company.¹⁵

(b) Sandbox Program

Whether or not tourists were from one of the 63 eligible countries, they could register for the Sandbox Program, which involved a seven-day quarantine in a designated area.¹⁶ This meant that the tourists could not leave the designated area, such as Phuket, Phang-Nga, Krabi, and Surat Thani provinces (specifically tourist destinations such as Samui Island, Pha-ngan Island, and Tao Island). However, they could leave their hotel and travel around the designated area.¹⁷ Nonetheless, they had to show evidence that they were fully vaccinated against COVID-19.¹⁸ They were also required to produce negative RT-PCR test results 72 hours before traveling to one of the Sandbox areas.¹⁹

¹⁰ “Thailand Pass FAQs,” Department of Consular Affairs, accessed March 21, 2022, <https://consular.mfa.go.th/th/content/thailand-pass-faqs-2?cate=5ddbe42115e39c4768007e1d>.

¹¹ “Notification of the Operation Centre for Measures on the Entry into and Departure from the Kingdom, and Protection of Thai Nationals Abroad Re: List of Countries and Territories Permitted to Enter the Kingdom of Thailand for Individuals under Category (13),” Ministry of Foreign Affairs, October 30, 2021, <https://www.mfa.go.th/en/content/updatelist301064?page=5f22514b78568958aa0d5b85&menu=5d5bd3cb15e39c306002a9b9>.

¹² “Registration System for Entering Thailand (for Air Travel Only),” Ministry of Foreign Affairs, accessed March 21, 2022, <https://tp.consular.go.th/en/plan>.

¹³ *Ibid.*

¹⁴ SHA refers to the Safety and Health Administration. SHA Extra+ hotels were those that met government-mandated pandemic-grade safety and health standards, had at least 70 percent of their staff vaccinated against COVID-19 and had partnered with accredited hospitals for RT-PCR testing.

¹⁵ “Thailand Pass FAQs (as of 31 October 2021),” Department of Consular Affairs, October 30, 2021, <https://www.mfa.go.th/en/content/thailand-pass-faqs>.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ “Registration System for Entering Thailand (for air travel only),” Ministry of Foreign Affairs.

¹⁹ *Ibid.*

(c) Unvaccinated travelers

Unvaccinated travelers were required to stay in a 10-day quarantine at an SHA+ hotel. Once the quarantine was completed, they were free to travel around Thailand.²⁰ Under this alternative option, tourists were not allowed to leave their room during the quarantine.

Nevertheless, COVID-19 has proved to be an ever-mutating virus, meaning that it creates an ever-fluid situation in the effort to control its spread. The Omicron variant, which was first identified in South Africa and Botswana in November 2021, began spreading across the globe. On November 28, 2021, the Thai government imposed a total ban on arrivals from eight African countries: Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, South Africa, and Zimbabwe.²¹ Additionally, the Thai government announced on December 21, 2021, that the Test & Go scheme was to be suspended, and that the Thailand Pass would be closed for all new Test & Go and Sandbox applicants, except for the Phuket Sandbox starting from December 22, 2021.²²

However, it appears that the suspension of the Test & Go program had an adverse economic

impact on Thailand's tourist industry. The number of people entering Thailand significantly dropped.²³ The relaunch of the Test & Go program took place on February 1, 2022,²⁴ at which time that program and registration for the Thailand Pass were accepted again.²⁵ From that date, travelers from all countries, not just the 63 previously designated countries, were eligible to apply for the scheme.²⁶ Additionally, instead of having one test upon arrival, two RT-PCR tests would be required on the first and fifth days of arrival.²⁷

The following documents had to be provided: proof of hotel booking for the first and the fifth days. The hotels could be different but must provide an accommodation service in partnership with a certified hospital for the RT-PCR test.²⁸

²⁰ *Ibid.*

²¹ "Thailand Imposes Travel Restrictions on Arrivals from Africa," *TAT Newsroom*, November 28, 2021, <https://www.tatnews.org/2021/11/thailand-imposes-travel-restrictions-on-arrivals-from-africa/>.

²² "Thailand Pass Will Be Closed for All New Test and Go and Sandbox Applications (except Phuket Sandbox), Starting from 00.00 Hrs. on 22 December 2021 until Further Notice," *Department of Consular Affairs*, December 21, 2021, <https://shorturl.asia/Zhk3E>.

²³ *Goong Nang (GN)*, "Pattaya Hotel Room Bookings Drop Significantly after 'Test & Go' Scheme Suspended, More Business Leaders Call for Pattaya to Be a Sandbox Again." *The Pattaya News*, December 25, 2021, <https://thepattayanews.com/2021/12/24/pattaya-hotel-room-bookings-drop-significantly-after-test-go-scheme-suspended-more-business-leaders-call-for-pattaya-to-be-a-sandbox-again/>.

²⁴ "Thailand Resumes Test & Go Scheme, Reopens Pattaya and Ko Chang Sandbox from 1 February 2022," *TAT Newsroom*, February 4, 2022, <https://www.tatnews.org/2022/01/thailand-resumes-test-go-scheme-reopens-pattaya-and-ko-chang-sandbox-from-1-february-2022/>.

²⁵ *Ibid.*

²⁶ "Registration System for Entering Thailand (for Air Travel Only)," *Ministry of Foreign Affairs*.

²⁷ "Thailand Resumes Test & Go Scheme, Reopens Pattaya and Ko Chang Sandbox from 1 February 2022," *TAT Newsroom*.

²⁸ *Monaworld*, "Thailand SHA Plus & Sha Extra Plus (Sha++) Hotels," *THAIest*, accessed March 29, 2022, <https://thaiest.com/blog/thailand-sha-plus-hotels>.

From February 1, 2022, the Sandbox Program was expanded to include Trat Province, Chang Island, and Chonburi Province.²⁹

On May 1, 2022, the Thai government imposed new entry measures for entering Thailand. Fully vaccinated people would no longer be required to get COVID-19 tests, both prior to and after arriving in Thailand. However, for unvaccinated people there were two schemes for entering Thailand. The first scheme was an exemption from quarantine. If an unvaccinated traveler produced a negative COVID-19 test result within 72 hours before traveling, he or she would not be required to get a COVID-19 test after arriving in Thailand. The second scheme involved quarantine. If an unvaccinated traveler could not obtain a COVID-19 test result within 72 hours before traveling, the person had to be quarantined after arrival. Quarantine required an RT-PCR test on day 1 and days 4 or 5 during the mandatory five-day quarantine at an alternative quarantine hotel. Additionally, the revised measures reduced the minimum insurance coverage to \$10,000. However, according to the Centre for COVID-19 Situation Administration (CCSA), the Thailand Pass would be canceled for all foreigners arriving in Thailand from June 1, 2022. Meanwhile, some airlines might require passengers to show the proof of vaccination at check-in.³⁰

²⁹ “Thailand Pass FAQs (as of 31 October 2021),” Department of Consular Affairs.

³⁰ “Thailand Pass, Covid Insurance to End July 1,” Bangkok Post, June 17, 2022, <https://www.bangkokpost.com/thailand/general/2328513/thailand-pass-covid-insurance-to-end-july-1>.

To support the COVID-19 monitoring system, Thailand launched a new mobile application, called Mor Chana (doctors win), to trace coronavirus contacts in-country.³¹ The application was designed to track any individual who had contact with an infected person by employing GPS and Bluetooth technology to identify their locations.³² This application makes it easier for the local authorities to assess potential risks and thereby help contain the outbreak.³³ When entering the country, travelers were required to download the Mor Chana application to their mobile phone.³⁴ Their RT-PCR test results would be recorded on this app at their hotels.

3. COMPLIANCE WITH THE INTERNATIONAL HEALTH REGULATIONS

The International Health Regulations are an international legal instrument legally-binding upon 196 countries, including all WHO member states.³⁵ This instrument establishes the rights and

³¹ “Thailand Launches Mor Chana Mobile App to Enhance Contact Tracing Efforts to Help Stop the Spread of COVID-19,” National Telecom Public Company Limited, accessed March 29, 2022, https://www.cattelcom.com/cat/content/3754/222/Thailand+launches+Mor+Chana+mobile+app+to+enhance+?lang=en_EN.

³² “A closer look at Thailand’s (non-mandatory) contact tracing apps,” Thai PBS, January 9, 2021, <https://www.thaipbsworld.com/a-closer-look-at-thailands-non-mandatory-contact-tracing-apps/>.

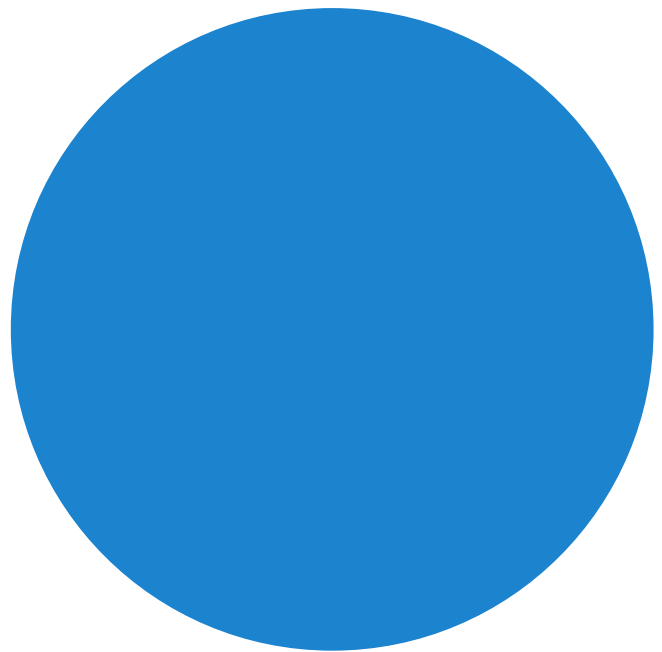
³³ “Entry Thailand Frequently Asked Questions,” TAT Newsroom, March 10, 2022, <https://www.tatnews.org/entry-thailand-frequently-asked-questions/>.

³⁴ *Ibid.*

³⁵ *International Health Regulations (2005)*, 2nd ed., Geneva: World Health Organization, 2008.

obligations for the member states to report public health events to WHO. It also requires member states to protect the health of travelers and their respective populations. Significantly, it seeks to find a balance between public health safety and the avoidance of unnecessary interference with international traffic.³⁶ The regulations also set forth conditions to consider if a particular event constitutes a “public health emergency of international concern” (PHEIC), the declaration of public emergency pursuant to the direction of WHO based upon the IHR Emergency Committee recommendation.³⁷ This instrument also introduces essential safeguards to guarantee the rights of travelers in respect of non-discrimination, as well as the protection of personal data in health measure applications.³⁸ Member states are also obliged to notify WHO regarding the rationale for restrictive mechanisms that give rise to a “significant interference” with international travel, construed as the denial or delay of entry or exit for more than a day.³⁹

WHO declared the COVID-19 situation as a PHEIC on January 30, 2020. After this declaration, the Emergency Committee issued its first temporary recommendations, emphasizing that member states are required to share information with WHO under the IHR and suggested that member states avoid international restrictions. It also requested member



states to inform WHO when travel measures had been taken and reminded states to avoid activities that promote stigma or discrimination.⁴⁰ WHO further updated its advice on February 29, 2020, advising against any travel restrictions, except in very limited circumstances. In addition, it called for not imposing restrictions that would significantly interfere with international travel, noting that these measures must be based on a cautious risk assessment, proportional to the public health risk, shortened duration, and to be regularly reconsidered as the situation evolves.⁴¹

³⁶ *Ibid.*

³⁷ *Article 12 of the International Health Regulations.*

³⁸ *Article 13 of the International Health Regulations.*

³⁹ *Article 6 of the International Health Regulations.*

⁴⁰ “Statement on the Second Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-Ncov),” *World Health Organization (WHO)*.

⁴¹ “Updated WHO Recommendations for International Traffic in Relation to COVID-19 Outbreak,” *World Health Organization (WHO)*.

After WHO officially declared the COVID-19 outbreak to be a global pandemic, the first temporary recommendations remained in effect until late April 2020. Secondary temporary recommendations were issued on May 1, 2020. At this time, the new temporary recommendations continually recommended against international restrictions and encouraged member states to implement appropriate travel measures, such as entry and exit screening, case finding, and contact tracing by using appropriate digital tools. In addition, WHO suggested that travel and trade measures should be reviewed based on regular risk assessments, transmission patterns at origin and destination, cost-benefit analysis, evolution of the pandemic, and new knowledge of COVID-19.⁴²

Even though this declaration did not indicate that member states must always comply with the recommendations, member states are obliged to make their decisions based upon scientific data, and to implement mechanisms that would provide a proportionate degree of protection.⁴³ In circumstances where there was no scientific information that would make travel restrictions necessary, the implementation of travel bans following the COVID-19 outbreak was considered contrary to WHO recommendations, taking into account the substantial economic impacts of such

⁴² “Statement on the Third Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Coronavirus Disease (COVID-19),” World Health Organization (WHO).

⁴³ Article 17 of the International Health Regulations.

bans. Hence, any restrictive measures that applied specifically to a particular country could not be easily justified once other countries started noticing comparable or more extensive numbers of infectious cases within that country.

Under the IHR, member states must impose the least restrictive mechanisms which would lead to an adequate, but proportionate, degree of protection. Therefore, implementing restrictive measures based upon the travelers’ passport, instead of travel record, is problematic, particularly when there has not been a strong connection between nationalities and COVID-19 exposure. Exclusion based on the nationality of the travelers, thus, poses a risk of violating the non-discrimination principle under the IHR.

Further, the IHR stated that health information collected by member states must be kept confidential and processed anonymously. However, member states could disclose and process personal information for the purpose of assessing and managing a public health risk. Personal information could not be further processed in a way that is incompatible with that purpose.⁴⁴ Member states must be cautious of any data breaches, collected information must be adequate, relevant, and not excessive in relation to this purpose, otherwise it could lead to the violation of the treatment of personal data under the IHR principle if a data breach occurred.⁴⁵

⁴⁴ Article 45 of the International Health Regulations.

⁴⁵ *Ibid.*

When Thailand implemented the Test & Go program, it was available only for those traveling from 63 countries without considering scientific evidence. Thailand did not compare the number of infections between those countries and other non-eligible countries. This therefore could not be justified as the least restrictive measure available due to the weak correlation between nationality and coronavirus exposure. It also excluded people based on their passport which could lead to a greater risk of contributing to stigma and discrimination. Moreover, when Thailand raised travel restrictions on African countries, the decision relied less on official reports and more on media and other sources without clear scientific evidence.

The Thai government used Mor Chana to track and trace virus exposure. The application's main purpose was to identify and promptly notify people who have been in close contact with an infected COVID-19 person. However, whether appropriate measures were taken to protect personal data is questionable. According to the Data Protection Excellence Network (DPEX) report, Mor Chana was the most privacy-intrusive contact tracing app among those used elsewhere in Southeast Asia because it required excessive user permissions and lacked transparency in its terms and conditions.⁴⁶ The app could not run automatically, which means that people needed to have the app open in order to run it. This is a failure in any COVID-19 tracking system.

⁴⁶ "Thai Covid-19 Apps Judged Invasive," *Bangkok Post*, July 20, 2020, <https://www.bangkokpost.com/business/1954287/thai-covid-19-apps-judged-invasive>.

Some travelers avoided Thai health measures due to the poor design of the Mor Chana app, as in the case of an Israeli traveler who left his alternative quarantine hotel in Bangkok without authorization.⁴⁷

The current situation in Thailand has changed remarkably from the early days. To help support the economic recovery, Thailand has lifted all travel restrictions and welcomes travelers from any country. The COVID-19 containment measures have been frequently reviewed and revised by the authorities to be a reasonable response in an ever-changing situation. It was officially confirmed in early May 2022 that the Mor Chana application would be discontinued from June 1, 2022.⁴⁸ Instead, the authorities plan to use the Exposure Notification Express (ENX) application to track and notify people when they have been in close contact with a person infected by the coronavirus.⁴⁹ The strength of this application is that it exchanges the information as random security keys via Bluetooth and runs in the background of a user's mobile phone. This app therefore can detect when two devices are near each

⁴⁷ Worrachaddejchai, Dusida, "Israeli Breakout Blamed on Apps," *Bangkok Post*, December 24, 2021. <https://www.bangkokpost.com/business/2236963/israeli-breakout-blamed-on-apps>.

⁴⁸ Leah, "'Doctor Loses': Mor Chana Covid-19 Application to Be Discontinued from June 1," *Thaiger*, May 10, 2022, <https://thethaiger.com/coronavirus/doctor-loses-mor-chana-covid-19-application-to-be-discontinued-from-june-1>.

⁴⁹ "The Federation of Thai Industries aims to Discuss with the Minister of Public Health next Week, Pushing on the Usage of the ENX-Rapid Test and Accelerating Vaccination Plans before the Crisis," *MGR Online*, July 15, 2021, <https://mgronline.com/business/detail/9640000068990>.



other without revealing where they are located, with no location tracking required.⁵⁰ Thus, it is less intrusive in terms of personal data and complies with the treatment of the personal data principle under the IHR.

Impacts of the international travel restrictions on the Thai economy

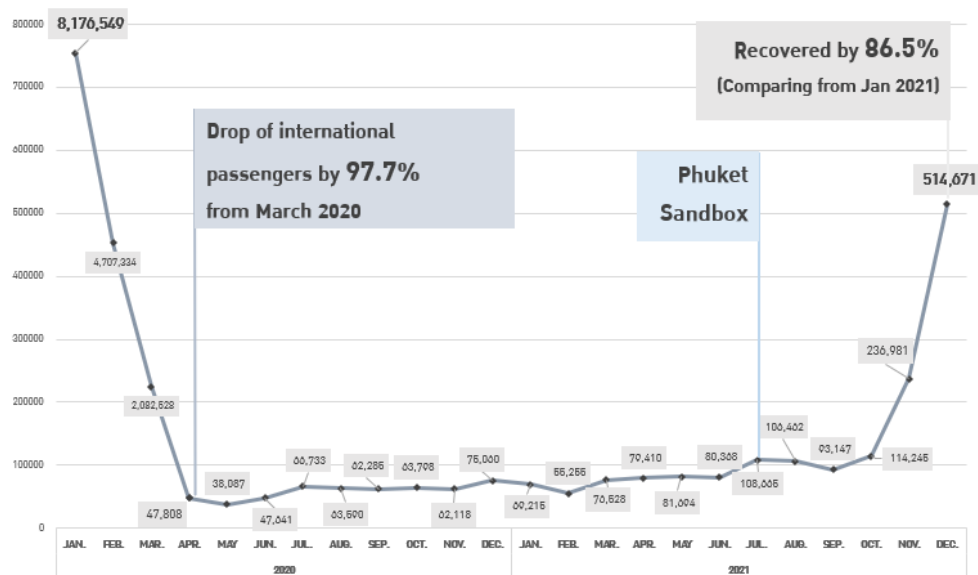
The economy of Thailand has been highly dependent on international tourism since the 1960s, as foreign arrivals continued growing due to the attractiveness of Thailand's scenery, tourist infrastructure, and its location as a crossroads for international air transport. According to media associated with Thai tourist landmarks, the number of international travelers to Thailand had continuously expanded and reached its highest peak with more than 40 million visitors in 2019, ranking Thailand

eighth globally in terms of foreign tourist arrivals. At that time, the Thai tourism sector accounted for a fifth of the country's gross domestic product (GDP). Furthermore, up to 20 percent of Thai nationals are employed in the country's accommodation, recreation, and entertainment sectors.

Unfortunately, 97 percent of all international flights to Thailand ground to a halt in April 2020 (compared with the month before) due to the COVID-19 pandemic and Thai government restrictions. As shown in Figure 1, the number recovered by only about 500,000 passengers at the end of 2021, or only 6.3 percent of the number of international visitors in 2019. This rapid plunge in international arrivals led to a heavy drop in international tourism spending, which accounts for Thailand's largest income stream. The statistics showed that international tourism receipts immediately dropped from \$62 billion in 2019 to \$11 billion in 2020 respectively.

⁵⁰ "Exposure Notification," *Apple Developer*, accessed May 14, 2022, <https://developer.apple.com/exposure-notification/>.

Figure 1: Total number of international passengers (2020-2021)



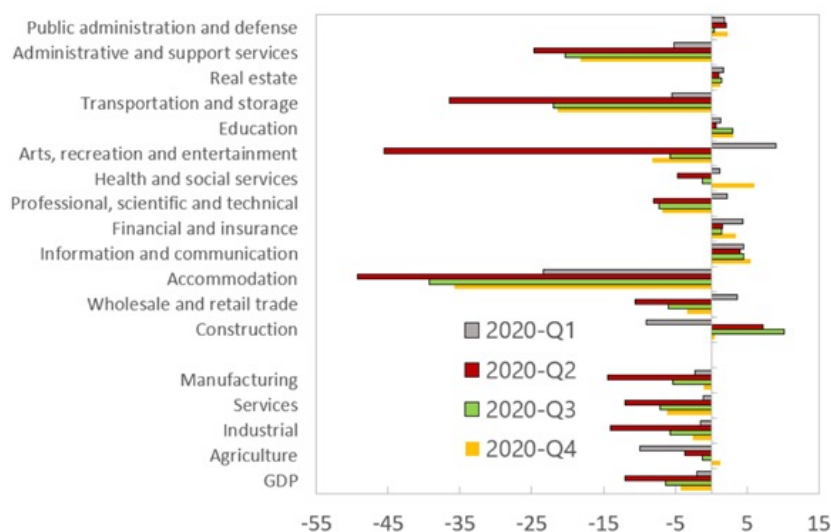
Source: Ministry of Tourism and Sports, Department of Tourism (December 2021).

Because the Thai economy largely depends on its tourism sector, Thailand’s GDP is heavily reliant on its foreign tourism income. As international arrivals dropped, Thailand’s GDP faced its largest contraction since the 1997 Asian financial crisis by falling more than 6 percent compared with the GDP for 2020. By the same token, the sub-sectors in the tourism sector were also hit hard: GDP contracted by 53 percent in the accommodation sector; 50 percent in recreation and entertainment; 38 percent in transportation; and 25 percent in food services, as shown in Figure 2.

With the loss of international tourist income, the Thai government applied various policies to drive up the number of foreign and domestic tourist arrivals, such as providing travel subsidies for airline flights and hotel stays, and catering to

international tourism demands by launching the Sandbox Program. However, the first priority before initiating policies to stimulate foreign tourist arrivals was to mitigate COVID-19 infection rates as much as possible. Thus, the Thai government implemented its “Integrated Plan for Multilateral Cooperation for Safety and Mitigation of COVID-19” or as it was better known “lockdown scheme,” which was drafted by the Ministry of Public Health with the following purposes in mind: (1) lowering the risk of coronavirus transmission into Thailand; (2) keeping Thai citizens who stay in Thailand or abroad safe from the COVID-19 virus; and (3) reducing the health, economic and social impacts with an increase in national security. Daily updates on COVID-19 infection cases in Thailand along with new measures, safety precautions, and restrictions regarding the

Figure 2: Thailand's GDP, by industry
(Annual percentage change)



Source: Stella Kaendera & Lamin Leigh, “Five Things to Know about Thailand’s Economy and COVID-19,” IMF Asia and Pacific Department, June 23, 2021, <http://www.imf.org/en/News/Articles/2021/06/21/na062121-5-things-to-know-about-thailands-economy-and-covid-19>.

coronavirus situation have been provided through news channels and other media.

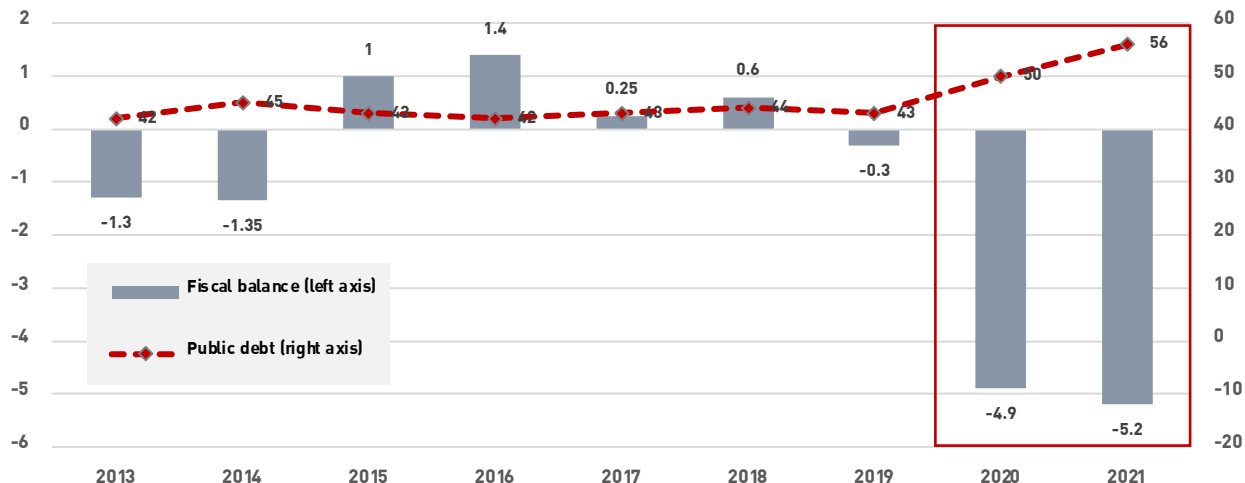
As a result, there were less than 1,000 daily infection cases nationwide during the application of this plan, and domestic tourism was still possible until November 2020. The ability to limit the spread of COVID-19 in Thailand was attributed mostly to people’s readiness to wear face masks, the Thai people’s hygiene culture, and successful public health information campaigns via television and social media.⁵¹ Thus, in August 2020, the Thai government established the Rao Tiew Duay Gun (We Travel Together) program, which had a budget

equivalent to \$640 million to help domestic tourism recover. Overall, the government subsidized 6 million nights of hotel accommodation and 2 million seats on airline flights; this breaks down as follows: (1) subsidizing 40 percent of hotel room rates, or \$100 per night (up to five nights); and (2) subsidizing 40 percent of the air transport ticket price, or \$32 per seat. After seven months of implementation of this policy, the Thai economy was boosted by at least \$1 billion.⁵²

⁵¹ Walden Bello, “How Thailand Contained Covid-19 – FPIF,” *Foreign Policy in Focus*, February 16, 2021, <https://fpif.org/how-thailand-contained-covid-19/>.

⁵² Steve Saxon, Jan Sodprasert, and Voramom Sucharitakul, “Reimagining Travel: Thailand Tourism after the COVID-19 Pandemic,” *Travel, Logistics & Infrastructure Practice*, November 30, 2021, <https://www.mckinsey.com/industries/travel-logistics-and-infrastructure/our-insights/reimagining-travel-thailand-tourism-after-the-covid-19-pandemic>.

**Figure 3: Thailand's fiscal balance and public debt from 2013 to 2021
(Percentage of GDP)**



Source: Blavatnik School of Government, Oxford University (2021) & Bank of Thailand (2021).

Although Thailand's measures and restrictions were considered to be efficient and effective at mitigating COVID-19 infection cases, they failed at resolving other problems of the crisis, such as the economic recession and social impacts. The economic cost of closing its borders and business closures according to strict restrictions in Thailand has been huge, especially in the tourism sector, which employs a large segment of the Thai workforce. Many researchers suggested that the Thai government's risk assessment and planning did not appropriately prioritize the low-income and vulnerable workforce, leading to the risk of further vulnerability in the future.⁵³ Thailand's restrictions

were considered as a timely and stringent measure: the fiscal deficit enlarged to 4.8 percent of GDP, and the public debt also increased to 49.6 percent of GDP in 2020, compared with 41 percent in 2019, implying that the COVID-19 restriction measures caused social and economic burdens over the long term (Figure 3). Thus, during a lockdown, other supportive measures should be hastily applied and implemented, such as an adequate and equitable distribution of vaccines. It can be concluded that the launch of stringent measures to mitigate COVID-19 cases may not outweigh the social and economic consequences due to the restriction policy implementation.

⁵³ Fitch Solutions, "Virus Imperils Thai Economy – Knock-on Impact from Sharp Tourism Slowdown Could Be Broad and Last for Many Months," *Bangkok Post*, February 5, 2020, <https://www.bangkokpost.com/business/1850904/virus-imperils-thai-economy>.

A first step to economic recovery – the Phuket Sandbox

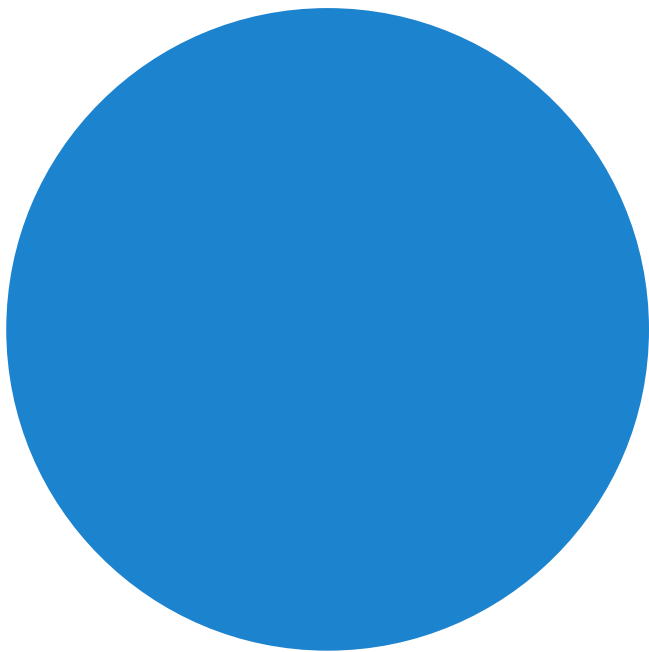
Although the Thai government promoted various policies to invoke domestic travel, local



tourist revenue decreased. In 2020, total revenue of domestic tourism significantly dropped from \$34.5 billion to \$15.4 billion.⁵⁴ However, as the Thai economy is largely depended on international travel, domestic travel on its own would never be able to compensate for Thailand’s overall income. Therefore, Thailand approved the “Phuket Sandbox” in March 2021 in an effort to recapture demand from international travelers, and scheduled its opening in July 2021. The initiative was promoted as “Travel to Thailand Without Quarantine,” offering fully vaccinated tourists exemption from quarantine, provided that they would remain in Phuket for at least 14 days before traveling to other parts of Thailand. Additionally, travelers’ stay in Phuket was restricted to accommodation establishments that have been certified by the Safety and Health Administration of the Thai government.

According to the Tourism Authority of Thailand, foreign travelers who wished to join the Phuket Sandbox Program were required to do the following pre-arrival: (1) be fully vaccinated against COVID-19 with a vaccine approved by WHO or the Ministry of Health of Thailand at least 14 days before traveling, and show a Certificate of Vaccination, issued by a government authority; (2) have a confirmed SHA Extra+ hotel reservation throughout the mandatory seven-day period; (3) obtain a COVID-19 test result (RT-PCR) issued within 72 hours before traveling (if the RT-PCR

⁵⁴ “Tourism Statistics – Ministry of Tourism and Sports,” Ministry of Tourism and Sports, accessed March 14, 2022, https://www.mots.go.th/mots_en/more_news_new.php?cid=332.



result is positive, travelers must submit a medical certificate as proof of COVID-19 recovery at least 14 days but no less than 90 days from the first date of detection); (4) have health insurance that covers treatment and medical expenses in relation to COVID-19, with a minimum coverage of \$50,000 (including in-patient hospitalization, hospital isolation, hotel isolation, or related quarantine); and (5) submit their information in accordance with the Thailand Pass, a minimum of seven days before their travel date to receive their QR code.

Travelers had to undergo two RT-PCR tests before obtaining their release form. When foreign travelers arrive, they would pass through disease control and immigration checkpoints using their Thailand Pass QR Code, then they would wait for their RT-PCR test result either at Phuket airport or their designated hotel. If the result was negative, they could travel freely around Phuket for the duration of the first seven days. On day 6 of arrival, the

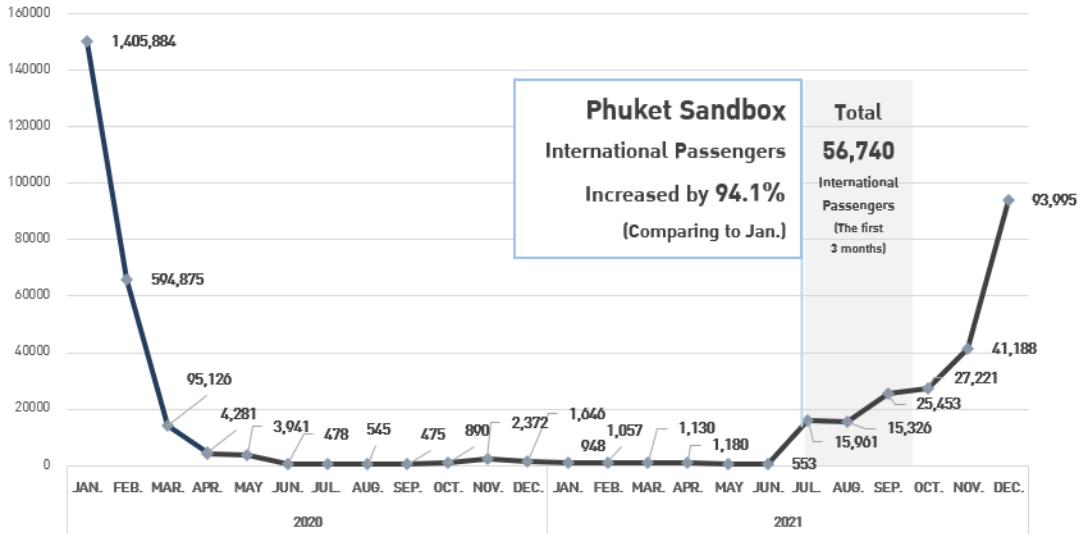
travelers must undergo a second COVID-19 test (ATK) before obtaining their release form. Visitors who stayed in Phuket for fewer than 14 days were permitted to leave Phuket only if their destination was outside of Thailand.

The Phuket Sandbox campaign was intended to attract international travelers to Thailand during the most popular year-end season. The “Samui Plus” and “Andaman Sandbox” plans also followed cooperatively in order to form a tourism network of reopened landmark destinations.⁵⁵ The Thai government positively forecasted that there would be 129,000 international passengers and 300 billion baht in tourist revenue after the first three-month period of the Phuket Sandbox, helping the Thai tourism sector to recover to pre-COVID levels.

However, after the first three months of the campaign, the number of international passengers in the Phuket Sandbox fulfilled only 43.9 percent of the government’s expectation, or 56,740 foreign passengers traveling into Phuket, as shown in Figure 4, and the total revenue received from tourists also did not exceed the Thai government’s expectations by getting only 4.3 percent of the expected amount, or only 12,899 million baht, as shown in Figure 5. Still, the Phuket Sandbox policy did bolster economic performance and tourism flows, as overall international passengers and revenue received increased by more than 90 percent compared with the beginning of the year.

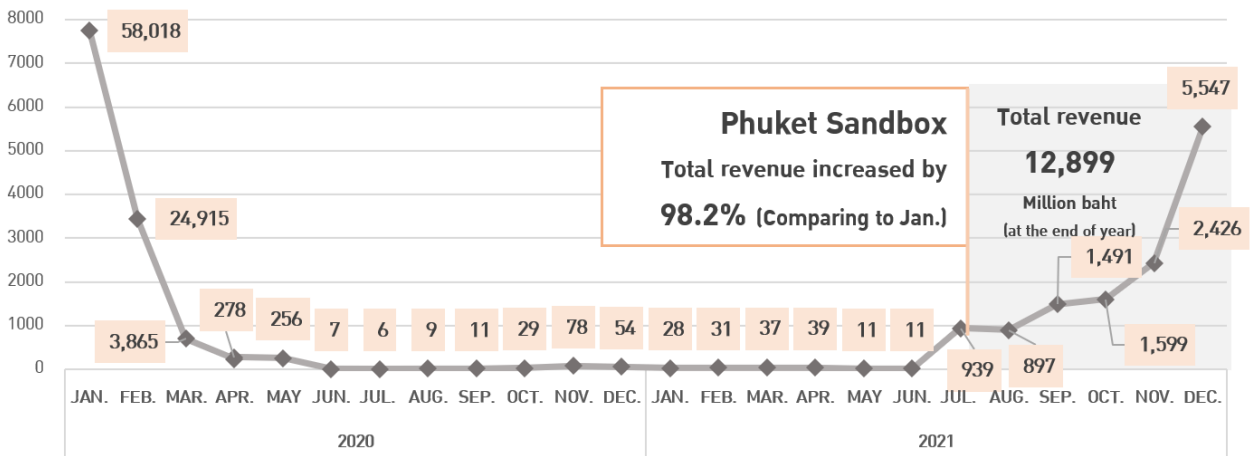
⁵⁵ “Samui Plus Plan to Generate B180M,” <https://www.bangkokpost.com>, July 18, 2021, <https://www.bangkokpost.com/thailand/general/2150575/samui-plus-plan-to-generate-b180m>.

Figure 4: Total number of international passengers in Phuket (Phuket international airport: HKT)



Source: Ministry of Tourism and Sports, Department of Tourism (December 2021).

Figure 5: Millions of baht in total revenue from Phuket international arrivals



Source: Ministry of Tourism and Sports, Department of Tourism (December 2021).

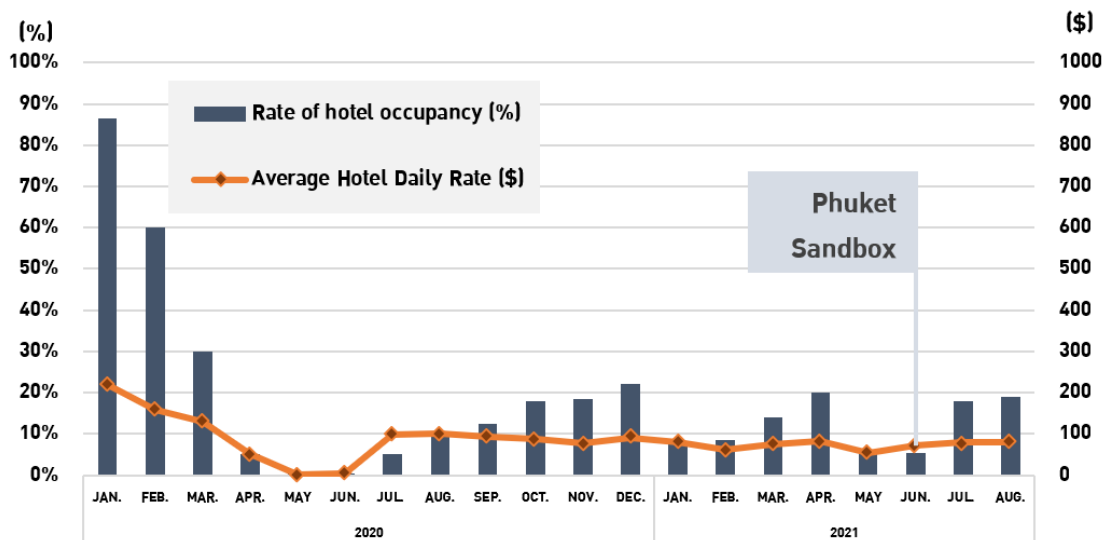
Unfortunately, for the hotel and accommodation industry to attract international tourists it had to offer large discounts on room rates. The rate of occupancy kept increasing, but hotel pricing remained low; therefore, it can be concluded that hotel operators remained negative in terms of profit. The hotels did not gain a greater income or profit with the opening of the Sandbox Program, and ran the risk of losing more money by operating than if they were to suspend operations.

The study also showed that before the opening of the Phuket Sandbox, the vaccination ratio of Phuket Province was less than 70 percent of its population. Then, the ratio started rising to more

than 70 percent after the opening of the campaign for two months. From this result, the number of infected cases in Thailand hugely increased after the launch of the Phuket Sandbox in July due to the highly contagious Alpha and Delta variants.

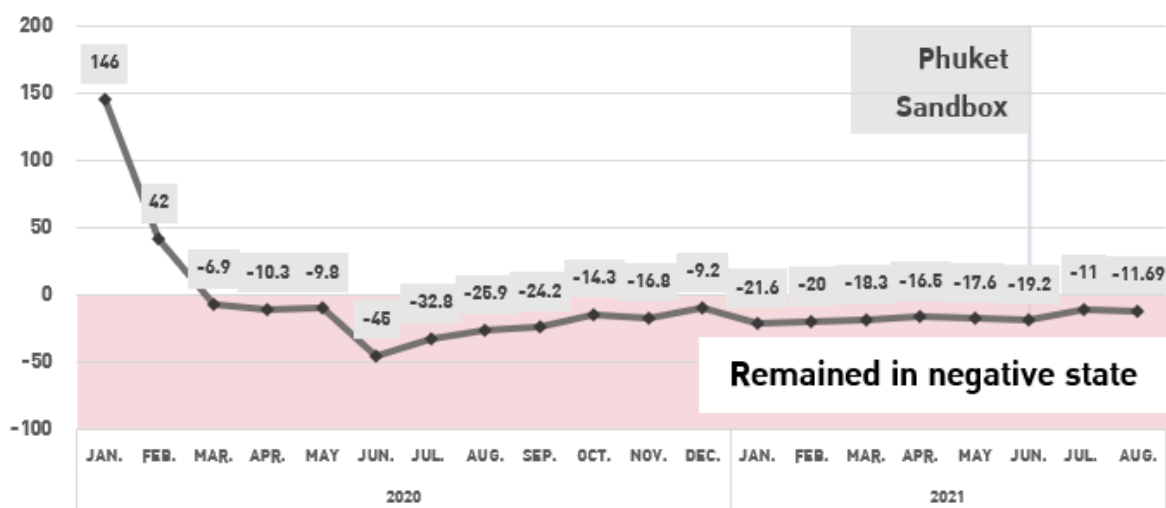
From all of the studies and analyses, the lessons learned from Phuket Sandbox campaign are as follows: (1) a fiscal expansion policy is essentially required to stimulate the recovery by expanding public investment and protecting the low-income and vulnerable workforce through targeted social transfers. Subsequently, government authorities should launch an income mobilization strategy to maintain economic and financial sustainability; (2)

Figure 6: Rate of hotel occupancy and average daily rate



Source: Ministry of Tourism and Sports, Department of Tourism (December 2021).

Figure 7: Gross operating profit per available room (dollars)



Source: Ministry of Tourism and Sports, Department of Tourism (December 2021).

public sector policies should be able to react to new and fluid situations. The most significant solution to social and economic recovery for COVID-19 is the vaccine distribution policy, leading to herd immunity and the ceasing of the pandemic; and (3) the Mor Chana application used by the Thai government should be less intrusive in terms of personal data or use available alternatives that would collect only adequate or relevant information for the purpose, and urgently fix the Mor Chana app to strengthen its security measures.

4. CONCLUSION AND RECOMMENDATIONS

Thailand has implemented various measures and policies to aid its significant travel and tourism sector throughout this pandemic crisis, with its most outstanding campaign being the Phuket Sandbox. Phuket was ranked the 15th most-visited place in the world,⁵⁶ and tourism employed at least 15.3 million workers across the Asia-Pacific region in the pre-COVID period; therefore, as the first initiator of the campaign, Thailand’s Phuket Sandbox has captured the Asia-Pacific region’s attention. Thus, research that delves into an analysis of the Phuket

⁵⁶ Kate Springer, “Why Phuket’s ‘Sandbox’ Pilot Project Matters to Other Islands in Asia,” CNN (Cable News Network), August 5, 2021, <https://edition.cnn.com/travel/article/thailand-phuket-sandbox-model-asia-cmd/index.html>.

Sandbox policy and its key success factors could be useful as a pilot project for the Asia-Pacific region. This research paper proposes key factors to achieve the Phuket Sandbox policy as follows:

(1) Air transport is significant for every economic-driven policy implementation; therefore, the government should incentivize airline partners to bring in passenger aircraft. They should also plan and market the flights to generate tourist flows into the country.

(2) Unrestricted travel from both directions is required for the Sandbox campaign to be fully functional, implying that a two-way vaccine passport is very important.

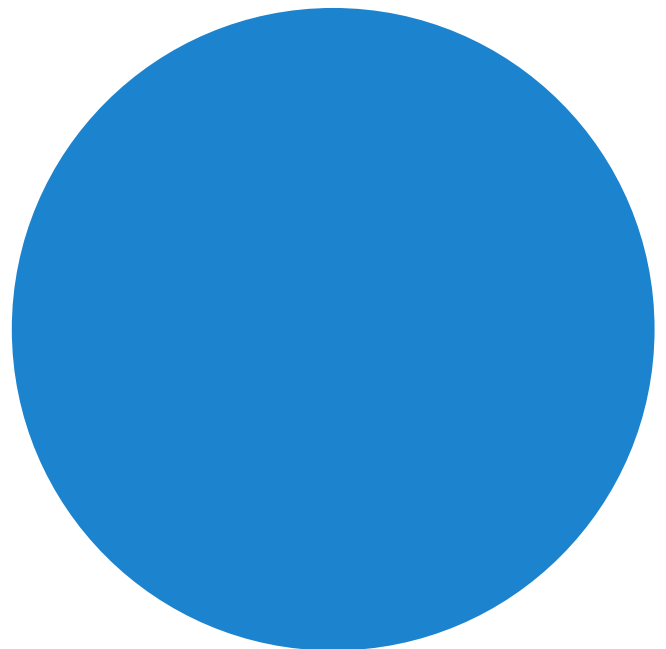
(3) Hotels and resorts run the risk of losing more money operating in the Sandbox; therefore, hotels and other forms of accommodation should deal with their own cost controls and management.

(4) Vaccination thresholds need to be met, so people living and working at the destination of the Sandbox have to reach specific vaccination targets by 70 percent or higher of all the population before the destination fully opens.

(5) COVID-19 protocols are required to be fully developed. As travel with COVID-19 will be the new normal, strict protocols need to be developed in all destinations, ranging from the recognition of vaccination passports internationally to on-property capacity limits and actions if infections are detected.

At the international level, WHO should help coordinate and facilitate national strategies in order to successfully reopen borders. In this regard, it should establish the standards for immunity similar

to the Yellow Fever International Certificate of Vaccination. This is acknowledged under the IHR as a condition of entry that states can require. If a similar certificate becomes a feasible alternative for COVID-19, WHO would be in the best position to establish the standards and embed it into the IHR.



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A STUDY OF THE NECESSITY OF AND APPROACHES TO THE PREPARATION OF PERSONAL DATA PROTECTION GUIDELINES*

*Khemmapat Trisadikoon***

1. INTRODUCTION

Thailand's Personal Data Protection Act, B.E. 2562 (2019) was enacted to protect the personal data of a data subject (defined as a natural person or juristic person about whom a controller holds personal data and who can be identified, directly or indirectly, by reference to that personal data) by setting out rules, and mechanisms, along with regulatory measures regarding the collection, storage, use, or disclosure of personal data, collectively known as "personal data processing."

* *The article is a part of the "Project on Preparing Personal Data Protection Guidelines on Data Controllers and Processors under the Personal Data Protection Act, B.E. 2562 (2019)," which was completed in December 2021. The project was funded by the Permanent Secretary of the Ministry of Digital Economy and Society.*

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However, that Act does not provide rules or procedures in detail. As a result, a guideline must be developed as an important instrument to assist in the reasonable implementation of the law or the principles set out in legislation in practice, particularly for agencies with specific missions or services.

Therefore, the Office of the Permanent Secretary, Ministry of Digital Economy and Society, serving as the Office of the Personal Data Protection Commission,¹ has assigned the Thailand Development Research Institute (TDRI) as a research team to study and draft personal data protection guidelines for relevant entrepreneurs and for the benefit of effective enforcement in accordance with the personal data protection law under the "Personal Data Protection Guideline for Personal Data Controllers and Data Processors according to the Data Protection Act, B.E. 2562" program, and to prepare relevant policy recommendations to address the issues not applied under the guidelines. Although the draft guidelines do not have a legal status that must be strictly followed, the draft guidelines, which lay out guidelines for relevant parties to implement, must be considered and reviewed by the Personal Data Protection Committee, which will be established later, before further promulgation.

¹ *Personal Data Protection Act, B.E. 2562 (2019), Section 93. During the period when the Office of the Personal Data Protection Committee has not yet been duly set up, the Office of the Permanent Secretary of the Ministry of Digital Economy and Society shall perform the duties in accordance with this Act, and the Minister shall appoint a Deputy Permanent Secretary of the Ministry of Digital Economy and Society to perform the Secretary-General's duties.*

2. GUIDELINES FOR PERSONAL DATA PROTECTION ACCORDING TO THE LAW IN THAILAND

The Act determines personal data protection measures that provide personal data subjects with the power to decide on their personal data. This includes establishing methods for exercising their rights over personal data under control of the data controller or the data processor.

Under the provisions of the Act, the guidelines for personal data protection are divided into five fields as follows:

2.1 Scope of law enforcement

The scope of law enforcement is a critical topic that raises the question “in what matters and to what territories can the law be applied.” The scope of enforcement of the Act can be divided into two characteristics: material scope and territorial scope.

(a) Material scope

The Act provides seven exceptions² to the processing of personal data for certain activities as follows: (1) personal data processing for personal gain or household activity; (2) personal data processing for the purpose of maintaining state security or public safety; (3) personal data processing in the case of mass media, fine arts, or literature; (4) personal data processing in compliance with the relevant legislative duties and powers; (5) personal data processing in court proceedings, criminal

² *Personal Data Protection Act, B.E. 2562 (2019), Section 4.*

justice procedures, legal execution, and deposit of property; (6) personal data processing in the case of credit bureau business; and (7) personal data processing exempted by royal decree. The Act shall not apply to the processing of personal data under the aforementioned clauses. However, such personal data must still be protected by the personal data controller, who must provide security in accordance with the standard.³ Furthermore, it may be necessary to comply with other methods that are specifically required by law. For example, the personal data protection procedure in judicial proceedings might employ the methods prescribed in procedural laws.

(b) Territorial scope

With regard to territorial scope, the Act supports extraterritoriality where it can be applied to the personal data processing of a personal data subject of Thai nationality, whether or not the processing takes place in Thailand. However, a personal data controller or processor based outside of Thailand shall be held accountable only if the processing is done for the purpose of offering goods or services, or monitoring of the personal data subject’s behavior where the behavior takes place within Thailand.⁴

2.2 Rights of the personal data subject

The objective of the personal data subject’s rights under the Act is to ensure the legal authority

³ *Ibid., Section 4.*

⁴ *Ibid., Section 5.*

of the personal data subject to exercise the subject's right over one's own personal data by assigning duties to the personal data controller that allow the personal data subject to exercise his, her or its (hereafter "its" is used for convenience when referring to singular subjects) rights with ease. The law also provides the methods that encourage the personal data subject to fully exercise its right to regulate decision-making regarding personal data through data subject access requests. The personal data subject has eight rights that are currently recognized by law (Table 1), although the personal data controller may deny the exercise of such rights if there are adequate legal grounds.⁵

Nevertheless, compared with the international guidelines for exercising personal data subject rights, the Act does not endorse the right of personal data subjects to exercise their legal rights free of charge,⁶ which may affect the exercise of legal rights in practice.

⁵ However, the rights of data subjects under the Act differ from certain rights guaranteed in the General Data Protection Regulation (GDPR), such as rights related to automated decision-making, including profiling under Article 22 of the GDPR.

⁶ GDPR, Article 12.

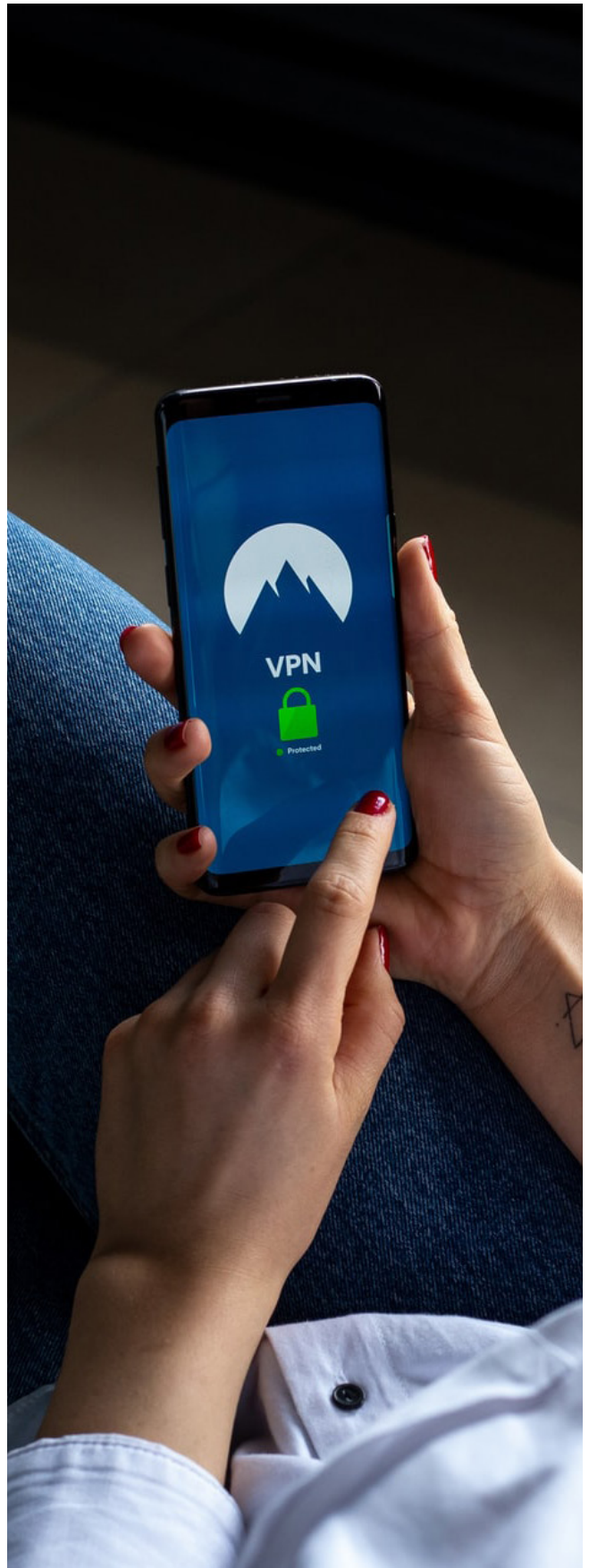


Table 1: Right of personal data subject under the Personal Data Protection Act, B.E. 2562

Right	Description
Right to be informed	The data subject has the right to know details about the data controller's use of personal data or events about that personal data. The data controller shall notify the data subject prior to or while the personal data is being processed so that the data subject can make informed decisions on matters that may affect its privacy rights. This right, therefore, calls for the controller to provide notification by means of clear and easy-to-understand communication.
Right to access	The data subject has the right to access its personal data collected by the data controller to check and recognize the relevant details, and can obtain a copy of the personal data that the personal data controller has collected.
Right to object	If the data subject does not agree to the processing of its personal data, the data subject may request the data controller to separate the data subject's wishes from other data sets and stop processing such data sets. After the data subject requests to exercise its rights, the data controller will not be able to continue collecting, using, or disclosing that personal data.
Right to withdraw consent	The right to express one's wishes to the data controller where data processing is based on consent is a legitimate ground for the processing of personal data. The data subject can express its wish to withdraw its consent at any time. After the consent is withdrawn, the data controller will not be able to process the personal data.
Right to data portability	If the processing of personal data is carried out by a technological system (not a paper file format), the data subject can request the data controller to provide or proceed to send the information to another data controller to the extent that the data controller can do so within the framework of the limitations or ability of the data controller to collect, use, disclose or transmit personal data.
Right to restriction of processing	The data controller shall limit or temporarily stop the processing of the data subject's data (different from the right to object, which is a permanent cessation of data processing).
Right to rectification	The data subject can submit a request to exercise the right to correct the data. This includes requesting the removal of old data and adding new data, so that the processing will be complete and involve accurate use of current data, and not cause any misunderstanding, and is beneficial to the data subject in order that the data subject would receive appropriate services.
Right to erasure and right to be forgotten	The data subject may request the data controller to delete or destroy its personal data. This includes using whatever means that make the information no longer personally identifiable. In addition, if such information is no longer necessary for its purpose, without any other legal basis, it is grounds for legally processing that data. The data controller should also have to delete personal data.

Source: Somkiat Tangkitvanich and others, 2021.

2.3 Relationships between parties involved in the processing of personal data

The Act establishes the relationship between the parties involved in the processing of personal data by dividing the relationship into two parts: (a) the relationship between the personal data subject and the personal data controller; and (b) the relationship between the personal data controller and the personal data processor.

(a) The relationship between the personal data subject and the personal data controller

The relationship between the personal data subject and the personal data controller under the Act is in the form of rights that the personal data subject has toward the personal data controller and duties that the personal data controller owes to the personal data subject, which can be classified into three groups:

(1) The first group: the duties of the personal data controller in relation to the processing of personal data in seven matters as follows:

- Collecting data to the extent necessary;⁷
- Informing the subject about the details regarding personal data processing;⁸
- Processing personal data based on legal grounds;⁹
- Requesting consent for the processing of personal data in the absence of other legal bases or grounds;¹⁰

⁷ *Personal Data Protection Act, B.E. 2562 (2019), Section 22.*

⁸ *Ibid., Section 23.*

⁹ *Ibid., Section 24.*

¹⁰ *Ibid., Sections 19 and 24.*

- Maintaining records of processing activities;¹¹
- Complying with the conditions of personal data collection from third parties;¹²
- Complying with the conditions of personal data transfer to foreign countries.¹³

(2) The second group: the duties relating to the exercise of rights by the personal data subject, that the personal data controller is obligated to assist and facilitate when the data subject requires the exercise of its legal rights.¹⁴

(3) The third group: the specific legal duties of the personal data controller.

- Maintaining the security of personal data;¹⁵
- Complying with requirements regarding the transfer of personal data to third parties;¹⁶
- Establishing a system for examining and editing personal data;¹⁷
- Appointing a data protection officer;¹⁸
- Reporting a personal data breach when it occurs.¹⁹

¹¹ *Ibid., Section 39.*

¹² *Ibid., Section 25.*

¹³ *Ibid., Sections 28 and 29.*

¹⁴ *See Act's Sections 19, 23 and 30–36.*

¹⁵ *Personal Data Protection Act, B.E. 2562 (2019), Section 37 (1).*

¹⁶ *Ibid., Section 37 (2).*

¹⁷ *Ibid., Sections 35 and 37 (3).*

¹⁸ *Ibid., Section 41.*

¹⁹ *Ibid., Section 37 (4).*

(b) The relationship between the personal data controller and the personal data processor

In practice, the personal data controller may not always process personal data on his or her own and therefore may assign the processing work to other persons, business organizations, or government agencies, as the case may be. By law, personal data processors do not have a direct contractual or legal connection with the personal data subject. As a result, the personal data controller is required by law to supervise and control the work of the personal data processor. The duties of the personal data processor include: following the orders of the personal data controller in the processing of personal data; providing security measures for personal data; and maintaining records of personal data processing activities as assigned.²⁰

2.4 Rules on the processing of personal data

The Act prescribes rules for personal data processing throughout the data life cycle, including data collection, usage, disclosure, and erasure or destruction of personal data, starting from evaluating the legal basis or grounds for processing personal data so that it is in accordance with personal data processing activities.²¹

²⁰ See *Personal Data Protection Act, B.E. 2562 (2019)*, Section 40.

²¹ *Ibid.*, Part 2, *Personal Data Collection*; and Part 3, *Use or Disclosure of Personal Data*.

2.5 Penalties and Powers of the Personal Data Protection Authority

Another important aspect of this Act is the penalties and powers of the Personal Data Protection Authority. The penalties for violations are classified into criminal,²² administrative,²³ and civil.²⁴ The law also authorizes the Personal Data Protection Committee and the Office of the Personal Data Protection Commission to supervise compliance with the law.

3. APPROACHES TO THE PREPARATION OF FOREIGN PERSONAL DATA PROTECTION GUIDELINES

The drafting of the personal data protection guidelines is new to Thailand. By establishing a good and clear framework which is also consistent with international standards will help encourage the related parties to apply such guidelines effectively. The research team therefore divided a study of foreign guidelines into two aspects: (a) a study of the global legal system of personal data protection; and (b) foreign best practices of personal data protection that are consistent with Thailand's law.

Currently, the world's legal system for personal data protection can be divided into three systems: (a) open model system, as used in the United States; (b) conditional model system, as used

²² *Personal Data Protection Act, B.E. 2562 (2019)*, Sections 79–81.

²³ *Ibid.*, Sections 82–90.

²⁴ *Ibid.*, Sections 77–78.

Table 2: Data protection law models

Model	Cross-border data flows	Domestic data processing
Open Model	<ul style="list-style-type: none"> • Self-certification • Self-assessment schemes • Ex-post accountability • Trade agreements and plurilateral arrangements as the only means to regulate data transfers 	<ul style="list-style-type: none"> • Lack of comprehensive data protection framework • Lack of informed consent • Limited sectoral regulations • Privacy as a consumer right
Conditional Model	Conditions to be fulfilled ex-ante, including the adequacy of the recipient country, binding corporate rules, standard contract clauses, data subject consent, codes of conduct and others	<ul style="list-style-type: none"> • Broad data subject rights • Data subject consent • Right to access, modify and delete personal data • Establishment of data protection authorities or agencies • Privacy as a fundamental human right
Control Model	<ul style="list-style-type: none"> • Strict conditions including bans to transfer data across borders • Local processing requirements: ad hoc government authorization for data transfer • Infrastructure requirements • Ex-ante security assessments 	<ul style="list-style-type: none"> • Extensive exceptions for government access to personal data • Privacy vs. security and social order

Source: Martina Francesca Ferracane and Erik van der Marel, 2021.

in the European Union and the United Kingdom; and (c) control model system, as used in China and Russia. Each system has different methods for achieving personal data protection, both in terms of cross-border personal data flow and domestic processing of personal data, as shown in Table 2.

Within the abovementioned framework, each approach to personal data protection differs systematically, the research team therefore chose countries that employ the open model system and the conditional model system in order to be consistent with the context of Thailand, which is influenced by the previously mentioned General Data Protection Regulation, or GDPR,²⁵ an essential basis in the enactment of the Personal Data Protection Act, B.E. 2562 (2019). The researchers also relied on four other factors when selecting countries to study. The

factors are as follows: (a) geographical diversity; (b) regulatory diversity; (c) law enforcement experience; and (d) the impact of enforcement. After consideration, the researchers chose to study the personal data protection guidelines of the European Union, Japan, Singapore, the United Kingdom, and the United States. The details of the study are as follows.

²⁵ In the draft of the Personal Data Protection Act, B.E. 2562 (2019), the note does not mention that the law is modeled after the European Union's GDPR, but considered in the Minutes of the National Legislative Assembly; it can be seen that the GDPR had a great influence on the drafting of the Act (see National Legislative Assembly, Minutes of the 18/2019 National Legislative Assembly (27 February 2019), 98).

3.1 National personal data protection legal system of each country

In considering the personal data protection laws of the five countries chosen for the study, the research team found that each country's national personal data protection legal system differs in detail and form of law enforcement. In the European Union, Japan, Singapore, and the United Kingdom, the personal data protection legal system is centralized by stating that their personal data protection law is a general law, thus allowing the law to be applied to any matter or activity that belongs either to either government agencies or private businesses. However, there may be cases where specific regulations may be enacted to provide additional details from the Act, such as the enactment of law for administrative and independent administrative agencies in Japan.

The United States legal system differs from that of other countries because the "Patchwork System"²⁶ lacks a central law and instead relies on the enforcement of multiple federal and state laws that are distributed among the business regulations in each industry. The Federal Trade Commission Act, for example, regulates the trade and commerce industry, as do state-level personal data protection laws, such as the California Consumer Privacy Act, which regulates the processing of personal data under the law. However, there are loopholes in the

supervision because some industries may lack an applicable personal data protection law. Furthermore, many regulations applied to protect personal data have the objective of protecting consumers rather than personal data.

3.2 Consistency between personal data protection laws and the GDPR

A review of the laws of the five sample countries showed that they were all influenced by the GDPR of the European Union. After the promulgation of the GDPR, all five countries were required to amend their laws related to personal data protection to be consistent with the standards set forth by the GDPR. The amendments were made to build confidence with the European Union, which has a larger economy than that of other countries, by establishing a personal data protection policy that is consistent with the European Union and supporting the security of cross-border personal data transfers. One of the evident examples is the case of the United Kingdom, where the Data Protection Act 2018 was enacted in lieu of the former Personal Data Protection Act with the purpose of adapting GDPR criteria into the national legal system since the United Kingdom was also part of the European Union at that time. Other countries have likewise made efforts to align their legal structures and principles with the GDPR.

3.3 Forms of personal data protection guidelines

The study of the forms of the personal data protection guidelines of the five sample countries

²⁶ See Heck, Z. S. 2018. "A Litigator's Primer on European Union and American Privacy Laws and Regulations." *Litigation* 44(2): 59–61. <https://www.jstor.org/stable/26402126>.

revealed that they can be classified into three forms: (a) general/concept guidelines; (b) sector-specific guidelines; and (c) topic-specific/activity-based guidelines. The details of each form are shown as follows:

(a) General/concept guidelines of personal data protection

General/concept guidelines of personal data protection collect explanations or advise on issues that are not explicitly stated by the law or secondary laws. The guidelines may also describe specific principles and concepts relevant to personal data protection laws, such as giving key definitions to the term “personal data” or “person” under the personal data protection law, for example. Another significant scope of content is the determination of legal compliance methods under different circumstances, such as consent request method, notification of personal data collection, selection of personal data processing basis, and actions in the event of a personal data breach, and so on. The details are shown in Table 3.

(b) Sector-specific guidelines of personal data protection

The study found that Japan, Singapore and the United States are examples of countries that have developed sector-specific guidelines of personal data protection for business operators in related industries in order to comply with applicable personal data protection laws. Major industries that have established guidelines on personal data protection are public

health, telecommunications, education, finance, banking, and credit. The details are shown in Table 4.

(c) Topic-specific/activity-based guidelines of personal data protection

Another form that has been developed is the topic-specific/activity-based guidelines, which take into account the context of personal data use in relation to the processing of personal data in a specific event or matter. For example, the European Union established guidelines 04/2020 on the use of location data and contact tracing tools in the context of the COVID-19 pandemic, which consider the context of personal data use for medical research as well as the use of location data and tracing tools in accordance with the situation in order to provide personal data protection that is consistent with the effectiveness of epidemic prevention.²⁷ The research team found that the topic-specific/activity-based guidelines were created to address recently emerged issues or newly developed innovations, thus requiring interpretation or guidance for the processing of personal data in such contexts. The details are shown in Table 5.

However, aside from the three forms as presented above, the study also found that the websites of some sample countries’ data protection authorities accommodate users by displaying the guidelines’

²⁷ EDPB, 2020, *Guidelines 04/2020 on the use of location data and contact tracing tools in the context of the COVID-19 outbreak*, 3–4, https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_20200420_contact_tracing_covid_with_annex_en.pdf, accessed April 4, 2022.

Table 3: Comparison of key issues that appear in the general guideline, by country/area

Key issues	European Union	United Kingdom	Singapore	Japan
Data controller and data processor	✓	✓		
Lawful basis	✓	✓		✓
Data subject rights		✓		
Transparency	✓	✓	✓	✓
Data transfer	✓	✓	✓	✓
Consent	✓	✓	✓	✓
Sensitive data or special categories		✓		?
Data protection officer	✓	✓	✓	
Anonymized information		✓	✓	✓
Data breach notification	✓	✓	✓	✓
Data protection impact assessment	✓	✓		
Fines	✓			

Source: Somkiat Tangkitvanich and others, 2021.

Table 4: Comparison of industry guidelines, by country

Industry	Countries		
	Japan	Singapore	United States
Education		✓	✓
Medical and public health	✓	✓	✓
Finance and credit	✓		✓
Telecommunications	✓	✓	✓
Commerce			✓
Transport (CCTV)		✓	
Real estate		✓	
Property management		✓	
Social work		✓	
Insurance		✓	
Labor	✓		

Source: Somkiat Tangkitvanich and others, 2021.

content in an easily accessible format and connecting the information within the website to facilitate research or study of the personal data law in each issue. Furthermore, in some countries, specific contents have been created to assist specific groups of users. In the United Kingdom, for example, the Personal Data Protection Agency’s website has specific guidelines or documents relating to small and medium-sized enterprises (SMEs), as well as

a self-assessment checklist for people with legal duties to assess the risk in legal compliance or to check their preparedness in following legal rules and conditions, and so on.

In conclusion, a comparative study of foreign personal data protection guidelines found that the five sample countries have different personal data protection laws where they may be enacted as a general data protection laws and sector-specific

Table 5: Overview of topic-specific/activity-based guidelines, by country

Activities	Countries/ areas	Name
COVID-19	Singapore	<ul style="list-style-type: none"> Advisories on Collection of Personal Data for COVID-19 Contact Tracing and Use of Safe Entry
	United Kingdom	<ul style="list-style-type: none"> Data Protection and Coronavirus Information Hub
	European Union	<ul style="list-style-type: none"> Guidelines 04/2020 on the use of location data and contact tracing tools in the context of the COVID-19 outbreak Guidelines 03/2020 on the processing of data concerning health for the purpose of scientific research in the context of the COVID-19 outbreak
Online activities	Singapore	<ul style="list-style-type: none"> Advisory Guidelines on the Personal Data Protection Act for Selected Topics – Chapter 6: Online Activities
	European Union	<ul style="list-style-type: none"> Guidelines 08/2020 on the targeting of social media users Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) GDPR in the context of the provision of online services to data subjects
	United States	<p>Commerce</p> <ul style="list-style-type: none"> App Developers: Start with Security Careful Connections: Keeping the Internet of Things Secure Marketing Your Mobile App: Get It Right from the Start <p>Education</p> <ul style="list-style-type: none"> Protecting Student Privacy While Using Online Educational Services: Requirement and Best Practices
Photography, video and audio recordings	Singapore	<ul style="list-style-type: none"> Advisory Guidelines on the Personal Data Protection Act for Selected Topics – Chapter 4: Photography, Video and Audio Recordings
	European Union	<ul style="list-style-type: none"> Guidelines 3/2019 on processing of personal data through video devices

Source: Somkiat Tangkitvanich and others, 2021.

personal data protection laws. These factors affect the nature of guidelines for which a personal data protection guideline may be formulated for specific industries only. In addition, when considering the

form of personal data protection guidelines, there are three forms of guidelines: (a) general/concept guidelines; (b) sector-specific guidelines; and (c) topic-specific/activity-based guidelines.

Table 6: Summary of comparison of personal data protection guidelines of sample countries/areas*

Key issues	EU	Japan	Singapore	UK	US
1. Data protection law models					
• Open model					✓
• Conditional model	✓	✓	✓	✓	
2. Status of personal data protection laws					
• Data protection governed by personal data protection law	✓	✓	✓	✓	
• Data protection governed by sectoral law					✓
3. Consistency between personal data protection laws and the GDPR	✓	✓	In the process of improvement	✓	In the process of improvement
4. Types of personal data protection guidelines					
• General guideline/concept guideline	✓	✓	✓	✓	✓
• Sector-specific guideline	-	✓	✓	-	✓
• Topic-specific guideline	✓	✓	✓	✓	✓
• Guideline of SMEs	-	-	-	✓	-
• Checklist / Self-assessment for Complying with Personal Data Protection Law	-	-	-	✓	✓

* Information as of December 14, 2021.

Source: Modification of information, based on Somkiat Tangkitvanich and others, 2021.

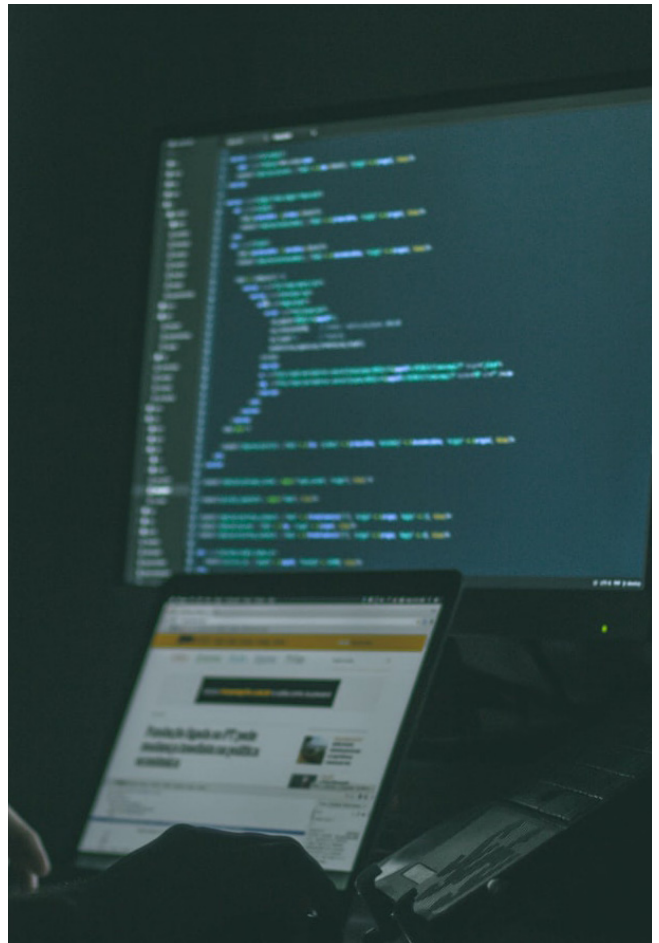
4. APPROACHES TO THE PREPARATION OF GUIDELINES ON PERSONAL DATA PROTECTION OF THAILAND

In order to effectively enforce the Personal Data Protection Act, B.E. 2562 (2019), personal data protection guidelines must be developed to help expand the unclear provisions in the Act, which also lacks a sufficiently clear legal practice guideline for compliance in each situation. As a result, planning for the drafting of guidelines is crucial in order to provide those involved with guidance on how to comply with the law. After analyzing examples of foreign guidelines with Thai personal data protection legal frameworks, the research team drafted a guideline which summarizes the guidelines and factors that must be considered in terms of form and scope of content as follows:

4.1 Forms of personal data protection guidelines

Considering that the enforcement of the personal data protection law has been delayed because of its complexity, the operators with legal duties are not yet ready to comply with the measures prescribed by the law²⁸ due to the lack of clear guidance for legal compliance; therefore, it is necessary to develop clear guidelines on personal

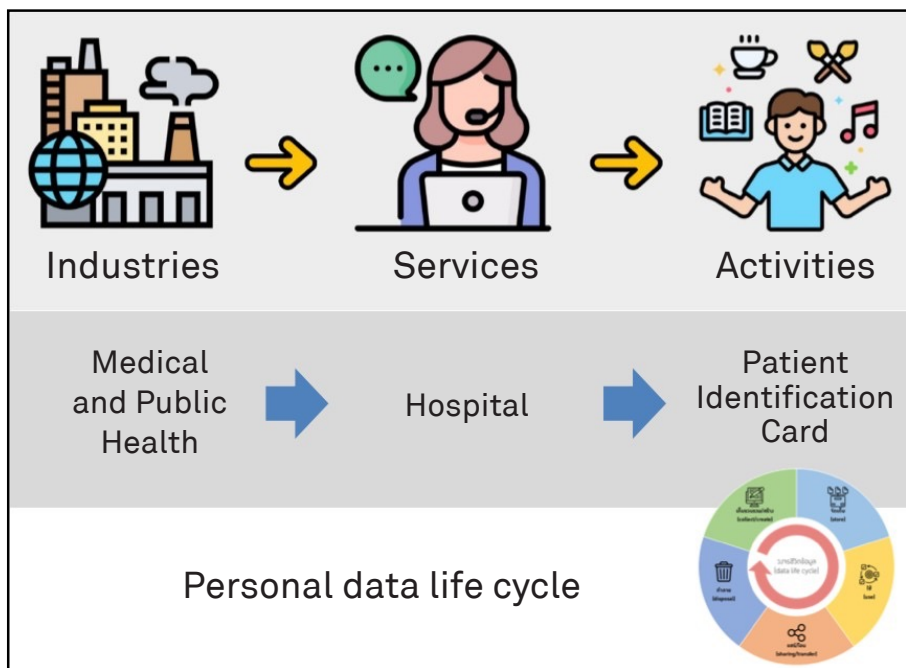
²⁸ For the first time, the Royal Decree Specifying Data Controllers that are Entities and Businesses not subject to the Personal Data Protection Act, B.E. 2562 (2019), and B.E. 2563, were announced on May 21, 2020; and for the second time, the Royal Decree Specifying Data Controllers that are Entities and Businesses not subject to the Personal Data Protection Act B.E. 2562 (2019) (second edition), B.E. 2564, was announced on May 8, 2021.



data protection.

In a study on the drafting of guidelines concerning personal data protection for agencies with specific missions or services, the operation should conduct both an industry overview study and a detailed study of personal data processing activities within the organization by conducting detailed analyses at the industry level, services level, and personal data processing activities respectively. The personal data life cycle may be taken into account at the activity level. The details are shown in Figure 1.

Figure 1: Methodology to develop personal data protection guidelines for certain sectors



Source: Somkiat Tangkitvanich and others, 2021.

4.2 Determining the scope of content of the personal data protection guidelines

Aside from the form, the preparation of the guidelines should take into account the scope of content to be drafted under the guideline development program. The research team conducted the study by dividing the guideline drafts into seven areas: public health; education; real estate and property management; tourism; retail and e-commerce; transportation and logistics; and government agencies. The content is divided into four parts as follows:

Part 1 Introduction and statement: this part describes the purpose, statements, instructions, and definitions of vocabulary used throughout this guideline;

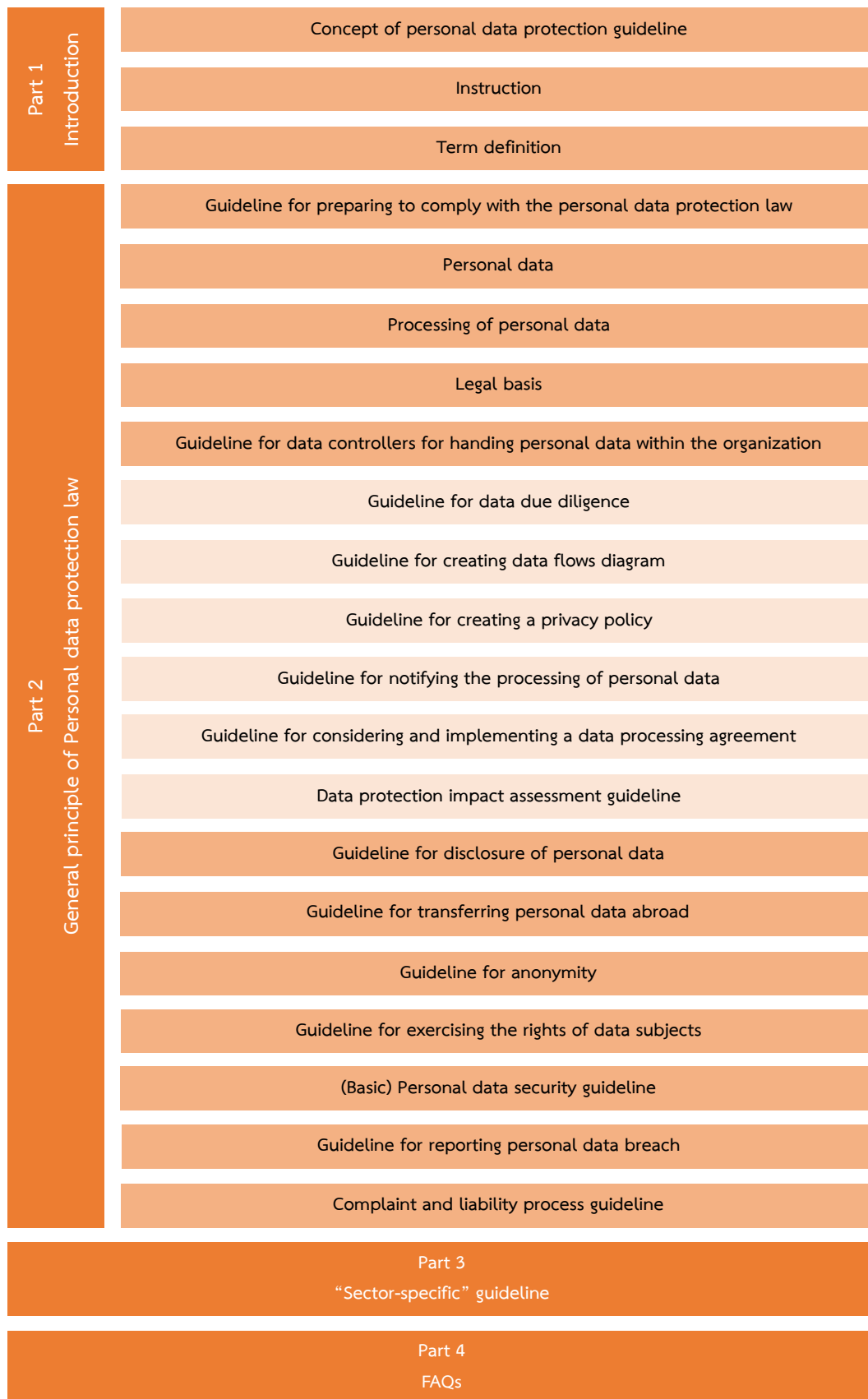
Part 2 General principles: this part explains the principles, procedures, and methods that the relevant parties are required to follow under the

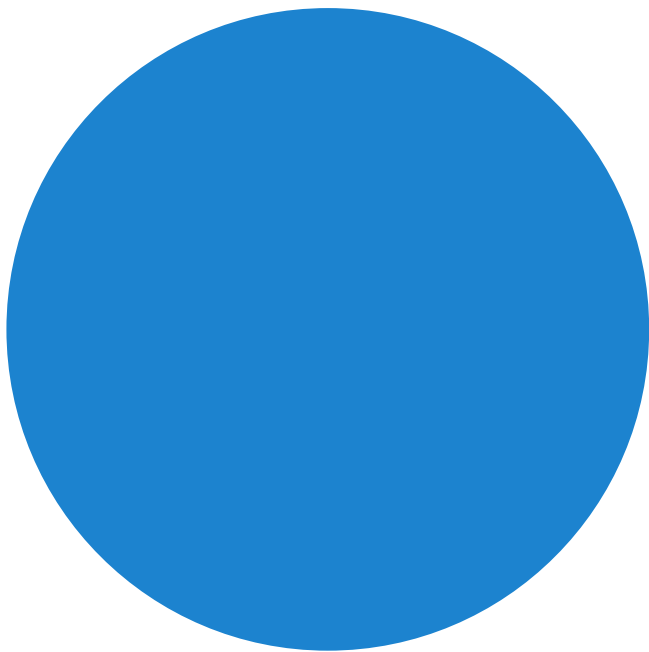
Act, such as guidelines for selecting a legal basis for the processing of personal data; guidelines for notifying the processing of personal data; guidelines for disclosure of personal data; guidelines for exercising the rights of personal data subjects; and guidelines for dealing with personal data leaks, among other guidelines;

Part 3 Guideline draft for specific personal data protection activities: this part provides examples of activities that require the processing of personal data and are essential to the agencies with missions or services in each area. The agencies can apply the guidelines from these sample activities to their own internal operations;

Part 4 Frequently Asked Questions (FAQs): this part includes issues and concerns that frequently occur in the context of each agency's operations in their mission or service.

Figure 2: Personal data protection guideline structure





In terms of implementing the four parts of the guidelines draft, the researchers prepared it by taking into account the benefits of the user in order to facilitate the search through the general principles section, the samples of specific personal data protection activities guideline section, and the frequently asked questions section; the user can also study any specific content in the guideline. Moreover, for the benefit of reference, the research team included an index in each paragraph, enabling the user to refer to the guidelines in each paragraph, a method similar to that used in the foreign personal data protection guidelines.

5. SUGGESTIONS

Under this guideline study project, the research team has made a recommendation which is divided into two parts: recommendations on the dissemination of personal data protection guidelines

after approval; and other policy recommendations.

5.1 Recommendations on the promulgation of guidelines on personal data protection

As for the recommendations on the dissemination of personal data protection guidelines after approval, the research team's recommendations are divided into two parts: (a) recommendations on the promulgation of personal data protection guidelines; and (b) recommendations on the dissemination of personal data protection guidelines after publication.

(a) Recommendations on the promulgation of the approved personal data protection guidelines

The guidelines on personal data protection are important for compliance with the Personal Data Protection Act, B.E. 2562 (2019). The research team believes that the guidelines should be promulgated, keeping in mind the preparedness of the agencies and the relevant parties; however, the seven areas in the guideline draft proposed by the research team, which are education, public health, tourism, real estate and property management, transportation and logistics, retail and e-commerce, and government agencies, may differ in readiness. Therefore, the research team suggested that the guidelines for each area should be promulgated in the sequence specified in the roadmap. The areas can be classified into three groups as follows:

Group 1 is prepared to comply with the guidelines and their implementation has a significant impact on law enforcement. This group includes

retail and e-commerce, public health, education, and government agencies. This group is designed to benefit the most from the guidelines in terms of clarity of usage, interpretation, and readiness for legal compliance. If the guidelines could be promulgated prior to the enforcement of the law before the end of the first quarter of 2022, they would benefit users who are personal data controllers and personal data processors before the Personal Data Protection Act, B.E. 2562 (2019) comes into force.

Group 2 is prepared to comply with the guidelines and their implementation has a less significant impact on the enforcement. This group includes real estate and property management, and transportation and logistics. Despite the fact that the guidelines have a significant impact on enforcement and readiness to comply with the Act, in terms of the number of users and the condition of the business, the entrepreneurs with missions or services in this group are mostly medium and large-scale business organizations (except in the case of real estate brokerages in the real estate and property management area); hence the guidelines for this group may be promulgated after the first group, which is during the second quarter before the Act comes into force.

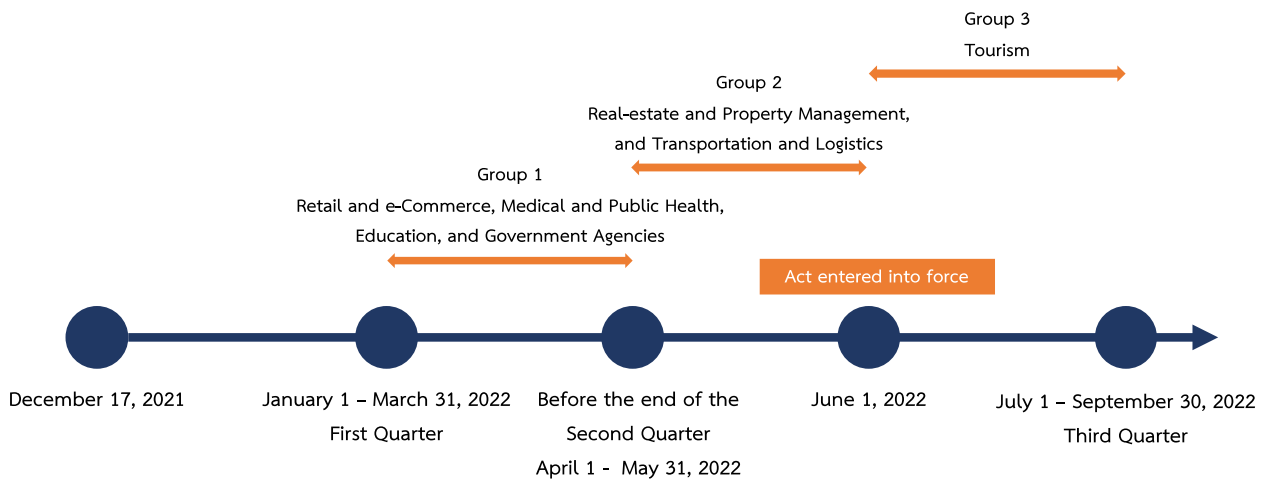
Group 3, the tourism businesses, is less prepared to follow the guidelines and their implementation has a smaller impact on enforcement at this time. The businesses with tourism missions or services are currently experiencing difficulties and impacts caused by the COVID-19 pandemic. As a result, they are unprepared to adhere to the guidelines during this time period. Furthermore,

entrepreneurs must concentrate on resolving the problems in the aftermath of the pandemic; thus, in terms of promulgation, this group should be the last, which may be after the Personal Data Protection Act, B.E. 2562 (2019) comes into effect after the postponement of enforcement in the third quarter. To keep the content up to date with the situation following the pandemic, the research team concluded that a meeting with the relevant stakeholders should be held again to determine their current consistency conditions prior to the dissemination of the Guidelines on Personal Data Protection in the tourism business. The discussion includes the details of the secondary regulations that the Personal Data Protection Committee will issue later to clarify the guidelines under the Act. However, the preparation for the implementation of the Act will benefit tourism groups in preparing for the European Union's GDPR, which is a higher standard.

(b) Recommendations on the dissemination of guidelines on personal data protection after promulgation

Following the initial publication of guidelines on personal data protection in all seven areas, the research team believes that the Office of the Permanent Secretary, Ministry of Digital Economy and Society, which currently acts as the Office of the Personal Data Protection Commission, or the next Office of the Personal Data Protection Commission, may consider taking some additional actions to ensure that the established guidelines are effectively enforced.

Figure 3: Timeline to publishing personal data protection guidelines



Source: Somkiat Tangkitvanich and others, 2021.

First, the Office of the Permanent Secretary, Ministry of Digital Economy and Society, which acts as the Office of the Personal Data Protection Commission, may add additional content to the guidelines in seven areas in order to be consistent with the secondary regulations that the Personal Data Protection Commission will further issue.

Second, because the Personal Data Protection Act, B.E. 2562 (2019) is still in the early stages of developing secondary laws and interpretation guidelines, the display of guidelines content on the Office of the Personal Data Protection Commission’s website is for the general public as personal data subjects, personal data controllers, and personal data processors, where they can conveniently track the contents of the secondary regulation, interpretation guidelines, and explanations of new issues in the personal data protection law. The website may employ a presentation format similar to that used on

the United Kingdom’s Information Commissioner’s Office website.

5.2 Policy Recommendations

The research team has complied recommendations from various studies on additional topics that will benefit personal data protection in Thailand. The details are as follows:

(a) Guidelines for personal data management on the front of identity cards according to Section 26 of the Personal Data Protection Act, B.E. 2562 (2019)

The researchers recognized practical issues with the use of identity cards and copies due to the fact that religious information is considered personal data (sensitive personal data) under Article 26 of the Act. Once the Personal Data Protection Committee is formed, it may be necessary to consider issuing

secondary regulation to prohibit the use of identity card copies in the identification process in doing transaction. Currently, entrepreneurs strike out the religious information on the identity card copies as a way to conceal it.

The method, however, results in a complex transaction process and procedure due to the fact that entrepreneurs have to employ their personnel to strike out the religious information and recheck whether each copy has been struck out or not. If there is no inspection, it will cause consistency problems in accordance with the law. Furthermore, entrepreneurs, particularly the legal compliance department, oppose this method as it is ineffective at reducing the risk of legal compliance as well as creating difficulties in court citation, and recommend a consent request method instead. As a result, in order to ensure clarity in legal compliance, the researchers were of the opinion that identity cards and copies should be exempted from the enforcement of the law.

(b) Solution to the problem of unclear provisions concerning the exceptions of personal data processing under Article 4 paragraph one (2) of the Personal Data Protection Act, B.E. 2562 (2019)

The research team is of the opinion that the provisions relating to the exceptions in Section 4, paragraph one (2) of the Act should be clarified by requiring that the exemptions from the law apply solely to personal data processing activities and not to all government agencies automatically as

stated in the Act that “This Act shall not apply to the operations of public authorities having the duties to maintain state security, including financial security of the state or public safety, including the duties with respect to the prevention and suppression of money laundering, forensic science or cyber security.” It is unclear whether the provision intends to exempt all processing activities or the entire performance of that government agency. When compared to the same provisions in the GDPR, the model law used in the drafting of the Act, it is shown that the GDPR provisions describe the nature of the exceptions that are not applied to personal data processing activities in the fields of national security and common security,²⁹ without the intention of automatically excluding all security-related government agencies. Consequently, the exemption from law enforcement should clearly state that the intention is to exclude personal data processing activities in relation to the purpose, rather than all government entities.

(c) Provisions on exceptions to the processing of personal data under Article 4 paragraph one (2) of the Act

If an amendment cannot be made to Section 4 paragraph one (2) of the Act by clarifying that the characteristic of an activity should be considered, the research team believes that the Office of the Personal Data Protection Commission may be required to specifically establish personal data protection

²⁹ GDPR, Recital 16.

guidelines for government agencies regarding security to clearly define the scope of the nature of security-related activities to be excluded. Some participants in the data collection interviews and small group meetings expressed concern that the provisions still remains unclear, especially when compared to similar provisions in Article 15, paragraph one (1) of the Official Information Act, B.E. 2540 (1997), which focus on security issues in particular.

(d) Restrictions on the enforcement of the Personal Data Protection Act, B.E. 2562 (2019) in conjunction with other legislation

The researchers are of the opinion that, in many cases when considering personal data processing activities, the data was collected not because of the actual need to process personal data but because of legal obligations requiring the personal data controller to comply,³⁰ such as the collection of personal data by hotels under the Hotel Act, B.E. 2547 (2004),³¹ or the collection of patients' personal data under various public health laws.³² In practice, problems arise in cases where the personal data controller intends to minimize the collection of personal data in accordance with the data minimization

³⁰ *Processing of personal data, in which case the data controller uses a legal obligation base to process personal data. See Somkiat Tangkitvanich and others, "Project on Preparing Personal Data Protection Guidelines on Data Controllers and Processors under the Personal Data Protection Act, B.E. 2562 (2019)" (Submitted to the Office of the Permanent Secretary of the Ministry of Digital Economy and Society 2021) Chapter 3.*

³¹ *Ibid.*, Chapter 10.

³² *Ibid.*, Chapter 5.

principle but is unable to do so because several regulations require agencies to collect personal data even when it is not necessary. For example, while the hotel operator is obligated to report hotel occupancy information to the Department of Provincial Administration under the Ministry of Interior, the law still requires the operator to preserve the guest registration for at least one year to be ready for inspection by government officials.³³

Furthermore, relying on law enforcement to collect personal data may put the subject's human rights or privacy rights at risk, especially with regard to laws relating to the security of the state and public order in various dimensions,³⁴ where the state may claim data collection without consent on the basis of state security and arbitrary exercise of power to access personal data and therefore affect the data subject. Although the principles in Thailand's Personal Data Protection Act B.E. 2562 (2019) are congruent with international principles, in practice people may not be fully protected by the Act because of other laws that provide the power to collect personal data. This problem may be related to the international standard issues regarding personal data transfers, which must be secured by countries with personal data protection standards.³⁵

The aforementioned restrictions represent the problems with Thailand's implementation of

³³ *Hotel Act, B.E. 2547 (2004), Section 35.*

³⁴ *See Kanathip Thongraweewong, Description of the Personal Data Protection Law (คำอธิบายหลักกฎหมายคุ้มครองข้อมูลส่วนบุคคล) (Nititham (นิติธรรม) 2021):495 and 496.*

³⁵ *Ibid.*

the Personal Data Protection Act B.E. 2562 (2019), which may result in inconsistency with the Personal Data Protection Law's principles and may affect the availability of sufficient international standards for the transfer of personal data between countries.

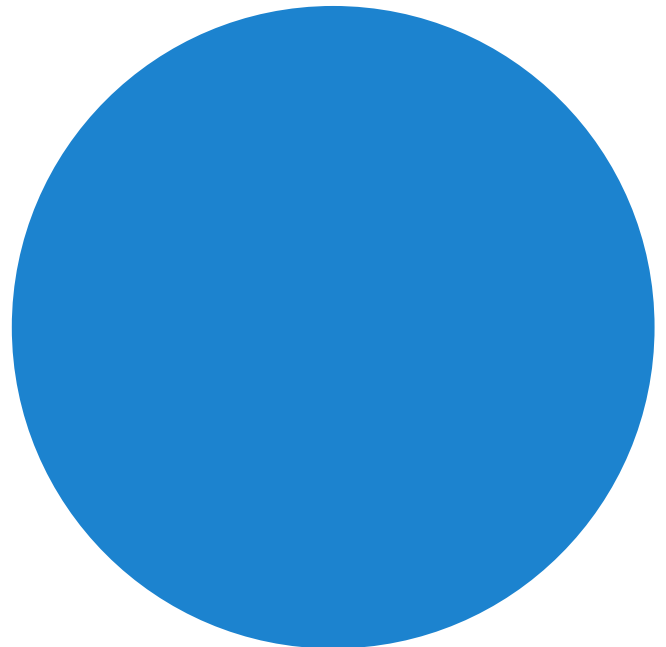
6. CONCLUSION

The Personal Data Protection Act, B.E. 2562 (2019) is an important Thai primary law that will help raise standards for personal data protection with regard to data controllers and data processors under the law. However, due to the law's complicated nature, it is difficult to comprehend and may impede the operator's compliance. The establishment of appropriate guidelines is very important because it will help clarify the contents for users so that they can apply the law properly to their context.

There is no fixed method for developing good guidelines for complying with personal data protection laws. According to an international study, the guideline models can vary depending on the context and availability of the relevant parties. Previous studies by the Thailand Development Research Institute, however, found that in order to draft good guidelines, it is necessary to consider form, content, and the target audience who are expected to implement the guidelines, so that the guidelines are drafted to meet their actual needs and expectations. Education, real estate, retail, transport and logistics, government agencies, tourism, and hospitals, all of which process large amounts of personal data with various operators but still lack a central agency in the preparation of guidelines,

are the groups that have a high demand for such guidelines. Additionally, while developing a good guideline, the activities in which the target audience must engage should be taken into consideration in order for the users to benefit from the guideline's complete execution.

However, after the guidelines have been approved by the relevant agencies, it's necessary to have a proper strategy in terms of time frame and sequence of promulgation to enable the relevant parties to adjust themselves in accordance with the primary law's regulations. All of these factors are critical to the development and promulgation of personal data protection guidelines in Thailand.



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