



## CLIENT UPDATE



### Significant Proposed Revisions to Israeli Privacy Law Are Published

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On July 23, 2020, the Ministry of Justice published a Proposal to Amend the Protection of Privacy Law (Definitions and Reduction of the Scope of the Registration Obligation), 2020 (the "Proposal"), for public comments. The Proposal has two main purposes: first, reducing the scope of the obligation to register databases, as set forth in Section 8 of the Protection of Privacy Law (the "Law"), and second, adapting the basic definitions concerning the protection of personal information to the Information Age, while taking into account leading international standards.

The Ministry of Justice notes in the Proposal that in the coming months another set of proposed revisions to the Law is expected to be published that will address other significant matters related to personal data and the processing thereof, including the expansion of the permitted legal bases for processing data, and the expansion and updating of the rights granted to data subjects.

The current Proposal and the expected future proposal constitute a substantial amendment to the Law, that was originally enacted almost 40 years ago, in 1981, and are intended to adapt it to the various developments that have taken place in the field. It is clear that the Proposal is very much inspired by the GDPR, with the intention of revising Israel's privacy legislation to conform to European legislation as part of the "adequacy status" granted to Israel in 2011, which is currently going through a re-examination process.

To the extent that the Proposal is eventually adopted as an amendment to the Protection of Privacy Law, this will lead to a material change in the current procedures in relation to personal information and databases in Israel.

#### **Reduction of the Scope of the Registration Obligation**

Currently, Section 8 of the Law requires the owner of a database to register the database, provided that at least one of the following conditions is met:

- (1) the database contains information about more than 10,000 people;
- (2) the database contains sensitive information;
- (3) the database contains information that was not provided by the data subjects, on their behalf or with their consent;
- (4) the database is owned by a public entity; or
- (5) the database is used for direct mailing.

Based on the Privacy Protection Authority's view that the registration obligation does not in and of itself protect the privacy of data subjects, and that the benefit to the public from the existence of the Database Registry is relatively limited when taking into account the resources required for its implementation and enforcement, the Proposal proposes reducing the scope of the registration obligation to databases that pose the biggest privacy risk, and to apply it only in respect of databases containing information about more than 100,000 data subjects and that in addition meet at least one of the following:

- (1) the main purpose of the database is to provide data to others as a way of doing business, including direct mailing services;
- (2) the database contains "data of special sensitivity" (a new category that was added as part of the Proposal and includes data which, by its nature, has special sensitivity, including biometric data, genetic information, medical or mental health status, racial or ethnic origin data, information on consumption habits, and financial information);
- (3) the database contains information that was not provided by the data subjects, on their behalf or with their consent; or
- (4) the database is owned by a public entity.

#### **Revisions of the Basic Definitions in the Law**

The Proposal adds a number of basic definitions to the Law, and adapts existing definitions to conform to the GDPR.

First, the Proposal expands the definition of "Data" in accordance with Israeli case law on the subject and in accordance with the GDPR, so that "Data" shall be defined as "data relating to an identified person or a person that can be directly or indirectly identified by reasonable means, including identity number, biometric data, and any other unique identifier." This is a transition from a content-based approach to an identification-based approach.

Second, the Proposal amends the definition of "Holder" in respect of a database to be parallel to a Processor in the GDPR.

A Database Owner will be "whoever determines, alone or together with another, the purposes of processing the data in the database, or an entity authorized by law to manage a database" (the Controller); while a Holder will be "whoever, as part of an agreement with the Database Owner to provide a service to the Database Owner or on its behalf, receives permission from the Database Owner to use the data in the database for this purpose".

This is a significant expansion of the term "Holder" under the Law. Currently, physical possession of the database is required; under the Proposal, authorization to use the database will be sufficient for that party to be considered a Holder under the Law. In this context, the Proposal also amends the definition of "Use", so that now, in addition to transfer and delivery, actions such as storage, access, organization, amendment, completion, retrieval and deletion will be included. In addition, it is proposed to add a definition of "Processing", which will be collection or use. The expansion of the definition of "Use" and the addition of the term "Processing" will naturally lead to a wider scope of actions in respect of which the provisions of the Law will apply.

The Proposal joins the previously proposed amendment to the Protection of Privacy Law, which would expand the Privacy Protection Authority's enforcement powers. This awaits approval by the Knesset after it passed a first reading in March 2018, and the Information Security Regulations that came into force in May 2018.

It is a welcome and necessary step, even if additional complementary steps are urgently needed to adapt Israeli law to the current reality and the global changes in the field, and will help in trying to preserve Israel's strong and unique international position which has been built with great effort and which has a significant impact on the prosperity of the Israeli high-tech industry.

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