

Legal Alert – 27 May 2011

UPDATE ON PERSONAL DATA PROTECTION REGIME IN UKRAINE

Effective 01 January 2011, the Law On Personal Data Protection (the “**Law**”) took effect introducing requirements for the gathering, processing, storing, and transferring of personal data (please see our Legal Alert dated 19 November 2010 http://www.rulg.com/leg_alerts.asp).

Scope of Applicability

The Law is applicable to all owners and processors of personal data databases (except for physical persons, who create a database for personal use, journalists, who carry out their professional duties and creative figures implementing creative activity).

The Law provides for establishment of the State Register of Personal Databases, administered by the “authorized state body on data protection”, and stipulates that personal databases are subject to mandatory state registration according to the prescribed procedure.

Important Caveats

- Since the Law will be fully functional only after all relevant regulations are adopted and take effect, and only a part of such regulations have been created, especially in the important area of registration of personal databases, creating the scope for inescapable technical breach of the Law;
- Owing to the complexity and ambiguity of some provisions, recourse to formal legal advice should be obtained well in advance of any plan for compliance measures within an organization.

Current Personal Data Protection Regime

The latest regulations in the sphere of personal data protection comprise the following:

- Regulation of State Service of Ukraine on Personal Data Protection approved by the Decree N 390/2011 of the President of Ukraine (effective 6 April 2011): State Service of Ukraine on Personal Data Protection is the central executive body which is directed and coordinated by the Cabinet of Ministers through the Minister of Justice of Ukraine. State Service on Personal Data Protection is authorized to:
 - a) make proposals for state policy on personal data protection;
 - b) implement state policy on personal data protection;
 - c) perform control over compliance with legislation on personal data protection;
 - d) implement international legal cooperation in the sphere of personal data protection.
- Letter of the State Committee on Land Resources N 4280/21/11-11 dated 24 March 2011: establishes rules for filling out information on adjacent owners.

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- Letter of National Bank of Ukraine N 18-311/695-2160 dated 08 April 2011: order of processing of personal data being bank secret is adopted by the National Bank of Ukraine. Once personal data protection regulations are adopted by the Cabinet of Ministers of Ukraine, authorized government agency for financial monitoring and the National Bank of Ukraine will amend existing rules of storage, protection, use and disclosure of bank secret.

Court practice

Overview of court decisions for period January-May 2011 indicates that judges already make references to the Law in decisions concerning circulation of information. But still Ukrainian court practice does not yet has cases specifically in the sphere of personal data protection.

Liability for Violations in the Sphere of Personal Data Protection in Ukraine

On 3 February 2011, Ukrainian Parliament adopted in the first reading a Bill introducing administrative and criminal liability in the area of personal data protection, namely:

- a) administrative liability for evasion of personal database registration, creation of or work with a personal database before its state registration, and breach of regime of accessing personal data resulting in fines in amount **USD 638-4,250**.
- b) criminal liability for unlawful gathering, storage, usage and distribution of personal data without the person's consent is subject to fines in amount **USD 1,700 – 4,250**, compulsory community service or imprisonment.

We note that the State Register of Personal Databases has not been established yet, therefore for the moment legislative requirements regarding state registration of personal databases cannot be practically complied with. For the Bill to become law, it should be finally adopted by the Parliament (in the second or third reading), signed by the President and officially published.

Disclaimer

The content of this Legal Alert is not legal advice, but a general informational summary of the law. Resource to qualified legal counsel is always required for legal advice. Failure to make timely inquiries of legal counsel may cause important legal deadlines to be missed.