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## Legal Update – 1 August 2013

### Liberalization of the Legal Regime for Personal Data Protection

Further to our Legal Alerts on the legal regime for personal data protection, we are pleased to report that the Law of Ukraine "On Amending Certain Ukrainian Legislative Acts Concerning Improvement of Personal Data Protection System" No. 383-VII dated 03 July 2013 (the "**Law On Amending Personal Data Protection System**") was signed by the President and will take effect on 1 January 2014. It fundamentally liberalizes the personal data protection regime in Ukraine, and in particular cancels the burdensome registration requirement for personal databases and provides for liquidation of the State Service of Ukraine on Personal Data Protection.

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The Law On Amending Personal Data Protection System introduces amendments to the Law "On Personal Data Protection" (the "**Law On Personal Data Protection**"), the Administrative Offences Code of Ukraine and the Law of Ukraine "On Ratifying the Convention for the Protection of Individuals Regarding Automatic Processing of Personal data and the Supplementary Protocol to the Convention for the Protection of Individuals Regarding Automatic Personal Data Processing by Supervisory Authorities and Transborder Data Flows" No. 2438-VI dated 06 July 2010.

The Law On Amending Personal Data Protection System provides for the liquidation of the State Service of Ukraine on Personal Data Protection, while at the same time it designates a Human Rights Commissioner of the Verkhovna Rada of Ukraine (the "**Ombudsman**") as the authorized personal data protection body with respective powers, including carrying out scheduled and unscheduled field and remote inspections of owners /administrators of personal data, giving instructions to owners /administrators of personal data for elimination of violations of personal data protection regulations, providing recommendations with regard to the practical implementation of personal data protection legislation; informing about the personal data protection legislation and problems of its implementation, monitoring new practices, etc. The Ombudsman and courts will monitor personal data protection compliance.

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The owners of personal data will no longer register personal databases. The Register of personal data with already existing information is to be transferred to the Ombudsman.

Instead of personal data bases registration the owners of personal data must inform the Ombudsman of the processing of personal data, which is of particular risk to the rights and liberties. Types of such personal data and categories of entities covered by the notification requirements, as well as the notification procedure must be determined by the Ombudsman within three months after the Law On Amending Personal Data Protection System comes into force (i.e. by 1 April 2014). Such information received by the Ombudsman must be published on his official website. At present it is unclear what types of personal data will be covered by the notification requirement.

The government agencies, local authorities, owners /administrators of personal data, which conduct processing of personal data, subject to notification to the Ombudsman, must appoint a subdivision / authorized person who organizes the works related to the protection of personal data during data processing. Information concerning such a subdivision/ authorized person must be provided to the Ombudsman who ensures its publication.

The subdivision / authorized person should inform and advise owner /administrator of personal data of the observance of personal data protection regulations and interact with the Ombudsman / his Secretariat in the prevention and elimination of violations of personal data protection regulations.

Individuals - entrepreneurs, including doctors (duly licensed), attorneys, and notaries personally protect personal information that they possess.

Associations or legal entities may develop codes of conduct to ensure effective protection of subjects of personal data, observance of the personal data protection legislation subject to the specifics of personal data protection in various spheres. While developing the code of conduct, they may request the Ombudsman's opinion.

Under the restated provisions of the Administrative Offences Code of Ukraine:

- failure to notify or late notification of the Ombudsman concerning the processing of personal data or change of the data that is notifiable by law, provision of incomplete /false information – is punishable by a fine from 1700 to 3400 UAH (appr. 210 - 420 USD);
- failure to comply with the legal requirements (regulations) of the Ombudsman/ officials of his Secretariat to prevent or eliminate violations of the personal data protection legislation x – is punishable by a fine from 3400 to 5100 UAH (appr. 420 - 630 USD);
- failure to follow the established rules of personal data protection procedures resulting in unlawful access to personal data or violation of the rights of the subject of personal data – is punishable by a fine from 1700 to 8500 UAH (appr. 210 - 1050 USD).

We note that criminal liability provisions established by Article 182 of the Criminal Code of Ukraine for the violation of sanctity of private life, including illegal collection, storage, use, etc. of confidential information about a person - remain unchanged.

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