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Legal Update – 17 December 2013

Liberalization of the Legal Regime for Personal Data Protection

Further to our Legal Alerts concerning the legal regime for personal data protection, we would like to remind you that starting from 1 January 2014 registration requirement for personal databases is to be cancelled and the regulator – the State Service of Ukraine on Personal Data Protection – is to be liquidated.

The Human Rights Commissioner of the Verkhovna Rada (Parliament) of Ukraine (the "**Ombudsman**") will become the authorized body for personal data protection with respective powers, including carrying out scheduled and unscheduled on-site and remote inspections of owners/administrators of personal data, giving instructions for elimination of violations of personal data protection regulations, providing recommendations with regard to the practical implementation of personal data protection legislation, monitoring new practices, etc.

Our Senior Counsel Xenia Eremenko, who leads our Regulatory and Antitrust Practice, attended a meeting with Mr. Markiyan Bem, the Ombudsman's representative for personal data protection, and we are pleased to share the highlights of this meeting. Please note that the comments below cannot be treated as official clarifications or regulations, but represent the summary of an informal discussion with Mr. Bem.

The Office of the Ombudsman dealing with personal data protection will have 15 employees and will be located in Kiev. It is anticipated that in the future the Ombudsman will have representatives dealing with personal data issues in major regional centers of Ukraine.

Starting from 1 January 2014 the owners of personal data must notify the Ombudsman on the processing of personal data, which is of particular risk to the human rights and liberties ("**Sensitive Personal Data**"). Sensitive Personal Data includes medical information, information about the movement and location of individuals in a certain period of time, and some other yet unspecified categories of data. Employers processing disability sheets (i.e., medical information) for their employees shall be exempt from the requirement to notify the Ombudsman on the Sensitive Personal Data.

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.

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It is important to note that the fact that the personal data is being transferred abroad, will not as such qualify this personal data as Sensitive Personal Data.

The owners of personal data, who already filed their personal data base for registration with the State Service of Ukraine on Personal Data Protection, are not exempt from the requirement to notify the Ombudsman on the Sensitive Personal Data.

The notification on Sensitive Personal Data shall be made by regular mail (we advise to send the notifications by certified mail with the return receipt requested), and no electronic filing is anticipated. The notification must include the categories of processed Sensitive Personal Data, types of personal data processing, the persons to whom it is being transferred to, including cross-border transfer.

Information on companies processing Sensitive Personal Data will be published on the Ombudsman's official website.

Companies will have six months to bring their internal documents in compliance with the new requirements and to notify the Ombudsman; the Ombudsman shall start conducting inspections from 1 June 2014. However, the relevant regulations have not been adopted yet, although the drafts have been already elaborated by the Ombudsman and shall soon be posted on his official website for public discussion.

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