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Legal Update – 30 January 2014

Personal Data Protection Legal Framework Liberalized; the Ombudsman Adopts New Personal Data Protection Regulations.

Further to our Legal Alerts concerning the legal regime for personal data protection, we would like to remind you that on 1 January 2014 amendments to Law of Ukraine "On Personal Data Protection" came into force: the registration requirement for personal databases was cancelled and the regulator – the State Service of Ukraine on Personal Data Protection – was liquidated. The Human Rights Commissioner of the Verkhovna Rada (Parliament) of Ukraine (the "**Ombudsman**") became the authorized body for personal data protection.

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On 8 January 2014 the Ombudsman by its Order No. 1/02-14 approved a set of personal data protection regulations (all regulations are posted on its official website, for your convenience we provide the relevant links):

- (1) The Model Requirements for Personal Data Processing, available in Ukrainian at: http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3411%3A2014-01-10-09-46-36&catid=202%3A2011-11-25-14-59-08&Itemid=202;
- (2) The Procedure for the Ombudsman to Control Compliance with Personal Data Protection Legislation, available in Ukrainian at: http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3412%3A2014-01-10-09-55-09&catid=202%3A2011-11-25-14-59-08&Itemid=202;
- (3) The Procedure for Ombudsman's Notification Concerning Processing of Personal Data, which is of Particular Risk to the Rights and Freedoms of Subjects of Personal Data, the Branch or the Responsible Person who Organizes the Work Related to Personal Data Protection During Their Processing, and also Publication of the Above Information, available in Ukrainian at: http://www.ombudsman.gov.ua/index.php?option=com_content&view=article&id=3413%3A2014-01-10-09-58-05&catid=202%3A2011-11-25-14-59-08&Itemid=202
(the "**Procedure for Ombudsman Notification**")

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Effective 1 January 2014, the owners of personal data must notify the Ombudsman of the processing of personal data, which is of particular risk to the human rights and liberties ("**Sensitive Personal Data**"). Sensitive Personal Data includes the following types of data:

- racial, ethnic and national origin;
- political, religious convictions or outlook;
- membership in political parties and/or organizations, professional unions, religious or public outlook-forming organizations;
- health status;
- sexual life;
- biometric data;
- genetic data;
- administrative or criminal liability record;
- pre-trial investigation record;
- implemented measures stipulated by the Law of Ukraine «Investigation Activities»;
- violence done to the person;
- the person's place of stay and/or locations.

The processing will be deemed sensitive if (1) the personal data processed by the owner includes the aforementioned data; or (2) the owner processes personal data of a specific category of persons that can be singled out based on the aforementioned criteria.

The following entities processing Sensitive Personal Data **are exempt** from the requirement to notify Ombudsman on their processing:

- personal data processed to maintain a register to provide information to population, which is open to general public;
- personal data processed by public associations, political parties and/or organizations, professional unions, employer unions, religious or public outlook-forming organizations, provided that the processing covers only the personal data of the members of these associations and the personal data is not transferred without their approval;
- **personal data processed to implement the rights and responsibilities of the owner of the personal data in labor relations in accordance with the law.**

The notification on Sensitive Personal Data must be made by regular mail (we advise to send the notifications by certified mail with the return receipt requested) or another method available to the applicant (fax, email, specially placed box) within 30 business days from the day when the company started such processing.

The notification must be made according to the prescribed form (Annex 1 to the Procedure for Ombudsman Notification) and must include information about the personal data owner, manager, processing of Sensitive Personal Data (including types of Sensitive Personal Data which are being processed, aim(s) of their processing, group(s) of the persons whose Sensitive Personal Data is being processed, third parties to which Sensitive Personal Data is being transferred, transborder transfer of such data, (actual) place of personal data processing, general description of the

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technical and organization measures taken by the owner of Sensitive Personal Data to ensure its protection).

The owners of Sensitive Personal Data must notify the Ombudsman (1) on every change of the information subject to the Ombudsman's notification according to the prescribed form (Annex 2 to the Procedure for Ombudsman Notification) – within 10 business days from the date of such change; (2) on the termination of Sensitive Personal Data processing according to the prescribed form (Annex 3 to the Procedure for Ombudsman Notification) – within 10 calendar days after such termination.

Information about the companies that process Sensitive Personal Data must be published on the Ombudsman's official website.

The owners of personal data, which already filed their personal data base for the 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.

It is also important to note that all Ukrainian companies should harmonize their internal documents and procedures with the new requirements, including the Model Requirements for Personal Data Processing.

At a meeting with the business community that was held in the end of 2013 Mr. Markiyan Bem, the Ombudsman's representative for personal data protection, stressed that the companies will have six months to comply with the new changes - the Ombudsman will start conducting inspections as of 1 July 2014.

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