

COMMERCIAL

#news_flash

Protection of Privacy Memorandum

July 2020

Dear clients and colleagues,

On July 23, 2020, the Ministry of Justice issued, for public comments, a memorandum of law to amend the Protection of Privacy Law, 1981 (the "**Law**"), which seeks to reduce the scope of the obligation to register databases, as well as to amend certain definitions in the Law.

Below are the main suggested amendments:

Reducing the scope of the obligation to register databases

The proposed amendment is intended to significantly reduce the scope of the obligation to register databases and to apply such obligation only to databases that contain data on 100,000 data subjects or more, that in addition meet at least one of the following: (1) the main purpose of the database is to collect data for the purpose of providing it to others, as a way of doing business, including direct-mailing services; (2) the database includes data of special sensitivity; (3) the database includes data about data subjects not provided by them, on their behalf or with their consent; or (4) the database is owned by a government ministry or other state institution, local authority or other body that performs public functions under law.

Adapting the definitions set out in the Law to contemporary reality

The proposed amendment is intended to align the statutory definitions relating to the protection of computerized personal data to the technological and social developments that have occurred since the Law was enacted, as well as to conform to international legislation in the field (including the GDPR provisions). As part of the amendment to the Law, the following changes are proposed:

- Amendment of the definition of "Holder": it is proposed to amend the definition of "Holder" while removing the physical possession requirement, so that a "Holder" will be considered as "whomever, as part of an engagement with the database owner to provide a service to

the Database Owner or on its behalf, received permission from the Database Owner to use the data in the database for this purpose".

- Amending the definition of "Use" and adding the definition of "Processing": As part of the amendment, it is proposed to add to the definition of "Use" additional types of actions which are performed on data in a database, including "storage, access, organization, amendment, completion, retrieval, deletion". In addition, it is proposed to add a definition of "Processing" - according to which "Processing" will be defined as "collection or Use". It should be noted that these definitions are in-line with the definition set out in Section 4(2) of the GDPR.
- Adding the definition of a "Database Owner": Although the interpretation of the term "Database Owner" has been established over the years, it has not been formally and explicitly defined under the Law. As part of the amendments, it is proposed to add a definition to the term according to which the Database Owner will be "the one who determines, alone or together with another, the purposes of processing the data in the database, or a body authorized under law to manage the database." It should be noted that this proposed definition bears resemblance to the definition of "controller" set forth in Section 4(7) of the GDPR.
- Amendment of the definition of a "Database": As part of the amendment, it is proposed to amend the definition of a "database" on two main levels: (1) to amend the definition of a "database" so that a database will be defined as "a collection of data held by digital means"; (2) such definition will not apply with regard to a collection that includes only name, address and means of communication (provided that any additional data cannot be deducted from such data, and that the owner of the collection, or an entity under its control, does not have an additional collection).
- Amendment of the definition of "Data": As part of the amendment, it is proposed to expand the term "Data" and to define it as "information relating to an identified or identifiable person, directly or indirectly, by reasonable means, including identity number, biometric data, and any other unique identifier". Thus anchoring the broad interpretation given by the Israeli courts to this term over the years. This definition bears resemblance to the existing definition in section 4(1) of the GDPR.
- Adding a definition of "Biometric Data": It is proposed to add a definition of "biometric Data" and to determine that biometric data constitute as "data used to identify a person, which is a unique human physiological or behavioral characteristic that can be measured by computerized means." This definition is similar to that which appears in the Protection of

Privacy Regulations (Data Security), 2017, and is also in line with the definition set forth in section 4(14) of the GDPR.

- Adding a definition regarding "Data with Special Sensitivity" and omitting the definition of "Sensitive Data": The definition of "Sensitive Data" under the current Law largely covers the definition of the term "Data" under the Law, causing the distinction between the terms to be relatively negligible. The amendment proposes to omit the definition of "Sensitive Data" and include a definition of "Data with Special Sensitivity" which includes, among other things, medical data or data about a person's mental state, data about a person's political views or beliefs, data about a person's criminal past, genetic data, biometric data, data on a person's race or origin, etc. It should be noted in this regard that in accordance with the above said regarding the reduced scope of the registration obligation, the definition of "Data with Special Sensitivity" has a direct implication in relation to the classification of databases that will indeed be subject to the registration obligation.
- Amendment of section 8 (e) of the Law: As part of the amendment, it is proposed to empower the Registrar to impose a registration obligation in respect to a particular database to which a registration obligation does not apply, or to exempt from a registration obligation appropriate matters.
- Adding of a new section relating to "appropriate management": it is proposed to prohibit the management of a database holding a database, if the data contained therein is received, accumulated, collected or created in violation of the Law or the provisions of any law which regulates data processing.

[For the full update \(in Hebrew\) >> click here](#)

It appears that the memorandum is a first step in what appears to be a combined move by the Ministry of Justice to adapt the outdated Israeli privacy legislation to international standards and especially to existing principles under the GDPR, with the intention of preserving Israel's status as a country ensuring protection of personal data in compliance with the European requirements.

The Ministry of Justice intends to once again promote the legislative amendment to the Protection of Privacy Law (Amendment No. 13) of 2018, which is intended to improve and update the supervision and enforcement capabilities currently conferred on the Registrar of Databases and on the employees of the Protection of Privacy Authority. An additional and complementary amendment is expected to be issued, which is expected to include substantial matters such as the expansion of the permitted legal bases for processing data, beyond consent and lawful authorization, expanding and updating the rights granted to data subjects, and establishing the liability of the database owner or a holder.

In any case, please note that this memorandum of law is still subject to legislative procedures in the Israeli parliament, and it is unknown when it will be approved, if at all, and what its final wording will be.

We will continue to keep you informed of any further developments in this matter.

Sincerely,
Herzog Fox & Neeman

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