
Data Protection

Personal Data Protection Updates – Appointment of New Personal Data Protection Commissioner & Class of Data Users (Amendment) Order 2016

Introduction

In this issue of Personal Data Protection Updates, we wish to highlight recent developments relating to the Malaysian Personal Data Protection Act 2010 ("PDPA"), including the recent appointment of a new Personal Data Protection Commissioner to oversee the implementation and enforcement of the PDPA, the issuance of the Class of Data Users (Amendment) Order 2016, as well as the approval and registration of several Personal Data Protection Codes of Practice for certain sectors. The enforcement phase is expected to commence by (if not before) the 3rd quarter, and all data users are expected to fully operationalise their data protection policies and procedures, in line with the relevant codes of practice or the PDPA in general.

Appointment of New Personal Data Protection Commissioner

Pursuant to the powers conferred by section 47 of the PDPA, the Minister of Communications and Multimedia has appointed Puan Khalidah binti Mohd Darus as the new Personal Data Protection Commissioner with effect from 23 January 2017, in place of Encik Mazmalek bin Mohamad (who was the preceding Commissioner in office from 1 October 2014 to 23 January 2017).

Prior to her appointment as the new Commissioner, Puan Khalidah was the Deputy Director-General of the National Film Development Corporation Malaysia (FINAS) (which is also under the purview of the Ministry of Communications and Multimedia), responsible for overseeing the local film industry and to ensure that publication of audio-visual contents are in line with the government's vision.

Personal Data Protection (Class of Data Users) (Amendment) Order 2016

The Commissioner has recently issued the Personal Data Protection (Class of Data Users) (Amendment) Order 2016 (the "**Amendment Order**"), which comes into operation on 16 December 2016.

The Amendment Order essentially adds to the list of data users, who belong to classes of data users that are required to register under the PDPA. In this regard, the following data users have been included:

- (a) under transportation sector, Malaysia Airlines Berhad;
- (b) under utilities sector, Pengurusan Air Selangor Sendirian Berhad; and
- (c) additional sectors, namely:
 - (i) Pawnbroker - a licensee under the Pawnbrokers Act 1972 (Act 81); and
 - (ii) Moneylender - a licensee under the Moneylenders Act 1951 (Act 400).

Pursuant to the Amendment Order, each of the abovementioned entities / licensees will need to submit their applications for registration to the Personal Data Protection Commission (in accordance with section 15 of the

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PDPA). Every such application must be accompanied with the prescribed registration fee and application documents as required by the Commissioner.

Effective 11th January 2016, the JPDP has made available an online portal for the registration of data users. The online portal may be accessed at <http://daftar.pdp.gov.my/login.php>.

A data user who belongs to one of the abovementioned sectors but processes personal data without complying with the registration requirement may, upon conviction, be liable to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding 3 years or both.

Codes of Practice for the Respective Data User Forums

The Commissioner has recently approved and registered the Personal Data Protection Code of Practice for the Utilities Sector (Electricity) (w.e.f. 23 June 2016), the Personal Data Protection Code of Practice for the Insurance/Takaful Industry (w.e.f. 23 December 2016), and the Personal Data Protection Code of Practice for the Banking and Financial Sector (w.e.f. 19 January 2017).

Data users within these sectors will therefore need to re-examine their existing data protection policies, procedures, and practices, as well as their internal operations, in order to ensure that the relevant Codes of Practice are fully operationalised within their respective companies/organisations.

On this note, please be advised that the Commissioner has confirmed that a three-month grace period will be accorded to the respective members of the relevant industries (from the date of approval and registration of the relevant Code of Practice) in order to regularise their internal processes in line with the Code of Practice. Enforcement is anticipated to commence shortly thereafter and in any event within the year.

Additionally, several other codes of practice are still in the process of being finalised with the Commissioner, namely the Codes of Practice of the Communications Sector and the Code of Practice for the Legal Services Sector. Once these codes of practice are finalised and registered, the sectors will similarly be required to ensure that the codes of practice are operationalised by each company/organisation within these sectors.

Notwithstanding the above, the Commissioner has also acknowledged that implementation of the codes of practice will likely reveal administrative, operational and technical difficulties, and that further amendments may have to be made to the respective codes of practice in the near future to address such issues.

Enforcement of the PDPA

In addition to the classes of data users who are bound by their respective codes of practice, we wish to highlight that the Commissioner has further indicated the Commissioner's intention to carry out inspections on data users that are not registered or not required to be registered under the PDPA, in order to ensure compliance with the general provisions of the PDPA as well as the minimum security, retention and data integrity standards set out under the Personal Data Protection Standards 2015.

In other words, the Commissioner is moving towards the enforcement phase of the PDPA, and will be closely monitoring all data users, whether registered or otherwise.

We trust that the above provides you with a quick update in relation to the PDPA and the status of its operationalisation and implementation. Should you require any assistance in relation to any of the above or in relation to any other aspect of personal data protection, please feel free to get in touch with us at your convenience.

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ASEAN Economic Community Portal

The launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com>.

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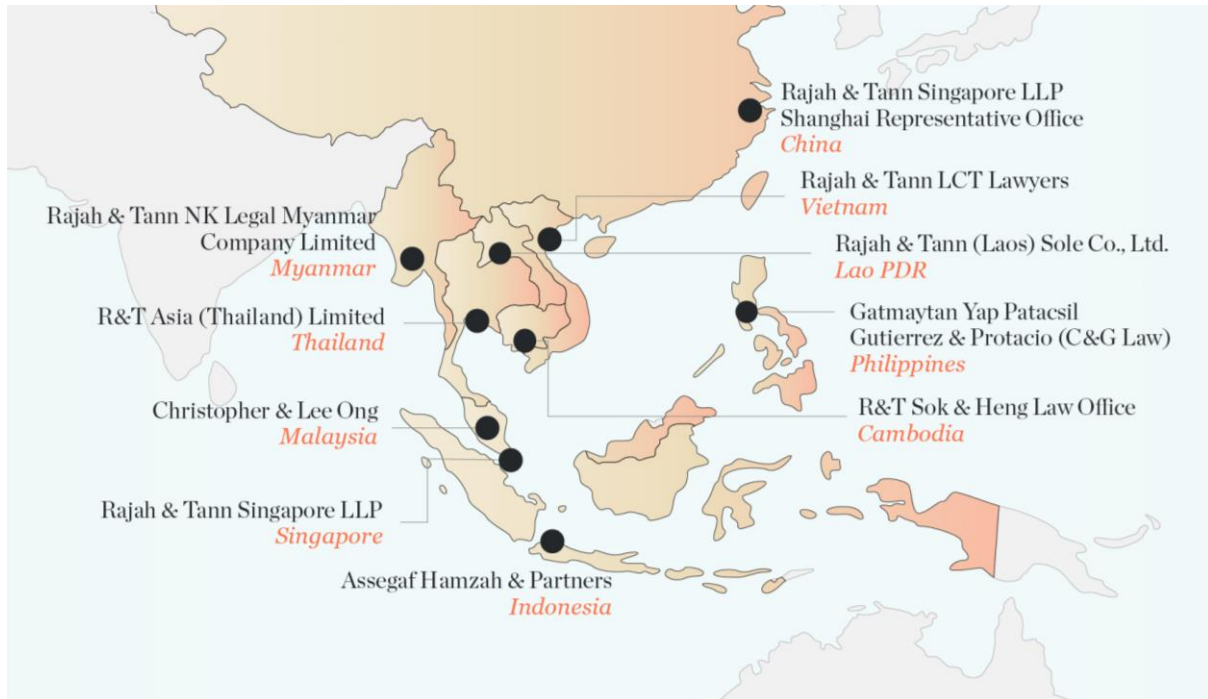
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