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Data Protection

# Personal Data Protection Updates – Public Consultation Paper No. 1/2018 – The Implementation of Data Breach Notification

## Introduction

In this issue of Personal Data Protection Updates, we wish to bring to your attention a recently released Public Consultation Paper (No. 1/2018) of the Personal Data Protection Commissioner (the “**Commissioner**”) entitled “*The Implementation of Data Breach Notification*” (the “**DBN Public Consultation Paper**”).

In the DBN Public Consultation Paper, the Commissioner expresses an intention to implement a data breach notification mechanism (DBN) in Malaysia. DBN is described as a mechanism which will require data users to notify and inform the relevant authorities and affected parties when a data breach has occurred within an organization. It is expected to be implemented in Malaysia by the end of 2018.

### How It Works

The DBN Public Consultation Paper does not specify the full details on the intended method of implementation. Nevertheless, it is expected the DBN regime will be implemented by way of imposing conditions to the certificates of registration issued by the Commissioner to data users. Whether or not the DBN regime will also extend to those data users that are not currently required to be registered with the Commissioner remains a question.

### Objectives of the DBN mechanism

The implementation of DBN is aimed to assist data users in personal data breach management by enabling data users and data subjects to take proactive steps to contain the damage caused by a breach incident. The DBN allows data users to demonstrate their commitment and accountability when addressing the breach and will enable enforcement authorities / regulators to conduct investigations thoroughly, transparently and fairly.

### Proposed Elements to be included in a DBN

The DBN Public Consultation Paper identifies the following elements to be included in a DBN:

- (a) Details about the data breach, including:
  - (i) Summary of the event and circumstances;
  - (ii) Type and amount of personal data involved in the breach; and
  - (iii) The estimated number of affected data subjects.

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- (b) Containment or control measures, including:
  - (i) Details of actions / measures taken or to be taken to contain the breach; and
  - (ii) The potential harm of the breach, especially to the affected data subjects.
  
- (c) Details and requirements with regards to notification, as follows:
  - (i) Identification of the persons who have been notified about the breach;
  - (ii) Details whether any regulatory bodies / law enforcement agencies have been notified about the breach;
  - (iii) The method(s) used by the organization to notify data subjects about the incident;
  - (iv) Any advice given to the affected data subjects; and
  - (v) The requirement for the Commissioner to be notified no later than 72 hours after having become aware of the breach.
  
- (d) Details on the organizations' training and guidance in relation to data protection, including:
  - (i) Whether the organization had provided training / awareness programmes to staff members prior to the incident;
  - (ii) Whether the staff members involved in the incident had received training in the last 24 months; and
  - (iii) Whether the organization had provided any detailed guidance to staff on the handling of personal data in relation to the reported incident.

The DBN Public Consultation Paper is currently in public consultation stage wherein the Commissioner has requested for feedback and suggestions from the public to be submitted on or before 21<sup>st</sup> August 2018 (Tuesday).

For your ease of reference, we provide below the link to the DBN Public Consultation Paper (published on the Commissioner's official website):

<http://www.pdp.gov.my/index.php/my/pengumuman/1273-public-consultation-paper-no-1-2018-the-implementation-of-data-breach-notification>

We trust that the above provides you with a quick update in relation to the PDPA. Should you require any assistance or clarification in respect 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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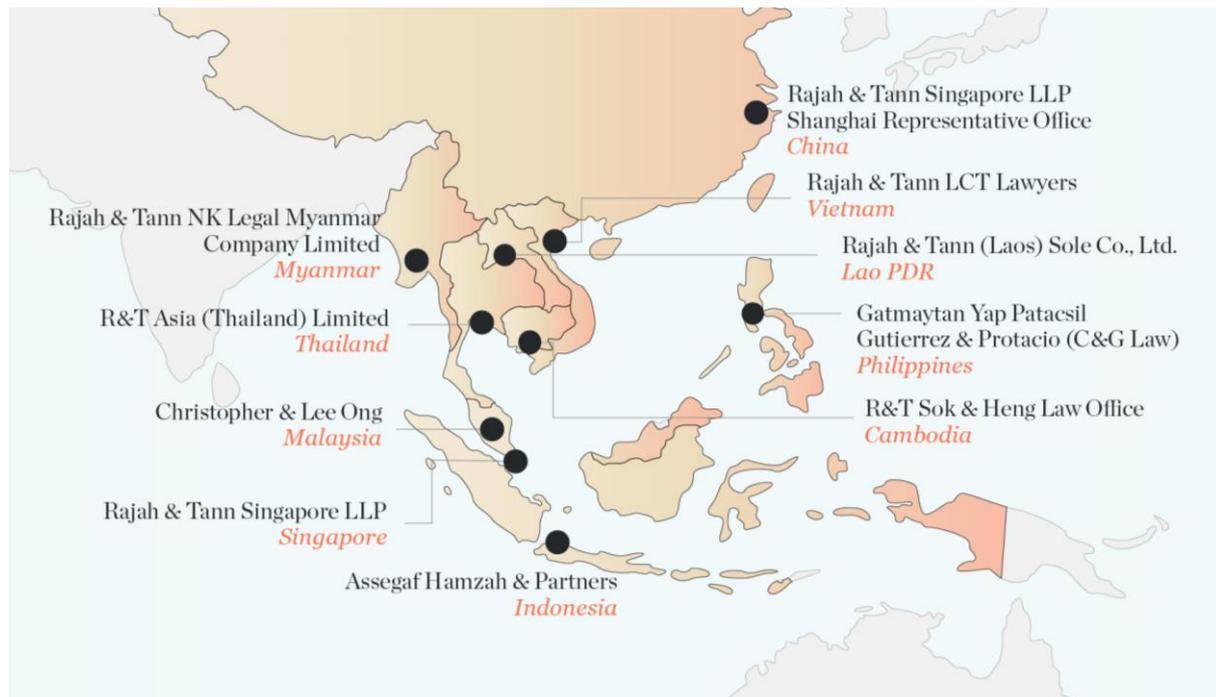
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