
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.

Data Protection

- (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 21st 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.

Contacts



Deepak Pillai
Partner

D +60 3 2275 2675
F +60 3 2273 8310
deepak.pillai@christopherleeong.com



Intan Haryati Binti Mohd Zulkifli
Partner

D +60 3 2675 2674
F +60 3 2273 8310
intan.haryati@christopherleeong.com



Yong Shih Han
Senior Associate

D +60 3 2273 1919
F +60 3 2273 8310
shih.han.yong@christopherleeong.com



Aisya Binti Abu Bakar
Associate

D +60 3 2273 1919
F +60 3 2273 8310
aisya.bakar@christopherleeong.com



Michelle Wu
Associate

D +60 3 2273 1919
F +60 3 2273 8310
michelle.wu@christopherleeong.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
F +65 6225 9630
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited

T +95 9 7304 0763 / +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977
F +632 552 1978
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Sole Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

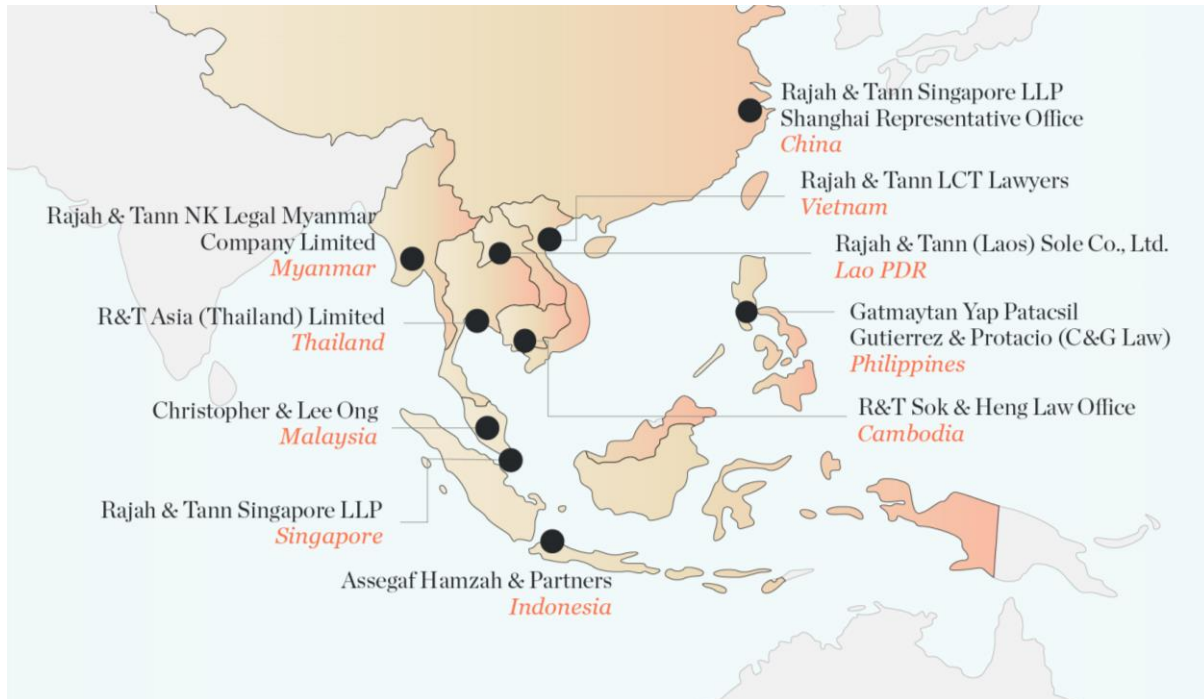
Member firms are constituted and regulated in accordance with local legal requirements and where regulations require, are independently owned and managed. Services are provided independently by each Member firm pursuant to the applicable terms of engagement between the Member firm and the client.

Client Update: Malaysia

2018 AUGUST

**LAWYERS
WHO
KNOW
ASIA**

Our Regional Presence



Christopher & Lee Ong is a full service Malaysian law firm with offices in Kuala Lumpur. It is strategically positioned to service clients in a range of contentious and non-contentious practice areas. The partners of Christopher & Lee Ong, who are Malaysian-qualified, have accumulated considerable experience over the years in the Malaysian market. They have a profound understanding of the local business culture and the legal system and are able to provide clients with an insightful and dynamic brand of legal advice.

Christopher & Lee Ong is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Japan and South Asia.

The contents of this Update are owned by Christopher & Lee Ong and subject to copyright protection under the laws of Malaysia and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Christopher & Lee Ong.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business or operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Christopher & Lee Ong.