
Data Protection

Personal Data Protection Update – Notice and Application under Section 43 of the Personal Data Protection Act 2010 to Prevent Processing for the Purpose of Direct Marketing

Introduction

In this Personal Data Protection Update, we wish to bring to your attention the issuance of standard forms relating to direct marketing by the Personal Data Protection Commissioner (the “**Commissioner**”) on 18th September 2018.

Specifically, the Commissioner has issued standard forms which may be used by a data subject (i) to prevent data users from processing the personal data of the data subject for the purpose of direct marketing, and (ii) to lodge a complaint with the Commissioner where the data user does not cease the said processing, as further elaborated below.

These forms are issued pursuant to Section 43(1) and (2) of the Personal Data Protection Act 2010 (“**PDPA**”).

1. Notice to Data User under Section 43(1) of PDPA

The Commissioner has published a template notice under section 43(1) of PDPA. Section 43(1) of the PDPA provides that a data subject may at any time by notice in writing to a data user, require the data user at the end of such period as is reasonable in the circumstances to cease or not to begin processing his/her personal data for purposes of direct marketing.

For your ease of reference, we provide below the link to the template notice:

<http://www.pdp.gov.my/images/borang/NOTIS-S431.pdf>

2. Application to the Commissioner under Section 43(2) of PDPA

The Commissioner has further published a template application form to the Commissioner under Section 43(2) of PDPA. Section 43(2) of PDPA provides that where the data subject is dissatisfied with the failure of the data user to comply with the notice, the data subject may submit an application to the Commissioner to require the data user to comply with the notice.

For your ease of reference, we provide below the link to the template application form:

<http://www.pdp.gov.my/images/borang/BORANG-S432.pdf>

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Potential Penalties for Non-Compliance with Section 43

Once an application under Section 43(2) of the PDPA has been filed with the Commissioner, should the Commissioner be satisfied that the application by the data subject is justified or justified to any extent, the Commissioner may, as provided under Section 43(3) of the PDPA, require the data user to take steps to comply with the notice which was given by the data subject to the data user pursuant to Section 43(1) of the PDPA.

Should the data user refuse to comply with the notice even after the Commissioner has required the data user to do so pursuant to Section 43(3) of the PDPA, the data user would be liable to a fine not exceeding two hundred thousand ringgit (RM200,000) or to imprisonment for a term not exceeding two (2) years or both, upon conviction, pursuant to Section 43(4) of the PDPA.

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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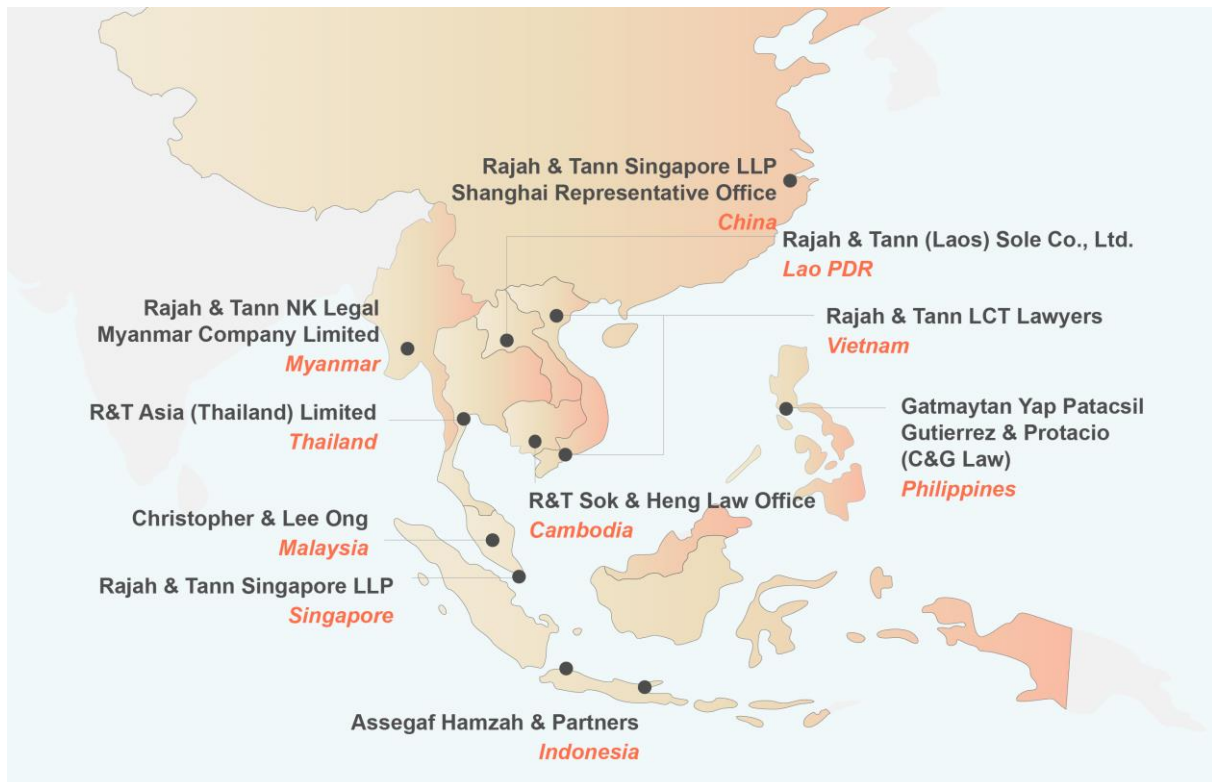
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