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Technology, Media and Telecommunications & Data Protection

# Personal Data Protection Commissioner Issues Advisory on the Collection, Processing and Storage of Personal Data During the Conditional Movement Control Order

## Introduction

In our previous PDPA client update, we explored privacy concerns surrounding the collection, disclosure and retention of personal data under the Personal Data Protection Act 2010 (“**PDPA**”) in the context of the COVID-19 outbreak. For further details, please refer to our previous client update [here](#).

Following the shift from the previous Movement Control Order to the Conditional Movement Control Order (“**CMCO**”) in Malaysia (which is currently scheduled to end on 9 June 2020), most industries and businesses have been allowed to resume operations, subject to compliance with standard operating procedures (“**SOPs**”) issued by the Malaysian Government.

Among others, the SOPs issued by the Malaysian government require all business premises allowed to operate during the CMCO period to collect information of visitors or patrons of their premises for the purposes of contact tracing.

On 29 May 2020, the Personal Data Protection Commissioner (“**Commissioner**”) issued an Advisory on the Procedure for the Handling of Activities relating to the Collection, Processing and Storage of Personal Data by Business Premises during the Conditional Movement Control Order (“**Advisory**”), which outlines the minimum requirements to be complied with by business premises operating during the CMCO period in order to comply with the seven Personal Data Protection Principles (“**PDP Principles**”) of the PDPA.

## Minimum Requirements Identified in the Advisory for Compliance with the PDP Principles

Under the PDPA, the key compliance obligations which Malaysian organisations are required to comply with when processing personal data are encapsulated in the seven PDP Principles, namely the General

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Principle, Notice and Choice Principle, Disclosure Principle, Security Principle, Retention Principle, Data Integrity Principle and Access Principle.

In this regard, the Advisory has identified the minimum requirements to be observed by businesses collecting personal data for contact tracing purposes during the CMCO period against each of the PDP Principles, as follows:

#### (1) General Principle

To ensure that the information collected is kept at a minimum and is not excessive, the Commissioner has stated that it will be sufficient for business premises to collect only the visitor's **name, contact number, and date and time of visit**, irrespective of whether such information is recorded via manual or digital means.

In this regard, the Advisory has limited the types of information which businesses are permitted to collect for contact tracing, as based on the SOPs previously issued by the Ministry of International Trade and Industry ("MITI") and the National Security Council ("NSC"), businesses were required to collect additional information beyond those specified in the Advisory, such as the individuals' temperature and national registration identity card (NRIC) numbers.

For the avoidance of doubt, the Commissioner has confirmed that the position taken in the Advisory overrides the previous SOPs issued by MITI and the NSC, in relation to personal data of visitors and patrons of business premises and as such, moving forward, businesses are to limit the personal data collected to name, contact number, and date and time of visit by visitors and patrons alone.

#### (2) Notice and Choice Principle

Clear notices must be displayed to inform visitors or patrons of the purposes of collection of their personal data. The Advisory provides a sample notice (in **Appendix A** of the Advisory), which may be adopted by businesses for use in their business premises, in both the English and Bahasa Malaysia languages.

The Advisory highlights that the said notice must be placed at a space which can be clearly seen by all visitors and patrons of the business premises.

#### (3) Disclosure Principle and Security Principle

In respect of the Disclosure Principle and Security Principle, the Advisory provides as follows:

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- (a) Where personal data is collected manually, the information must be recorded by employees of the business premises to avoid unauthorised or accidental disclosure of the personal data. Further, the physical document used to record the information must be a document that is exclusively designated for the purpose of collection of information for the purposes of contact tracing;
- (b) In this regard, the Advisory provides a sample of the format which may be adopted by businesses where collecting personal data manually (in **Appendix B** of the Advisory). Where personal data is collected via digital means, the Advisory does not specify any particular format to be used but the Advisory highlights the need for business premises to ensure the information collected is limited to only the types of information specified in (1) above;
- (c) Regardless of whether the information is collected via manual or digital methods, business premises are required to ensure that the personal data collected is used strictly for the purposes of contact tracing per the requirements of the Prevention and Control of Infectious Diseases Act 1988, and not for any other purpose such as marketing; and
- (d) Business premises must ensure that the security measures implemented in respect of the personal data collected is maintained at all times.

#### (4) **Retention Principle**

Personal data collected for the purpose of contact tracing can only be maintained for a period of six months from the date of the official end date of the CMCO, as announced by the Malaysian Government. At the end of the six-month period, all personal data collected for the purposes of contact tracing must be permanently destroyed or deleted. Businesses may use such appropriate mechanisms to destroy or delete such personal data depending on the method of collection used.

#### (5) **Data Integrity Principle**

All businesses allowed to operate during the CMCO period must ensure that the personal data of visitors or patrons collected is accurate and clear.

#### (6) **Access Principle**

The Commissioner has fully exempted businesses from complying with the Access Principle during the CMCO period.

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### Enforcement of the Advisory

According to the Advisory, enforcement officers from the Department of Personal Data Protection (or “**JPDP**”) may carry out inspections from time to time to ascertain the compliance of business premises with this Advisory, and will not hesitate to take enforcement actions where necessary. Please note that under section 101 of the PDPA, the Commissioner is empowered to carry out, on its own initiative, inspections to ascertain whether any data user’s personal data system complies with the PDPA, in particular, the PDP Principles.

The Advisory further provides that failure of any business premises to comply with the matters stated in the Advisory is an offence where the offender may be liable, on conviction, to a fine not exceeding RM300,000 and/or to an imprisonment not exceeding two years.

We trust that the above provides you with a quick update in relation to the Advisory issued by the Commissioner on 29 May 2020. If you have any queries in relation to the above or other issues relating to personal data protection, please get in touch with any of the individuals listed below.

Visit our [COVID-19 Resource Centre](#) for views from our lawyers across the region on common issues and legal implications brought about by COVID-19. For specific inquiries, please reach out to your relationship partner or send an email to our [COVID-19 Legal Team](#).

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