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THE DEVELOPMENT OF TECHNOLOGY AND CYBER LAWS IN MALAYSIA

Malaysia has one of the most comprehensive set of technology and cyber related laws in South East Asia. These laws were intended to catapult Malaysia into the digital future and they have succeeded to a certain degree.

The focus on technology and cyber laws coincided with the switch in the 1990s from a largely commodities and manufacturing based economy to one which was increasingly services based. The government of Malaysia, saw the possibilities of the digital economy and deliberately set to harness it as an engine of growth, bestowing upon Malaysia the Multimedia Super Corridor (a special development zone with preferential tax treatment for digital enterprises and the MSC Bill of Guarantees) and a set of laws intended to give assurance to investors in the Malaysian digital ecosystem.

Amongst these laws were the Computer Crimes Act 1997 ("CCA"), the Communications and Multimedia Act 1998 ("CMA") and the Digital Signature Act 1997 ("DSA"), which were intended to set the regulatory framework for the advent of the digital economy. It served as a powerful declaration of national intent which has been a guide to Malaysia's journey thus far.

The CCA, which was modelled on the UK Computer Misuse Act 1990, has been reportedly utilised in several hundred matters, though only a handful have been reported in the press and/or in the law reports. However, lately there have been a number of reported cases which indicate an increased willingness on the part of the AG's Chambers to prosecute cybercrime.

The DSA, which was modelled after the digital signature legislation of Utah and guarantees the authenticity and integrity of digital signatures, had a lackluster beginning with limited corporate level uptake, but has since seen an enormous level of usage in Malaysia in the past decade. Today, there are millions of banking, tax and immigration related transactions which are grounded on the guarantees provided by the DSA.

The CMA, a convergence legislation that shifted the focus from regulating "telecoms" to regulating the network and the content that passed through it, has been an unqualified success. The CMA has ensured transparency and the equality of treatment and removed the opaque licensing regime of the Telecommunications Act 1950. It



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has served to encourage the growth of mobile operators, MVNOs and other telecoms facilities providers, some of whom have become regional players.

On the consumer side, the Consumer Protection Act 1999 was extended to apply to electronic / online transactions in 2007, with specific regulations being extended to online business suppliers and online marketplace operators in 2012. Further, the Personal Data Protection Act (PDPA) was passed in 2010.

Moving to the here and now, in a time when internet services and computing power are becoming near ubiquitous to the man in the street (at least in urban areas), it would seem that most South East Asian economies are at risk of being overwhelmed by a digital tsunami. Regulators across the region are bravely paddling to stay on top of the changes being wrought by the likes of fintech, e-money, peer-to-peer funding, bitcoin, blockchain, over the top (OTT) services (e.g. Netflix), disruptive technologies (e.g. Uber, Grab, Airbnb), autonomous vehicles, drones, etc.

The government of Malaysia has taken cognizance of this reality and of the fact that everyday activities are increasingly being carried out online and acknowledge the need to regulate these emerging digital activities.

This acknowledgment, has taken the form of the repeal of the Payment Systems Act 2003 and its

replacement with a more liberalized e-money and payment services regime by the Malaysian Central Bank ("BNM") under the Financial Services Act 2013. Other examples of the financial sector capitalizing off the said digital tsunami includes the Securities Commission launching its Peer-To-Peer (P2P) Financing Framework in late 2016, followed by BNM launching its Fintech Regulatory Sandbox in 2017.

In terms of "disruptors", such as Uber and Grab, the government has recently tabled the Commercial Vehicles Licensing Board (Amendment) Act 2017, which will require e-hailing services to be licensed prior to commencing operations.

In addition to the above, a new cyber court was also established in September 2016 to regulate cyber activities and to facilitate growth of the digital economy. The cyber court was established to address the increasing number of civil and criminal cyber offences.

On the horizon, there are upcoming amendments to the CMA, CCA and DSA, which are all currently under review by the relevant government ministries and/or the AG's Chambers. Additionally, the government recently announced a new Cyber Security bill which is intended to combat a variety of cybercrimes, including the recruitment and financial sourcing by terrorist groups, money laundering and online gambling.

Undoubtedly, the pace of change has picked up tremendously, causing governments across the region to accelerate their legislative programs particularly in respect of technology and cyber related laws, whether to accommodate digital activities within existing legislation or to reflect new realities with new legislation. The Malaysian government seems to be amongst the leaders in meeting this challenge and considering their track record to date, is likely to successfully meet the challenge.

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