
Technology, Media and Telecommunications & Data Protection

Amendment Bill to the Personal Data Protection Act 2010 Tabled for First Reading in the Malaysian Parliament

Introduction

On 10 July 2024, Digital Minister Gobind Singh ("**Minister**") tabled the long-awaited [Personal Data Protection \(Amendment\) Bill 2024](#) ("**Amendment Bill**") for its first reading before the *Dewan Rakyat* (or House of Representatives).

The Amendment Bill is scheduled to be debated in its second and third readings during the ongoing parliamentary session. This means that we may see the Amendment Bill passed at the *Dewan Rakyat* level by the end of next week, unless further amendments to the Amendment Bill are required pursuant to the outcome of the debate.

Key Changes

A brief overview of the key changes that will be introduced by the Amendment Bill are as follows:

(1) Criteria Replacement of the Term "Data Users" with "Data Controllers"

The Amendment Bill will replace the term "data users" with "data controllers" in the Personal Data Protection Act 2010 ("**PDPA**") to align with the terminology used in other data protection regimes, such as the European Union General Data Protection Regulation (EU GDPR). This change is primarily cosmetic and will not materially impact the obligations of data users/data controllers under the PDPA.

(2) Recognition of Biometric Data as Sensitive Personal Data

The Amendment Bill recognises "biometric data" as a new type of sensitive personal data. Biometric data refers to any personal data derived from technical processing of a person's physical or behavioural characteristics, such as data processed for facial recognition / fingerprint verification. Businesses processing biometric data will need to comply with the more stringent consent and security requirements applicable to sensitive personal data under the PDPA.

Technology, Media and Telecommunications & Data Protection

(3) Increased Penalties

The Amendment Bill increases the maximum penalty for breaches of any of the seven Personal Data Protection Principles. The penalties have been raised from the original RM 300,000 and/or two years of imprisonment to RM 1,000,000 and/or three years of imprisonment.

(4) Extension of the Security Principle to Data Processors

Currently, the PDPA directly regulates only data controllers. The Amendment Bill changes this by requiring data processors to directly comply with the Security Principle of the PDPA. Failure to comply will result in data processors being directly liable for penalties under the PDPA.

(5) New Data Protection Officer Appointment Obligation

The Amendment Bill introduces a new requirement for both data controllers and data processors to appoint a data protection officer ("DPO") for their organisation. Appointed DPOs must be registered with the Commissioner and will be responsible for ensuring the data controller's/processor's compliance with the PDPA. There are no specific penalties prescribed for non-compliance with this appointment requirement in the Amendment Bill.

The Amendment Bill does not provide extensive details regarding this requirement. Further details regarding the specifics of this requirement, such as the minimum qualifications or expertise required of DPOs, will likely be detailed in the upcoming DPO Guidelines being developed by the Personal Data Protection Commissioner ("**Commissioner**").

(6) New Mandatory Data Breach Notification Obligation

The Amendment Bill imposes a new obligation on data controllers to notify both the Commissioner and affected data subjects of personal data breaches. Non-compliance with this notification requirement can result in fines of up to RM250,000 and/or imprisonment for up to two years, or both.

Similarly, the Amendment Bill is silent on the specifics for the requirements of this obligation, such as notification thresholds and notification timeframe. Further details regarding these specifics are likely to be addressed in the upcoming Data Breach Notification Guidelines.

(7) Right to Data Portability

The Amendment Bill introduces a new right of data portability, allowing data subjects to request that their personal data be directly transmitted from one data controller to another. However, the

Technology, Media and Telecommunications & Data Protection

Amendment Bill clarifies that the right is not absolute, and will be subject to the technical feasibility and compatibility of the data format.

Likewise, the Amendment Bill is silent regarding the scope and application of the right. Further details about the implementation of this right are expected to be detailed in the upcoming Right to Data Portability Guidelines.

(8) Removal of Whitelisting Regime for Cross-Border Data Transfers

The Amendment Bill removes the whitelisting mechanism under Section 129(1) of the PDPA cross-border data transfers, which has not been utilised since the inception of the PDPA. Following these changes, outbound transfers from Malaysia must comply with the conditions stipulated under Section 129(3) of the PDPA to transfer personal data abroad.

The upcoming Cross-Border Data Transfer Guidelines from the Commissioner are expected to provide further clarity on the measures that data controllers must implement when relying on these conditions for cross-border data transfers.

The introduction of the long-awaited Amendment Bill (which has been in the works since 2018) is a much-welcomed development in Malaysia's data protection regulatory landscape.

As mentioned above, many specific details regarding the implementation of the new requirements and obligations are not addressed in the Amendment Bill and will most likely be covered in the suite of guidelines being developed by the Commissioner and his office, JPDP (*Jabatan Perlindungan Data Peribadi* or the Personal Data Protection Department). Earlier this year, the Minister announced that the Commissioner will be drawing up a suite of guidelines to complement changes introduced by the Amendment Bill. These include the following:

- (1) Data Breach Notification Guidelines;
- (2) Data Protection Officers Guidelines;
- (3) Data Portability Guidelines;
- (4) Cross Border Data Transfer Guidelines and Mechanism;
- (5) Data Protection Impact Assessment Guidelines;
- (6) Privacy by Design Guidelines; and
- (7) Profiling and Automated Decision Making Guidelines.

Conclusion

Given that the new obligations introduced by the Amendment Bill will require organisations to review their data protection policies and allocate new resources to their data protection compliance program, and considering that many specific details required for the implementation of these obligations are not addressed in the Amendment Bill, we foresee that there will likely be a transition or grace period provided to organisations before the changes are fully enforced by the Commissioner.

Technology, Media and Telecommunications & Data Protection

We trust the above provides a brief update on the changes introduced by the Amendment Bill. We will follow up with a more detailed update on the Amendment Bill and the compliance steps that organisations will need to take to adhere to these new changes once the Amendment Bill is passed by the *Dewan Rakyat*.

Contacts



Deepak Pillai
Head
Technology, Media &
Telecommunications; Data Protection

T +603 2267 2675
M +601 2213 4674
deepak.pillai@christopherleeong.com



Intan Haryati Binti Mohd Zulkifli
Partner
Technology, Media &
Telecommunications

T +603 2273 1919
D +603 2267 2674
intan.haryati@christopherleeong.com



Anissa Maria Anis
Partner
Technology, Media &
Telecommunications; Media &
Entertainment

T +603 2267 2750
M +601 2371 9129
anissa.anis@christopherleeong.com



Yong Shih Han
Partner
Technology, Media &
Telecommunications; Data Protection

T +603 2267 2715
M +601 2480 8863
shih.han.yong@christopherleeong.com

Contribution Note

This Client Update is issued by the Contact Partners above from the Technology, Media and Telecommunications & Data Protection Practice Group, with the assistance of Yeap Yee Lin (Associate, Christopher & Lee Ong).

Regional Contacts

RAJAH & TANN SOK & HENG | *Cambodia*
Rajah & Tann Sok & Heng Law Office
T +855 23 963 112 / 113
F +855 23 963 116
kh.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

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 | *Lao PDR*
Rajah & Tann (Laos) Co., Ltd.
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*
Christopher & Lee Ong
T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*
Rajah & Tann Myanmar Company Limited
T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*
Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)
T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Singapore*
Rajah & Tann Singapore LLP
T +65 6535 3600
sg.rajahtannasia.com

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

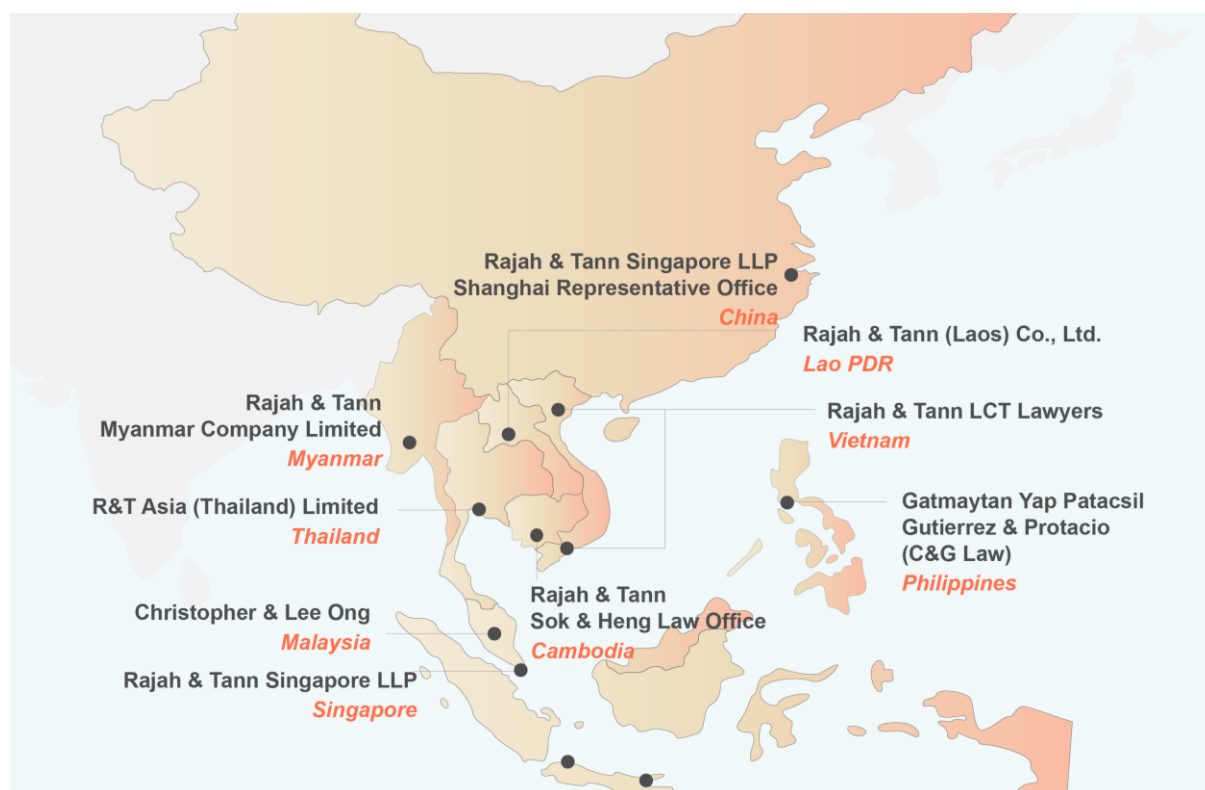
Hanoi Office
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

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 Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, 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.