
Technology, Media and Telecommunications & Data Protection

Latest Guidelines on Personal Data Protection Notices under the Personal Data Protection Act 2010 (PDPA)

Introduction

The Personal Data Protection Act 2010 ("**PDPA**") is the main legislation which regulates the processing of personal data in the context of commercial transactions.

Pursuant to section 7 of the PDPA (in relation to the Notice and Choice Principle), every data user must prepare a written statement which sets out the information as prescribed under the PDPA, such as the types of personal data being processed by the data user, the purposes for which the personal data is being processed, the class of third parties to whom personal data is disclosed to, etc. Failure to comply with this requirement is a breach of the PDPA which may render the data user liable, upon conviction, to a fine of up to RM300,000 or imprisonment term not exceeding two years, or both.

The Personal Data Protection Department (*Jabatan Perlindungan Data Peribadi* or "**JPDP**") recently issued the [Guide to Prepare Personal Data Protection Notice](#) ("**Guidance Note**"), especially for the micro, small and medium enterprises, to provide guidance on the preparation of simple but comprehensive personal data protection notices (also known as "**privacy notices**"), which are aligned with the current business ecosystem as well as the personal data protection landscape in Malaysia.

Pursuant to the recent issuance of the Guidance Note, this Update seeks to provide a brief summary of the requirements for the preparation of privacy notices, as well as the potential impact on data users vis-à-vis their compliance with the Notice and Choice Principle.

General Guidance on Privacy Notices

Under the Guidance Note, the Personal Data Protection Commissioner ("**Commissioner**") addressed several aspects in relation to privacy notices, including communication of privacy notices, compulsory information to be included in privacy notices, the need for privacy notices to be in dual languages, format and style of privacy notices, and placement of privacy notices.

The Commissioner has also emphasised transparency in privacy notices, and that data users must endeavour to list all personal data processing activities involved. Data users must also take steps to comply with all statements and obligations committed to in the privacy notices.

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Data users are also required to regularly review and update the privacy notices, either periodically or as necessary.

For full details of the requirements set out by the Commissioner in respect of privacy notices, please refer to the [Guidance Note](#).

Analysis

In addition to the existing requirements in relation to the types of information to be set out in privacy notices (as prescribed under section 7 of the PDPA), the Guidance Note sets out the Commissioner's additional requirements in relation to the preparation and implementation of privacy notices, including the following:

1. Duration of Processing of Personal Data. Privacy notices must now state the duration within which personal data will be retained for processing and when the data will be disposed of;
2. Disclosure to Regulators. Privacy notices must state the purposes for which personal data is collected and processed, including where collection and processing is pursuant to regulators' requirement to collect, process and disclose personal data;
3. Security Measures. Privacy notices must state the practical measures taken by the data user to ensure security of personal data;
4. Contact Person. Privacy notices must include the contact details of the person-in-charge of queries and complaints regarding the data user's personal data protection practices, in particular the name of the person-in-charge;
5. Review and Update of Privacy Notices. The effective date and last reviewed / amended date of the privacy notices must also be mentioned and recorded in the privacy notices for the data subjects' reference.

Please refer to the Guidance Note for the full requirements in respect of the preparation and implementation of privacy notices.

Conclusion

The Guidance Note is the latest guidance provided by the Commissioner to ensure data users' compliance with the PDPA. The status of the Guidance Note has not been expressly stated within the document, i.e. whether the requirements under the Guidance Note are compulsory or recommended best practices by the Commissioner.

Technology, Media and Telecommunications & Data Protection

This is an issue for all data users to consider, especially bearing in mind that the requirements of the Guidance Note have exceeded the scope prescribed under section 7 of the PDPA. While the Guidance Note is targeted at micro, small and medium enterprises, it is also stated in the Guidance Note that applies to all data users. In view of this, all data users are advised to review and re-assess their existing privacy notices and to make any necessary amendments in order to ensure that their respective privacy notices are in compliance with the Notice and Choice Principle under the PDPA and the Guidance Note.

While data users may challenge the imposition of these new requirements, do note that in view of the Commissioner's intention to amend the PDPA in the near future in order to be more in line with the EU General Data Protection Regulation (GDPR), the further requirements introduced by the Guidance Note would be largely in line with international data protection standards.

We trust the above provides you with a quick update on the Guidance Note.

Should you require any assistance or clarification regarding your privacy notices or about any other matter pertaining to personal data protection, please feel free to get in touch with us at your convenience.

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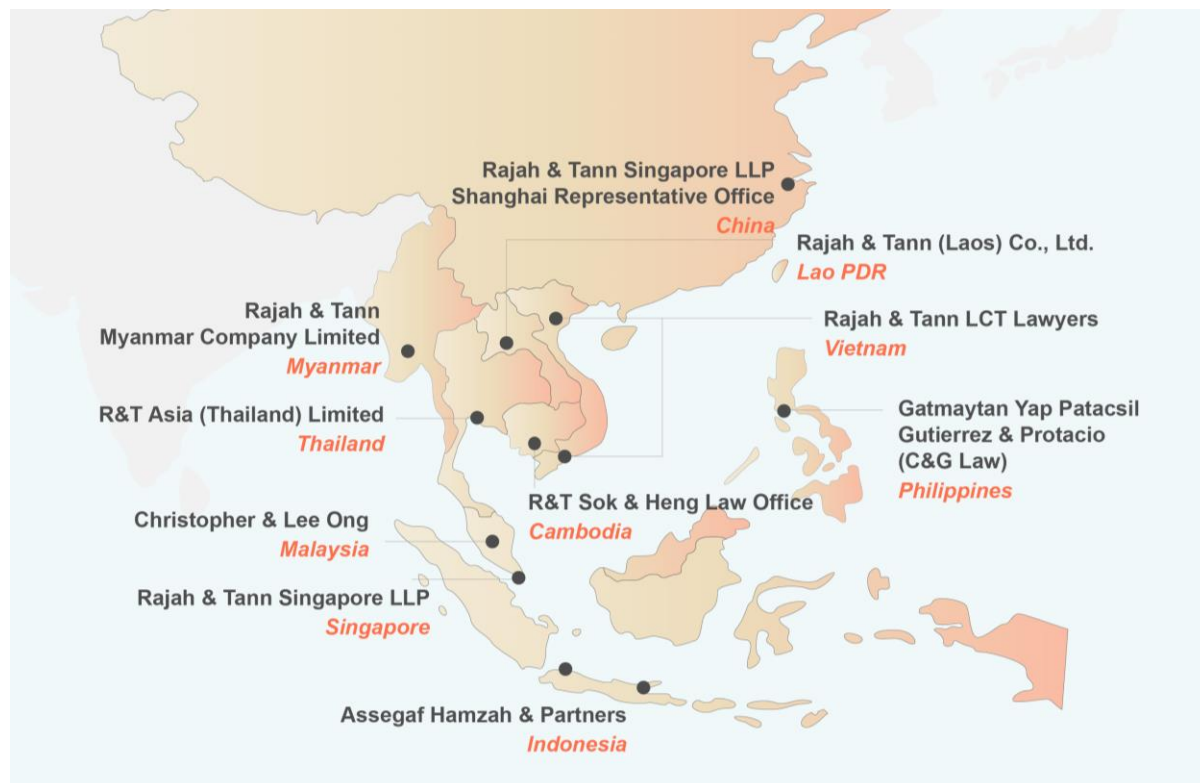
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