

Technology, Media and Telecommunications & Data Protection

Latest Update on the Proposed Amendments to the Personal Data Protection Act 2010

Introduction

In 2019, the Department of Personal Data Protection (*Jabatan Perlindungan Data Peribadi*) ("JPDP") conducted a regulatory review of the Personal Data Protection Act 2010 ("PDPA") and issued a [Public Consultation Paper on Review of the PDPA](#) ("**Public Consultation Paper**") containing proposed amendments to the PDPA. In the Public Consultation Paper, the Personal Data Protection Commissioner ("PDPC") identified 22 aspects where the PDPA should be amended, taking into consideration various emerging issues on personal data protection that impact both data users and data subjects as well as comparative provisions from personal data protection regulations abroad.

In our previous [Client Update](#), we have provided an overview of the proposed amendments as set forth by JPDP in the Public Consultation Paper.

As a follow-up to the said update, we wish to highlight further updates on the proposed amendments under the Public Consultation Paper, pursuant to a recent conference organised and conducted by JPDP ("**Conference**"), where representatives of JPDP have stated that JPDP has further shortlisted the proposed amendments to the PDPA and have submitted the same to the Attorney General's Chambers of Malaysia for further review. **According to JPDP, they are aiming to table the finalised amendments in Parliament in October 2022.** In the said Conference, they announced the five major finalised amendments which had been shortlisted and approved by the relevant ministries.

Pursuant to the updates provided by JPDP during the Conference, this Update seeks to provide a brief summary of the shortlisted amendments to the PDPA, as well as their potential implications on the existing personal data protection practices of data users.

Proposed Amendments that have been Shortlisted

(1) Appointment of a Data Protection Officer

As the PDPA currently stands, there is no provision in the Act which obliges data users to appoint a Data Protection Officer ("**DPO**"). A DPO is essentially the designated person in a company who

Technology, Media and Telecommunications & Data Protection

is responsible to oversee the overall data protection strategy and implementation within the company.

JPDP indicated that this requirement has been shortlisted as one of the five proposed amendments to the PDPA. Specifically, JPDP is proposing that all data users appoint at least one DPO for each entity that is subject to the PDPA. However, to aid those entities that might not have sufficient internal resources to achieve this mandatory DPO requirement, JPDP also proposes to allow the appointment of a third party to fulfil such service (e.g. by outsourcing such function to a legal firm).

JPDP further clarified that there is no requirement or expectation for the DPO to be a personnel with legal background, although they do acknowledge that it is the typical practice of large data users to have a specialised legal team that manages all personal data protection matters. However, this is not a requirement and hence, would not be expected. Additionally, JPDP also stated that the DPO appointed will be the person responsible for liaising with JPDP in respect of any complaints, queries, and enforcement matters.

In view of this, JPDP advises all data users to immediately commence the recruitment and training process for the personnel who will be appointed to carry out the role of the DPO.

(2) Data Breach Notification

The requirement for data users to report personal data breaches to JPDP has also been shortlisted as one of the five proposed amendments to the PDPA. JPDP confirmed that the threshold period currently proposed to fulfil the notification requirement is 72 hours from the detection of the suspected data breach. The timeframe of 72 hours is deemed to be sufficient for data breach victims to undertake the necessary immediate actions to remedy or mitigate the situation, and for the entity making the breach notification to gather all the information required for such notification. JPDP, however, has yet to disclose the specific types of breaches that would count as notifiable breaches pursuant to this particular amendment, as well as the parameters to consider in identifying these breaches (e.g. the materiality threshold such as number of data subjects affected; consideration as to whether serious harm would be occasioned to the affected data subjects pursuant to the breach; whether confirmed or suspected breach would warrant notification to be made).

(3) Data Processor

The third amendment proposed to be shortlisted by JPDP relates to the expansion of the scope of the application of the PDPA to data processors. JPDP remarked that this requirement is particularly important considering the rising trend in the use of third-party data processing services by data

Client Update: Malaysia 2022 AUGUST

Technology, Media and Telecommunications & Data Protection

users, and the increasing number of data breaches which continue to arise in Malaysia (some of which are attributed to the default or omission of the data processors).

Interestingly, JPDP stated that many government agencies also adopt the same approach of outsourcing their data management activities to third party data processors, and as both the Federal Government and the State Government fall outside the ambit of the PDPA, JPDP seems to be of the view that it is particularly important for it to have the power to enforce the PDPA vis-a-vis the relevant data processors instead. As such, this expansion of scope should certainly be welcomed.

(4) Data Portability

Data portability is a concept that gives data subjects the right to obtain and reuse their data for other purposes across different services, particularly the right to access their data in a structured, machine-readable format which can be transferred from one data user to another to obtain services. An example of data portability is the transfer of a data subject's e-mail from one online e-mail provider to another, or from one medical service provider to another. JPDP confirmed that this proposed amendment has also been shortlisted for October 2022, although no further details have been announced in relation to the specifics of this amendment.

Nevertheless, this proposed amendment is expected to have a positive impact on data subjects by allowing them to switch services with less concern of losing their data. However, this will be a major cost for local and regional data users as they will need to expend resources to enable data portability across the relevant services, in order to ensure continued compliance with the law.

(5) Transfer of Personal Data to Places Outside Malaysia

JPDP also confirmed that the proposed amendment in respect of replacing the "white-list" regime under section 129 of the PDPA with a "black-list" regime has been shortlisted for October 2022. Under the black-listing regime, data users will generally be allowed to transfer personal data to other countries (subject to compliance with certain minimum criteria stated in the amended PDPA or its regulations), save for jurisdictions that have been specifically black-listed by the Minister.

Additionally, JPDP also briefly touched on the introduction of an approval requirement in relation to the storage of personal data outside Malaysia, although no further details on the same were disclosed.

In addition to these principal amendments which have been shortlisted for October 2022, JPDP has also indicated that several minor amendments had been approved by the relevant ministers, and would be tabled in Parliament together with the said principal amendments.

Technology, Media and Telecommunications & Data Protection

With regard to the proposed amendments, the Minister of Communications and Multimedia, Minister Annuar Musa, has confirmed during a recent parliamentary reply that the amendments have been submitted to the Attorney General's Chambers. The Minister has also confirmed that the proposed amendments relating to the appointment of a DPO and the mandatory breach notification requirement will be included in the proposed amendments to the PDPA.

Conclusion

Although these shortlisted proposed amendments to the PDPA remain subject to the approval of Parliament and subject to the timelines of the Government of the day, it is suggested that all data users set in motion the relevant socialisation within their organisations and commence preparations for implementation of the necessary operational measures in view of the incoming PDPA amendments.

Should you require any clarification regarding the proposed amendments to the PDPA, or any other matter pertaining to personal data protection, please feel free to reach out to us through any of the **Christopher & Lee Ong** partners listed hereunder.

Contacts



Deepak Pillai
Head
Technology, Media &
Telecommunications; Data
Protection

T +60 3 2275 2675

F +60 3 2273 8310

deepak.pillai@christopherleeong.com



Intan Haryati Mohd Zulkifli
Partner
Technology, Media &
Telecommunications; Data
Protection

T +60 3 2267 2674

F +60 3 2273 8310

intan.haryati@christopherleeong.com



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

T +60 3 2273 1919

F +60 3 2273 8310

anissa.anis@christopherleeong.com



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

T +60 3 2273 2703

F +60 3 2273 8310

shih.han.yong@christopherleeong.com

Contribution Note

This Client Update is contributed by the Contact Partners listed above, with the assistance of [Ili Syazwani Shairi](#) (Associate, Christopher & Lee Ong) and [Yu Xin Yi](#) (Associate, Christopher & Lee Ong).

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.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

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

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

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 | *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

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

Hanoi Office

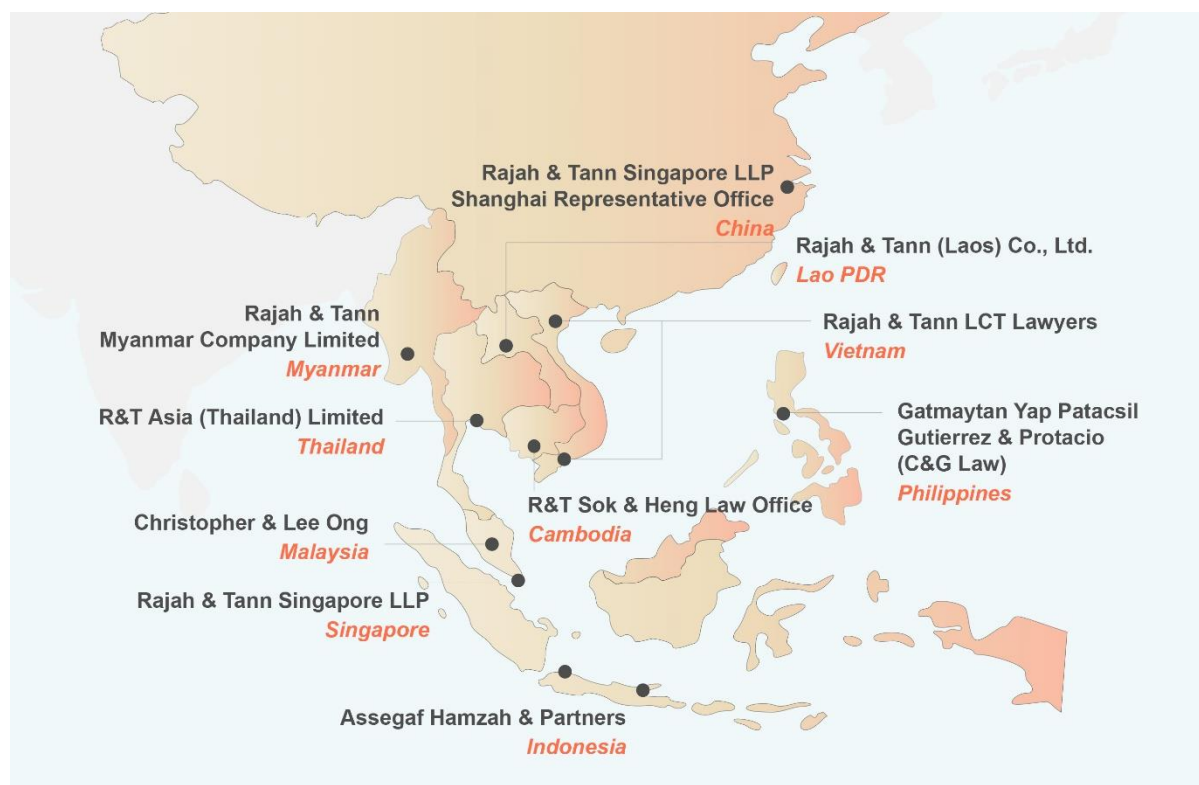
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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