
Technology, Media & Telecommunications

Personal Data Protection Act 2010 under the New Government: Updates to the Proposed Amendments in 2023

Introduction

In order to bring the Personal Data Protection Act 2010 ("**PDPA**") in line with global data protection standards and also to address issues arising from the emerging ways of using and processing personal data, the Malaysian Government first announced its intention to carry out a comprehensive review exercise to update the PDPA back in 2018.

Since the announcement, continuous efforts have been made to complete the review exercise and to draw up a draft PDPA amendment bill. However, the review process and PDPA amendment bill have been delayed time and again, on account of the Covid-19 pandemic as well as multiple changes in the Government.

Back in August 2022, the then Communications and Multimedia Minister, Tan Sri Annuar Musa (the "**Former Minister**") confirmed that the proposed amendments to the PDPA had been finalised, and that a draft PDPA amendment bill had been drawn up by the Government ("**Draft Bill**"). He also stated that the Malaysian Government planned to table the Draft Bill for the Malaysian Parliament's approval during the parliamentary sitting in October 2022.

However, the Malaysian Parliament was dissolved in early October 2022 to make way for the 15th General Elections, before the Draft Bill could be tabled in Parliament. With the installation of a new Government, the new Minister of Communications and Digital (the "**New Minister**"), Fahmi Fadzil, is now tasked with overseeing the proposed amendments to the PDPA.

This Update seeks to provide a quick insight into the latest information available on the status of the proposed amendments to the PDPA under the new Government.

What was included in the Draft Bill prepared by the previous government?

Previously, the Former Minister and the Personal Data Protection Department (*Jabatan Perlindungan Data Peribadi* or "**JPDP**") confirmed that the Draft Bill sets out five proposed amendments which had been shortlisted from the initial 22 areas proposed for amendment as identified in the public consultation

Technology, Media & Telecommunications

paper published by the Personal Data Protection Commissioner ("**Commissioner**") in 2020¹ ("**Public Consultation Paper**").

We have provided a brief overview of the five confirmed amendments in our previous Update, available [here](#). Briefly, the amendments are:

- (a) the introduction of a new requirement for data users to appoint a data protection officer for their organisation;
- (b) the introduction of mandatory data breach notification obligation;
- (c) the extension of the requirement to comply with the Security Principle under the PDPA to data processors;
- (d) the introduction of a new right to data portability for data subjects; and
- (e) the introduction of new "black-list" regime to replace the current "white-list" regime for transfers of personal data to places outside of Malaysia.

What will happen to the amendments in the Draft Bill?

Pursuant to instructions from the New Minister, JPDP is currently re-examining the Draft Bill to identify and propose improvements that can be made to the five amendments prepared by the Former Minister under the previous Government.

Based on information obtained from JPDP, the confirmed amendments in the Draft Bill will most likely be retained. Additionally, JPDP will be expanding on the scope of the Draft Bill to include new amendments that address other aspects of the PDPA as addressed below.

What are the new or additional amendments being considered?

At this juncture, both the New Minister and JPDP have not provided confirmation on the additional amendments that will be inserted into the Draft Bill. Nevertheless, the New Minister has thus far highlighted two areas that are under consideration, namely:

- (a) Increased Penalties for Misuse of Data or Breach of the PDPA in General. The New Minister has expressed disappointment in the average amount of fines that have been imposed on non-compliant data users in the past. To this end, the New Minister intends to increase the maximum fines / penalties available under the PDPA; and

¹ [Public Consultation Paper No. 01/2020 on Review of the PDPA](#).

Technology, Media & Telecommunications

- (b) Increased Enforcement Powers and Elevation of JPDP as a Statutory Commission. Currently, JPDP is operating as a government department under the Ministry of Communications and Digital. The New Minister plans to increase JPDP's enforcement powers and elevate JPDP from a government department to an independent statutory commission (similar to the Malaysian Communications and Multimedia Commission and the Energy Commission) , in order to ensure that it has the required resources and authority in order to effectively carry out its role in regulating data protection-related issues and enforcing the provisions of the PDPA.

Apart from the above, given that JPDP is currently re-examining the Draft Bill as a whole, there is a possibility that JPDP may take the opportunity to reassess the other proposed amendments contained in the Public Consultation Paper, that were not included in the Draft Bill prepared by the previous Government.

What is the new timeline for the proposed amendments to the PDPA?

The New Minister plans to table the proposed amendments to the PDPA for the Malaysian Parliament's approval **by the end of this year.**²

Concluding remarks

Given that the New Minister has publicly announced data protection and cybersecurity as being amongst the main priorities of his term, in particular in the aspect of addressing the increasing frequency of data breach incidents, we are optimistic that the New Minister will be introducing legislative and policy changes to facilitate and reinforce data protection and cybersecurity in Malaysia. Organisations will likely be seeing developments in our data protection and cybersecurity regulatory landscape in the coming months and would be well advised to take the necessary preparatory steps in anticipation of these changes.

We trust the above provides you with a quick update on the latest information available on the status of the proposed amendments to the PDPA under the new Government. Should you require any assistance or clarification regarding the above, or about any matter pertaining to personal data protection or cybersecurity, please feel free to get in touch with us at your convenience.

² <https://www.thesundaily.my/home/pdpa-amendments-to-curb-data-breaches-to-be-tabled-in-parliament-by-year-end-fahmi-EA10549184>

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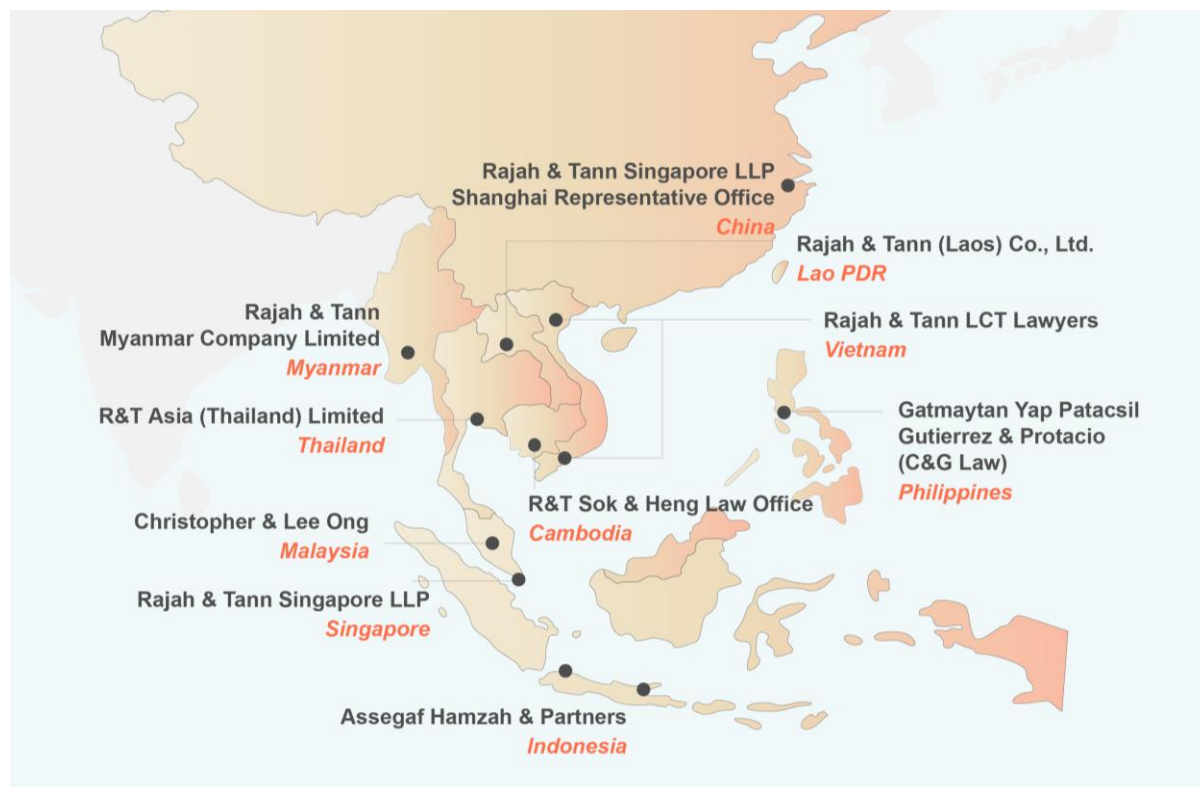
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