
New General Code of Practice of Personal Data Protection Issued under the Personal Data Protection Act 2010

Introduction

The Personal Data Protection Commissioner ("**Commissioner**") recently issued the [General Code of Practice of Personal Data Protection](#)¹ ("**General COP**"), which came into force on 15 December 2022.

Pursuant to the [Personal Data Protection \(Class of Data Users\) Order 2013](#)² ("**Data Users Order**"), specified classes of data users are required to be registered under the PDPA ("**Specified Data Users**") and to draw up binding Codes of Practice for their particular industries (e.g. Banking, Insurance, Communications, Education, Healthcare). While certain industries have since set up their own data user forums and registered their Codes of Practice, there are other industries (such as certain categories of licensees/regulatees under the private healthcare sector), that have yet to do this due to various reasons.

The General COP applies to the following categories of Specified Data Users:

- (a) Specified Data Users that do not have a Personal Data Protection Code of Practice ("**COP**") that has been registered with the Commissioner; and
- (b) where there is no data user forum designated to develop the COP for that particular class of Specified Data Users.³

This Update seeks to provide a brief overview of the General COP and highlight key provisions set out in the General COP which Specified Data Users should take note of.

Additionally, as the General COP has been prepared by the Commissioner, it is **indicative of the expectations of the Commissioner in relation to the minimum measures required to be implemented by every data user pursuant to the PDPA.**

Background

Under the PDPA, the Data Users Order identifies 13 classes of Specified Data Users that are required to comply with the following:

¹ The Bahasa Malaysia version of the General COP is accessible at:

https://www.pdp.gov.my/jpdpv2/tata_amalan/tataamalan-umum-perlindungan-data-peribadi/

² To be read together with the [Personal Data Protection \(Class of Data Users\) \(Amendment\) Order 2016](#).

³ Paragraph 1.1.2 of the General COP.

- (a) the **registration requirement** – Specified Data Users are required to register with the Commissioner and obtain a valid certificate of registration to process personal data; and
- (b) the **requirement to comply with the COPs for their respective sectors** – Specified Data Users are required to comply with sector-specific COPs, which set out personal data protection requirements tailored to the unique sector/environment in which the Specified Data User is operating.

To this end, the PDPA allows the Commissioner to designate entities/bodies as "data user forums" for each of the different classes of Specified Data Users, which are in turn responsible for the preparation of the COP for their own class of Specified Data Users.⁴

As of the date of this Update, the COPs of the following sectors have been registered with the Commissioner:

- (a) the banking and financial sector;
- (b) licensees under the Communications and Multimedia Act 1998 (CMA);
- (c) the insurance and takaful industry;
- (d) the aviation sector;
- (e) the utilities sector (electricity);
- (f) the utilities sector (water); and
- (g) private hospitals in the private healthcare industry.

Who needs to comply with the General COP?

The following classes of Specified Data Users (collectively referred to as the "**Applicable Data Users**") are required to comply with the General COP (unless and until specific COPs are prepared and registered for these classes of Specified Data Users):

Sector	Classes of Specified Data Users
Communications	Licensees under the Postal Services Act 2012
Health	<p>Licensees under the Private Healthcare Facilities and Services Act 1998 ("PHFSA"), apart from private healthcare facilities and services that have been licensed as "private hospitals".</p> <p>These include licensees that have been licensed as private psychiatric hospitals, ambulatory care centres, private nursing homes, psychiatric nursing homes, maternity homes, blood banks, haemodialysis centres, hospices, and community mental health centres.</p>

⁴ For instance, the Association of Banks in Malaysia which was appointed as the Data User Forum for the banking and financial sector, with the participation of the Malaysian Investment Banking Association, the Association of Islamic Banking Institutions Malaysia (AIBIM), and the Association of Development Finance Institutions of Malaysia, developed the COP for the banking and financial sector.

Sector	Classes of Specified Data Users
	<p>Holders of certificates of registration of private medical clinics and private dental clinics under the PHFSA</p> <p>Body corporates registered under the Registration of Pharmacists Act 1951</p>
Tourism and Hospitality	<p>Licensed persons who carry on or operate tourism training institutions; licensed tour operators; licensed travel agents or licensed tourist guides under the Tourism Industry Act 1992 ("TIA")</p> <p>Persons who carry on or operate a registered tourist accommodation premises under the TIA</p>
Education	<p>Private higher educational institutions registered under the Private Higher Educational Institutions Act 1996</p> <p>Private schools or private educational institutions registered under the Education Act 1996</p>
Direct Selling	Licensees under the Direct Sales and Anti-Pyramid Scheme Act 1993
Services	<p>Companies registered under the Companies Act 2016 (or Companies Act 1965) ("CA" / partnerships registered under the Partnerships Act 1961 ("PA")) carrying on any of the following business:</p> <ul style="list-style-type: none"> (a) Audit; (b) Accountancy; (c) Engineering; or (d) Architecture. <p>Companies registered under the CA/partnerships registered under the PA that conduct retail dealing and wholesale dealing as defined under the Control Supplies Act 1961</p> <p>Companies registered under the CA/partnerships registered under the PA that carry on the business of a private employment agency under the Private Employment Agencies Act 1981</p>
Real Estate	<p>Licensed housing developers under the Housing Development (Control and Licensing) Act 1966</p> <p>Licensed housing developers under the Housing Development (Control and Licensing) Enactment 1978, Sabah</p> <p>Licensed housing developers under the Housing Developers (Control and Licensing) Ordinance 1993, Sarawak</p>
Pawnbroker	Licensees under the Pawnbrokers Act 1972
Moneylender	Licensees under the Moneylenders Act 1951

Key Provisions under the General COP

The General COP sets out several new requirements and clarifies certain provisions in the PDPA that all data users ought to note. We have selected three key provisions from the General COP for the purpose of this Update, which are intended by the Commissioner to provide further guidance on compliance with the PDPA and/or to impose additional requirements on Applicable Data Users:

(a) Additional Requirements for Privacy Notices

Aside from the types of information that must be set out in privacy notices (as prescribed under section 7 of the PDPA), the General COP requires additional information to be included in the Applicable Data User's privacy notices. This includes, among others, information as to whether any sensitive personal data is being processed (where applicable), duration of processing of personal data, etc.

In this regard, we note that the additional matters specified in the General COP were also included as part of the best practice recommendations in the [Guide to Prepare Personal Data Protection Notice](#) issued by the Commissioner last year.⁵

(b) Minimum Clauses for Agreement with Data Processors

Under the [Personal Data Protection Standard 2015](#) ("PDP Standard"), the minimum security standards specified by the Commissioner require data users to contractually bind third party data processors that are carrying out personal data processing activities on the data users' behalf.

The General COP provides further guidance on the minimum clauses which should be included in the agreement between the Applicable Data User and the data processor, namely:

- warranties that the data processor shall only process personal data for purposes relating to his appointment by the Applicable Data User, in accordance with the Applicable Data User's instructions and no other purpose;
- warranties that the data processor shall comply with all applicable laws, regulations and industry standards relating to the privacy, confidentiality and/or security of the personal data;
- provisions on confidentiality, non-disclosure, technical and/or organisational security measures;
- conditions under which personal data may be processed;
- representations, undertakings, warranties and/or indemnities which are to be provided by the data processor;

⁵ For further information, please refer to our previous Update on the Guide to Prepare Personal Data Protection Notice which is accessible [here](#).

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- security measures governing the processing to be carried out as may reasonably be contained in the Applicable Data User's internal security policy and/or standards; and
 - deletion, destruction and/or return of personal data that is under the control of the data processor upon completion or termination of the contract or engagement, unless the Applicable Data User decides otherwise.⁶

(c) Clarification on Instances Where a Data User May Use Personal Data to Conduct Direct Marketing

Section 43 of the PDPA sets out an opt-out regime, where data subjects are given the right to prevent the processing of their personal data for direct marketing purposes by submitting a written notice to the data user.

In this regard, the General COP provides additional guidance on instances where an Applicable Data User is permitted to use a data subject's personal data for direct marketing purposes, particularly in instances where the data user has not obtained prior consent of the data subject to process their personal data for direct marketing purposes. Examples of these instances include: (i) where the data user has informed the data subject in its privacy notice that their personal data may be used for direct marketing purposes; and (ii) where the product and/or services offered to the data subject are similar to the product and services generally provided by the data user.⁷

Penalty for Non-Compliance

Non-compliance with the requirements of the General COP may render the Applicable Data User liable, upon conviction, to a fine of up to RM100,000 or to imprisonment of up to one year, or to both.

Concluding Remarks

The provisions above serve to highlight some of the many requirements/clarifications included in the General COP. Apart from these, the General COP also provides general guidance on the measures that must be put in place and the documentation that must be prepared by the Applicable Data Users for the purposes of complying with the PDPA.

As such, all Applicable Data Users must refer to the General COP for the full guidance and additional requirements set out by the Commissioner or risk being penalised for non-compliance.

It is recommended that other data users also refer to the individual provisions in the General COP and consider these as being indicative of the Commissioner's new position or expectation in terms of complying with the requirements of the PDPA.

⁶ Paragraph 5.5.1 and 6.5 of the General COP.

⁷ Paragraph 10.6.4 of the General COP.

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We trust that the above provides you with a quick update on the General COP. Should you require any assistance or clarification regarding the above, or about any matter pertaining to personal data protection, please feel free to get in touch with us at your convenience.

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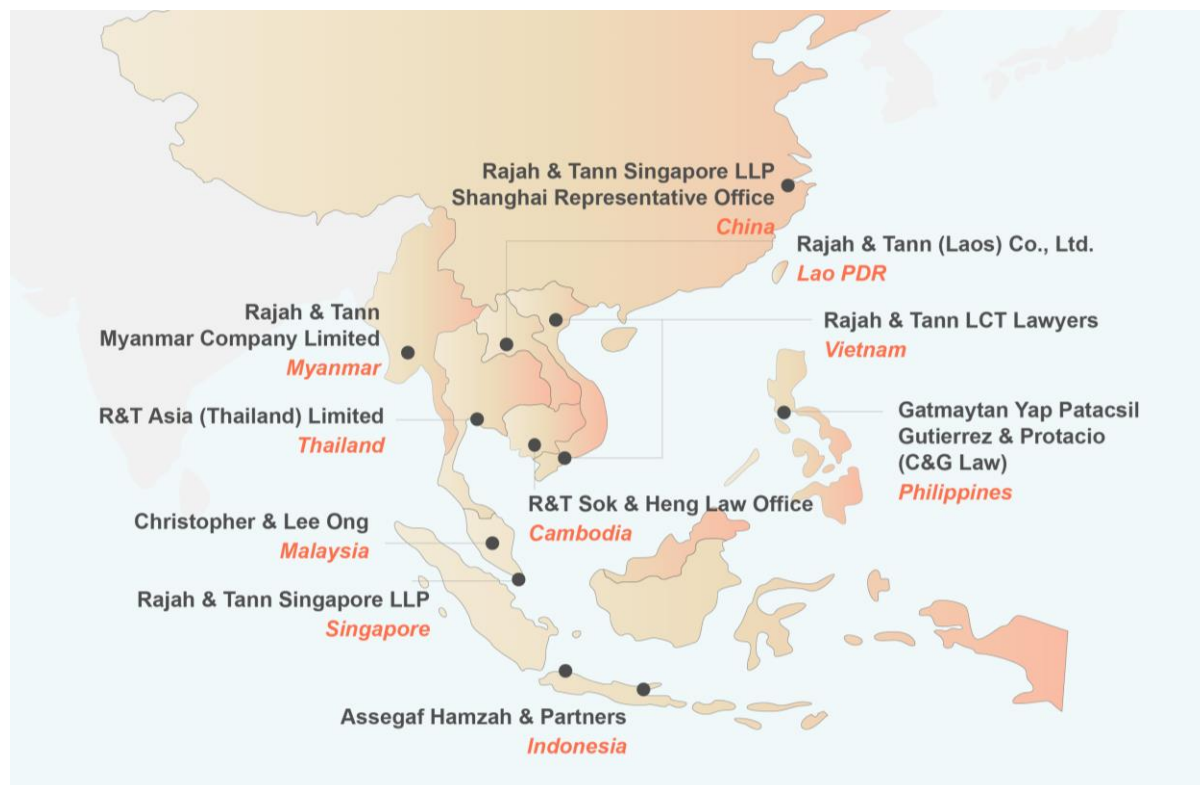
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