

Technology, Media & Telecommunications

Data Management for Businesses: Launch of ASEAN Data Management Framework and Model Clauses on Data Transfer

Introduction

The growth of the digital economy has been accelerating at a rapid pace. In ASEAN, it is estimated that the internet economy has reached \$72 billion in gross merchandise value in 2018, with these numbers only expected to rise.

Businesses in the region are finding themselves increasingly involved in digital networks and platforms as part of the commercial process. This includes payment applications, big data analytics, artificial intelligence and cognitive computing, all of which are heavily reliant on data sharing. Issues of digital data governance have thus come to the forefront as businesses seek to balance digital initiatives and data protection.

To assist businesses on this front, the ASEAN Digital Ministers' Meeting has on 22 January 2021 approved the ASEAN Data Management Framework ("**DMF**") and Model Contractual Clauses for Cross Border Data Flows ("**MCCs**"). These initiatives were developed by the Working Group on Digital Data Governance chaired by Singapore.

- (a) The DMF provides a step by step guide for businesses to put in place a data management system, which includes data governance structures and safeguards.
- (b) The MCCs are template contractual terms that may be included in agreements between businesses transferring personal data to each other across borders.

In this Update, we highlight the key features of the DMF and MCCs, and how businesses may utilise these tools to their advantage.

ASEAN Data Management Framework

Businesses entering into the digital sphere may find themselves faced with the fundamental issue of how to practice proper data governance. It may be challenging to independently develop a comprehensive framework to ensure that data is adequately identified, managed and protected at all relevant stages of operation.

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The DMF (available in full [here](#)) provides guidance based on best practices in data management. It should be noted that the DMF is voluntary and non-binding, and that its content does not constitute legal advice or a compliance tool.

Businesses may adapt the DMF according to their business needs and their data management systems. The DMF is intended for the use of all private sector businesses operating in ASEAN, including small and medium enterprises ("**SMEs**").

The foundational components of the DMF are as follows:

- (a) **Governance and oversight:** Provide direction for employees in implementing and executing the DMF and oversee the function to confirm it is operating as designed.
- (b) **Policies and procedural documents:** Develop data management policies and procedures based on the DMF throughout the data lifecycle.
- (c) **Data inventory:** Identify and gather the data used and collected so as to enable understanding of data taxonomy and data purpose.
- (d) **Risk assessment:** Assess the impact using different impact categories if confidentiality, integrity or availability parameters are compromised.
- (e) **Controls:** Design and implement protection controls within the systems according to the categories assigned and data lifecycle.
- (f) **Monitoring and continuous improvement:** Monitor, measure, analyse and evaluate the DMF components implemented to keep it up-to-date and optimised.

Model Contractual Clauses for Cross Border Data Flows

When operating within the digital economy, businesses may need to transfer personal data to entities in other jurisdictions. Such transfers inevitably raise certain issues, such as adequate protection of personal data and compliance with data transfer regulations.

The MCCs (available in full [here](#)) provide terms and conditions that may be included in the legal agreements between parties transferring personal data to each other across borders. These contractual terms set out baseline responsibilities, required personal data protection measures, and related obligations of the parties.

The MCCs may be adopted on a voluntary basis. Parties may adopt or modify the MCCs in accordance with the principles set forth in the ASEAN Framework on Personal Data Protection (2016) or as required by any law of the relevant ASEAN member nation. Parties may also add clauses as appropriate for their commercial or business arrangements so long as they do not contradict the MCCs.

The baseline obligations set out in the MCCs include:

- (a) Lawful/legal basis for collection, use and disclosure;
- (b) Baseline data protection clauses; and

(c) Requirement of data breach notification.

The MCCs provide two modules for use in two common transfer scenarios. The first is for controller-to-processor transfer, and the second is for controller-to-controller transfer.

In addition, the Singapore Personal Data Protection Commission ("**PDPC**") has provided guidance for the use of the MCCs in Singapore, available in full [here](#). The guidance recommends certain clarifications and amendments to the MCCs for use in compliance with the Personal Data Protection Act ("**PDPA**"), and states that the PDPC recognises and encourages the use of the MCCs to fulfil the Transfer Limitation Obligation under the PDPA.

Concluding Words

Businesses developing their digital operations should be aware of the need to develop an adequate system to handle all their data, and should pay close attention to the guidance provided by the DMF in this regard. By utilising this valuable resource and properly adapting its principles, businesses can establish their own framework for the management of data, which would facilitate smoother operations, responsible practices, and enhance the confidence of consumers and commercial counterparts.

Similarly, parties transferring personal data across borders should be aware of the data protection requirements they must comply with when conducting such transfers. By utilising the MCCs and adapting them accordingly, parties may ensure that the transfer of personal data is done in a manner that complies with the applicable legal and regulatory requirements, protects the personal data of data subjects, and promotes trust among citizens in the ASEAN digital ecosystem. Parties should also ensure that they obtain their own professional and/or legal advice in the relevant jurisdictions within ASEAN when adapting the MCCs for their operational needs.

For further queries, please feel free to contact our team below.

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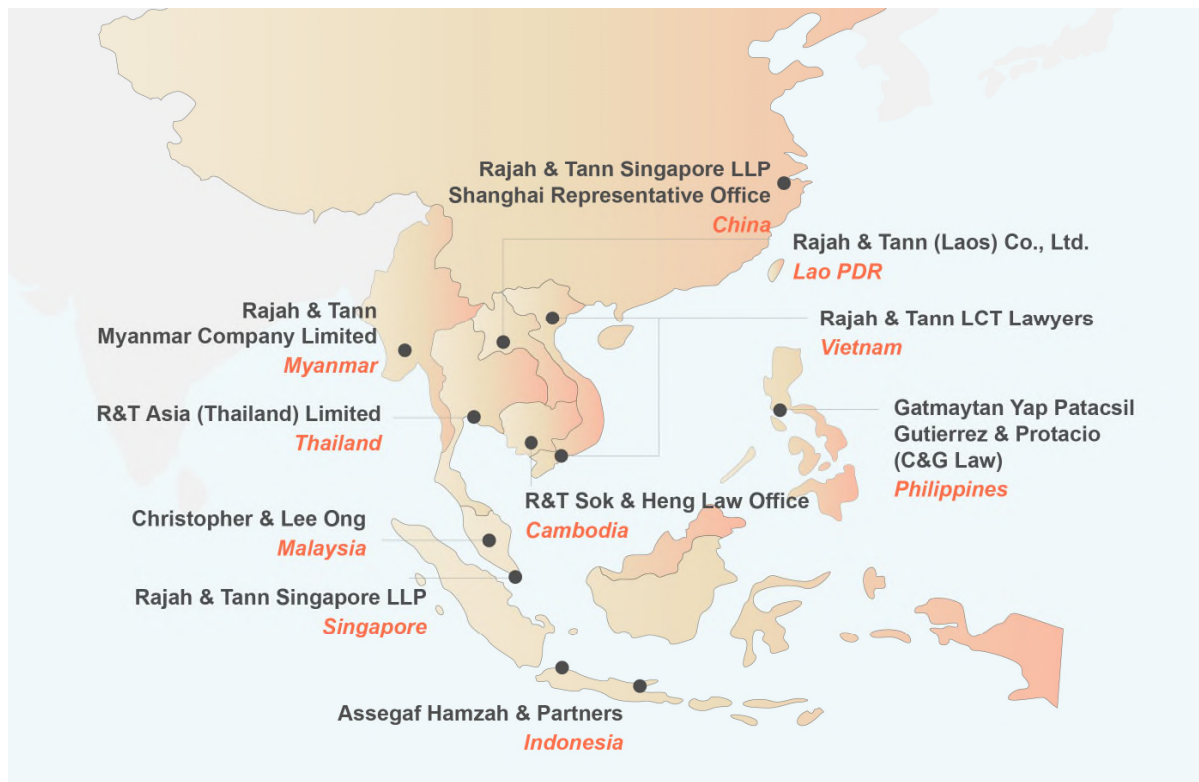
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