

Technology, Media & Telecommunications

Clarification of Amendments to Personal Data Protection Act – Follow-Up Changes to Regulations and Advisory Guidelines

Introduction

The Personal Data Protection Act 2012 ("**PDPA**") has been undergoing a series of amendments pursuant to the Personal Data Protection (Amendment) Act 2020, aimed at enhancing the PDPA and strengthening organisation accountability and consumer protection. The changes have taken effect in phases, with the first phase coming into operation on 1 February 2021.

As a follow-up to the earlier changes, a number of subsequent amendments have been made to the Regulations under the PDPA – specifically, the Personal Data Protection Regulations 2021 ("**PDP Regulations**") and the Personal Data Protection (Notification of Data Breaches) Regulations 2021 ("**Notification Regulations**"). These amendments have taken effect from **1 October 2021**, and serve to clarify the concept of significant harm for mandatory data breach reporting, defences for egregious mishandling of personal data and the provision of business contact information of Data Protection Officers ("**Follow-Up Amendments**").

To help organisations with compliance, the Personal Data Protection Commission ("**PDPC**") has also updated the following resources to provide clarity on the Follow-Up Amendments:

- (a) [Advisory Guidelines on Key Concepts in the Personal Data Protection Act](#)
- (b) [Advisory Guidelines on the Personal Data Protection Act for Selected Topics](#)

This Update provides a summary of the Follow-Up Amendments to both Regulations under the PDPA.

Data Breach Notification

The first phase of amendments saw the introduction of the mandatory data breach notification regime, under which organisations which discover a data breach must notify the PDPC and the affected individuals in the event of a data breach which is:

- (a) likely to result in **significant harm** to the individuals whose personal data is affected by the breach; or
- (b) of a significant scale (not fewer than 500 individuals).

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The Notification Regulations set out prescribed categories of personal data and circumstances which are deemed to result in "significant harm". The Follow-Up Amendments to the Notification Regulations clarify certain prescribed categories and introduce new prescribed categories, including.

- (a) Information which might lead to the identification of a woman or girl in respect of whom a specified offence is alleged to have been committed; and
- (b) Information that identifies the individual as a resident of a place of safety (or the location of such place of safety) under the Women's Charter.

Defence of Prior Consent

The first phase of amendments introduced new offences to hold individuals (including employees and service providers) liable for knowing or reckless unauthorised handling of personal data. This includes the offences under section 48D(1) (unauthorised disclosure of personal data) and section 48E(1) (improper use of personal data) of the PDPA.

The Follow-Up Amendments to the PDP Regulations set out the defence of prior consent in relation to the above offences. Specifically, it is a defence to the offences in section 48D(1) and section 48E(1) if the personal data was used or disclosed with the prior consent of the individual to whom the personal data relates.

Business Contact Information

The PDPA provides that an organisation must make available to the public the business contact information of the individual(s) responsible for ensuring compliance with the PDPA – the Data Protection Officer of the organisation.

The Follow-Up Amendments to the PDP Regulations set out how such business contact information may be made available so as to satisfy the above obligation:

- (a) For an organisation registered under one of the prescribed Acts, the information may be made available in a record relating to the organisation on the Internet website of the Accounting and Corporate Regulatory Authority.
- (b) The information may be made available on a readily accessible part of the organisation's official website.

Concluding Words

As the amendments to the PDPA and the relevant Regulations and Advisory Guidelines continue to take effect in phases, organisations should keep abreast of the changes and ensure that their data protection policies and practices are updated to be compliant with the applicable obligations.

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We will continue to monitor the amendments to the PDPA for the next phase of implementation as well as any further follow-up amendments.

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

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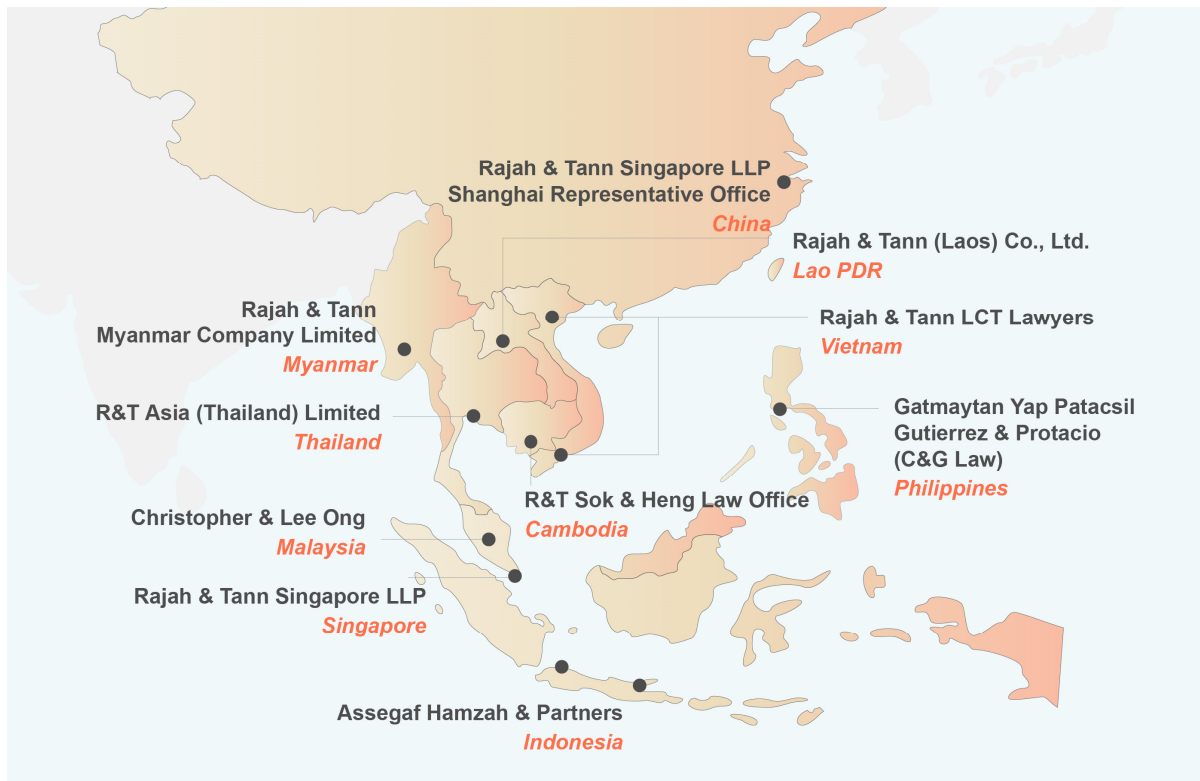
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