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PDPC Issues Advisory Guidelines on In-Vehicle Recordings by Transport Services for Hire

Introduction

On 9 April 2018, the Personal Data Protection Commission (the “**PDPC**”) issued advisory guidelines on in-vehicle recordings by transport services for hire (“**Advisory Guidelines**”). Developed in consultation with the Land Transport Authority, the Advisory Guidelines were issued to provide guidance on ensuring compliance with the provisions of the Personal Data Protection Act 2012 (the “**Data Protection Provisions**” or “**PDPA**”) when in-vehicle recording devices (“**IVRDs**”), such as inward-facing cameras and audio recorders are used.

This update summarises the Advisory Guidelines.

Advisory Guidelines on In-Vehicle Recordings by Transport Services for Hire

Guidance for Leasing Companies, Hirers and Service Providers

The Advisory Guidelines specified three groups of parties that should take note of the Data Protection Provisions with regards to the use of IVRDs:

- (i) organisations that lease vehicles to drivers who provide transport services for hire (“**Leasing Companies**”);
- (ii) drivers providing transport services for hire who lease vehicles from Leasing Companies, and are not employees of the Leasing Companies (“**Hirers**”); and
- (iii) organisations providing transport services for hire and drivers providing transport services for hire using their own vehicles (“**Service Providers**”).

Additionally, “transport services for hire” refer to transport services provided using vehicles such as taxis, private hire cars and private charter buses.

Application of the PDPA to the use of IVRDs

In-vehicle recordings can take the form of images, audio recordings and video recordings. In general, the Data Protection Provisions will apply to in-vehicle recordings in transport vehicles for hire if individuals are identifiable in such recordings. By way of example, an individual may be considered identifiable in a voice clip if the recording is sufficiently clear and of a sufficient duration.

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Data Intermediaries

For Leasing Companies, Hirers and Service Providers, their obligations under the Data Protection Provisions in relation to IVRDs will depend on whether they are considered 'data intermediaries' or not. "Data intermediaries" are defined under the Data Protection Provisions as organisations that process personal data on behalf of other organisations.

The key distinction that data intermediaries enjoy is that they are only subject to the obligations under the Data Protection Provisions that relate to the protection and retention of personal data ("**Protection Obligations**" and "**Retention Obligations**", respectively). In contrast, organisations that are not data intermediaries will be subject to the full range of obligations under the Data Protection Provisions.

A Hirer may be considered a data intermediary of the Leasing Company in respect of an in-vehicle recording if the Hirer records, stores or retrieves the in-vehicle recording on behalf of and for the purposes of the Leasing Company. However, if a Hirer records, stores or retrieves personal data in the in-vehicle recording on his own behalf and for his own purposes, or for purposes beyond what is required by the Leasing Company, the Hirer will not be considered a data intermediary. In this latter situation, the Hirer will be responsible for complying with the full range of obligations under the Data Protection Provisions.

In general, the PDPC will consider the facts of each particular case to determine whether a Leasing Company, Hirer or Service Provider will be considered a data intermediary, and whether any or all of them will be held subject to the full range of obligations under the Data Protection Provisions.

Complying with Consent, Purpose Limitation and Notification Obligations

Notification and Consent

The Data Protection Provisions include provisions that deal with the consent requirements for the collection, use and disclosure of personal data ("**Consent Obligations**"), provisions that limit the purposes for which personal data can be collected, used or disclosed ("**Purpose Limitation Obligations**") and provisions that require an organisation to notify an individual of the purposes for which they will collect, use or disclose personal data ("**Notification Obligations**").

Leasing Companies, Hirers and Service Providers who are subject to the Consent, Purpose Limitation and Notification Obligations are required to notify individuals of the purposes and obtain their consent for collecting, using and disclosing their personal data if they record personal data of individuals through IVRDs.

There are various means of notifying an individual of the purposes for which his personal data may be collected, used or disclosed. The PDPC suggests placing a prominent notice at an appropriate location on the window of the passenger door, or placing notices at prominent locations in the car setting out the purpose of the recording. This is to notify the individual before he or she boards the car. There is no prescribed manner of notification and the persons responsible for complying with the Notification Obligations should assess the most appropriate manner of notifying the individual.

The content of the notification should indicate that IVRDs are operating within the vehicle, and specify the purposes for which data may be collected, used or disclosed.

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Reasonable Use

Leasing Companies, Hirers and Service Providers should also ensure that they collect, use or disclose personal data only for purposes that are reasonable. Reasonableness of a purpose would depend on whether a reasonable person would consider it appropriate in the circumstances. For example, it may be reasonable for Leasing Companies, Hirers and Service Providers to require those who wish to use their transport services to consent to the collection, use or disclosure of their personal data to ensure the safety and security of the drivers, or to deter fare evasion.

Withdrawal of Consent

Leasing Companies, Hirers and Service Providers who are subject to the Consent, Purpose Limitation and Notification Obligations must also allow individuals to withdraw any consent given under the PDPA, and put in place policies and practices to facilitate such withdrawal of consent. Therefore, if an individual withdraws consent for the use or disclosure of his personal data in the in-vehicle recording after using the transport service, the Leasing Company, Hirer and Service Provider must cease using such data unless an exception applies. Exceptions include those in the Third and Fourth Schedules to the PDPA – Leasing Companies, Hirers and Service Providers may use, disclose or collect personal data where consent has been withdrawn, if such use, disclosure or collection is necessary for any investigation or proceedings or there are any legal or business purposes to retain it.

As mentioned above, personal data includes audio clips that sufficiently identify an individual. It is not uncommon for an individual to have conversations (whether over the phone or with another passenger) in the car where such conversations are assumed to be confidential in nature and not expected to be recorded. Individuals should hence bear in mind the right to withdraw consent (and the exceptions which may apply) for the use or disclosure of their personal data by Leasing Companies, Hirers and Service Providers.

Complying with Access Obligation

The Data Protection Provisions include provisions that deal with access to personal data (“**Access Obligations**”). Generally, Leasing Companies, Hirers and Service Providers who are subject to the Access Obligations are required to grant individuals access to the personal data in their possession and provide information about how such personal data has, or may have, been used or disclosed by the organisation in the past year. Before responding to an access request, Leasing Companies, Hirers and Service Providers should exercise due diligence and adopt appropriate measures to verify the individual’s identity.

If the in-vehicle recording resides in a form that cannot be provided to the individual, or if it is prohibitively costly to provide a copy of the recording, the Leasing Company, Hirer or Service Provider may provide the individual a reasonable opportunity to view the requested personal data in person, with appropriate masking of the images and/or voices of other individuals where necessary.

Leasing Companies, Hirers and Service Providers need not provide access to the individuals’ personal data where an exception in the Fifth Schedule to the PDPA applies – for example, if the request is frivolous or vexatious, or if the burden or expense of providing access would be unreasonable to the Leasing Companies, Hirers and Service Providers or disproportionate to the individual’s interest.

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Complying with Protection Obligation

Leasing Companies, Hirers and Service Providers who record personal data of individuals through IVRDs are required to make reasonable security arrangements to protect the personal data in their possession or under their control in order to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal or similar risks.

Other Obligations

Leasing Companies, Hirers and Service Providers should be mindful that the Data Protection Provisions do not affect any legal rights or obligations under other laws. In the event of any inconsistency with other written laws, such other written laws will prevail to the extent of such inconsistency. As such, Leasing Companies, Hirers and Service Providers will still be subject to obligations under other relevant laws in addition to their obligations under the PDPA, and in particular, Hirers may also be subject to any contract that they may have with the Leasing Companies.

Concluding Words

The use of IVRDs as a means to help protect Hirers is not new, with this notion previously being raised in Parliament in 2016. With the publication of the new Advisory Guidelines, drivers in the taxi and private-hire transportation business will be able to continue to use their IVRDs as long as they comply with the personal data provisions. Along with the Advisory Guidelines, the PDPC has issued a handbook to serve as a general guide for drivers and organisations on the protection of personal data in relation to in-vehicle recordings. The introduction of the Advisory Guidelines is welcomed, considering the balanced approach whereby the use of IVRDs is subject to compliance with the PDPA.

Moving forward, Leasing Companies, Hirers and Service Providers should bear the Advisory Guidelines in mind if they wish to use IVRDs, and seek clarification from professional legal advisors if they have any questions with regard to the Advisory Guidelines.

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

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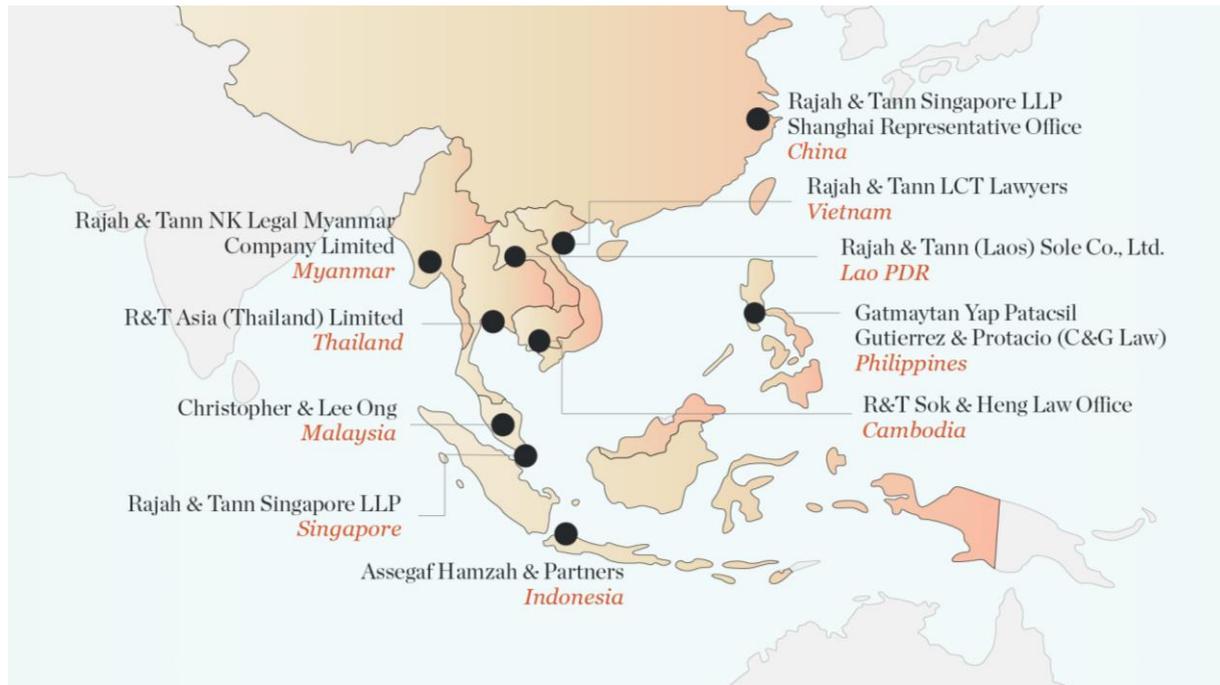
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