

Personal Data Protection Bill

The much awaited Personal Data Protection Bill 2009 ("PDP") which was first tabled in November 2009 is expected to be debated and tabled for the second and third readings in the current sitting of the Parliament.

The PDP aimed at safeguarding the confidentiality of an individual's personal data and preventing misuse of the data only applies to a person 'established' in Malaysia who processes, controls and/or who authorises the processing of any personal data in commercial transactions. A person is considered 'established' in Malaysia if he is physically present in Malaysia, is a business entity formed under Malaysian laws or maintains an office, branch or agency or regular practice in Malaysia or uses equipment in Malaysia for processing personal data. The PDP thus would not be applicable to the Government sectors and to personal data processed outside Malaysia.

The PDP sets out seven personal data protection principles which a data user must abide by, namely the:

- i) General Principle - a data user shall not process personal data about an individual unless that individual has given his consent to the processing of the personal data;
- ii) Notice and Choice Principle - a data user is required to give written notice informing an individual ("data subject") that personal data of that data subject is being processed by or on behalf of the data user and the notice shall amongst others include the purpose for which the personal data is being collected and whether it is obligatory for the data subject to provide the personal data;
- iii) Disclosure Principle - personal data shall not without the consent of the data subject, be disclosed for any purpose other than the purpose disclosed at the time of collection or to any party other than third parties whom the data subject has permitted;
- iv) Security Principle - a data user is required to take practical steps to protect any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction of personal data;
- v) Retention Principle - personal data processed cannot be kept longer than is necessary and the data user shall take all reasonable steps to destroy personal data that is no longer required;
- vi) Data Integrity Principle - a data user must ensure that personal data is accurate, complete, not misleading and kept up to date; and
- vii) Access Principle - a data subject shall be given access to and be able to correct to his personal data.

The PDP also provides for the appointment of a Personal Data Protection Commissioner ("Commissioner") and the setting up of a Personal Data Protection Advisory Committee to advise the Commissioner on the administration and enforcement of the PDP.

The enactment of the PDP is welcome as it will curtail the misuse and mishandling of personal data and enable the growth of e-commerce. In any event, it is no longer an option but a trade requisite as many countries now require adequate regulation on personal data for bilateral trade. For instance, Article 25 of the European Union's Data Protection Directive 1995 outlines that "the transfer to a third-party country, of personal data..., may take place only if... the third-party country... ensures an adequate level of protection".

For further information and assistance, please contact the RL Corporate and M&A Team at T: + 603 2093 3939 ext. 286 or email: rexlex@raslanloong.com.

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