
Data Protection

New Personal Data Protection Act

Introduction

On 28 February 2019, the National Legislative Assembly voted 161-0 with 5 abstentions to approve the draft Personal Data Protection Act (**PDPA**) in its third and final reading. The draft PDPA will be further submitted to HM the King for His Royal Signature, and then sent back to the Secretariat of the Cabinet for publication in the Royal Gazette.

The PDPA will come into effect from the date following the date of its publication in the Royal Gazette; however, provisions under Chapter 2, Chapter 3, Chapter 5, Chapter 6, Chapter 7, Section 95 and Section 96 will be effective one year after the date of publication. The Minister of Digital Economy and Society shall be in charge of the execution of the PDPA.

The stated reason for the promulgation of the PDPA is because there have been many violations of personal data rights and such violations cause damage to the economy as a whole. Due to advancements in technology, it is necessary to enact a law to make the collection, compilation, use and disclosure of personal data easy, convenient and prompt. A summary of the provisions of the approved draft PDPA is set out below.

Definitions

“Personal Data” means information relating to a natural person which is directly or indirectly identifiable to such natural person, excluding information of a deceased person.

“[Personal] Data Controller” means a natural person or juristic person who has power and duty to determine the collection, use, or disclosure of personal data.

“[Personal] Data Processor” means a natural person or juristic person who performs the collection, use, or disclosure of personal data according to the order or on behalf of the Data Controller. The natural person or juristic person who performs those shall not be a Data Controller.

“Committee” means the Personal Data Protection Commission

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Chapter 1: Personal Data Protection Commission

The PDPA establishes the Personal Data Protection Commission (**PDPC**) whose duties and powers include preparing the master plan for operation in respect of the promotion and protection of personal data, and interpreting and determining issues arising from the enforcement of the PDPA.

Chapter 2: Personal Data Protection

This chapter is categorized into three parts: (i) General Rules; (ii) Collection of Personal Data; and (iii) Use or Disclosure of Personal Data.

Principally, the Data Controller is required to seek consent prior to or during the collection, use and disclosure of Personal Data, unless the provisions under the PDPA or other laws prescribe otherwise.

In collecting the Personal Data, the Data Controller must inform, prior to or during the collection of Personal Data, the owner of the Personal Data (**Data Subject**) of the following: (i) the purposes of collection; (ii) the data to be collected; (iii) the rights of the Data Subject; and so forth.

Chapter 3: Rights of Data Subject

The Data Subject is granted the right to access and request a copy of his/her Personal Data, the right to object to the collection, use or disclosure of his/her Personal Data, and the right to request the Data Controller to delete or destroy his/her Personal Data under specific circumstances.

Chapter 4: The Office of Personal Data Protection Commission

The PDPA establishes the Office of Personal Data Protection Commission (**PDPC's Office**) to promote and support the development of Personal Data Protection. PDPC's Office is a government agency and will have the status of a juristic person.

Chapter 5: Complaint

The Data Subject has the right to lodge a complaint to the Expert Committee if the Data Controller or Data Processor, including its employee(s) or contractor(s), fails to comply with any provision under the PDPA or the notifications issued by virtue of the PDPA.

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Chapter 6: Civil Liability

Civil liability will be imposed on a Data Controller or Data Processor who intentionally or negligently fails to comply with any provision under the PDPA which results in damage towards the Data Subject.

The limitation period for the claim of damages expires after the lapse of three years from the date on which the Data Subject knew of such damage and the Data Controller or Data Processor who would be responsible, or ten years from the date on which the violation of Personal Data was committed.

Chapter 7: Penalty

There are two types of penalty: (i) criminal penalty; and (ii) administrative penalty.

The offences on which penalties will be imposed include a violation of the consent requirement and a failure to comply with Personal Data protection standards which result in damage towards the Data Subject.

Transitional provisions

In respect of the Personal Data collected by the Data Controller prior to the date of enforcement of the PDPA, the Data Controller is entitled to continue collecting and using such Personal Data according to its purpose.

However, the Data Controller is required to specify the instructions for revocation of consent and publicize them to the Data Subject.

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Contacts



Melisa Uremovic
Partner

D (66) 2656 1991
F (66) 2656 0833
melisa.u@rajahtann.com



Sui Lin Teoh
Partner

D (66) 2656 1991
F (66) 2656 0833
sui.lin.teoh@rajahtann.com



Saroj Jongsaritwang
Partner

D (66) 2656 1991
F (66) 2656 0833
saroj.jongsariwang@rajahtann.com



Supawat Srirungruang
Partner

D (66) 2656 1991
F (66) 2656 0833
supawat.s@rajahtann.com



Visitsak Arunsuratpakdee
Partner

D (66) 2656 1991
F (66) 2656 0833
visitsak.a@rajahtann.com



Pasiri Taypongsak
Senior Associate

D (66) 2656 1991
F (66) 2656 0833
pasiri.t@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
F +65 6225 9630
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited

T +95 9 7304 0763 / +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977
F +632 552 1978
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Sole Co., Ltd.

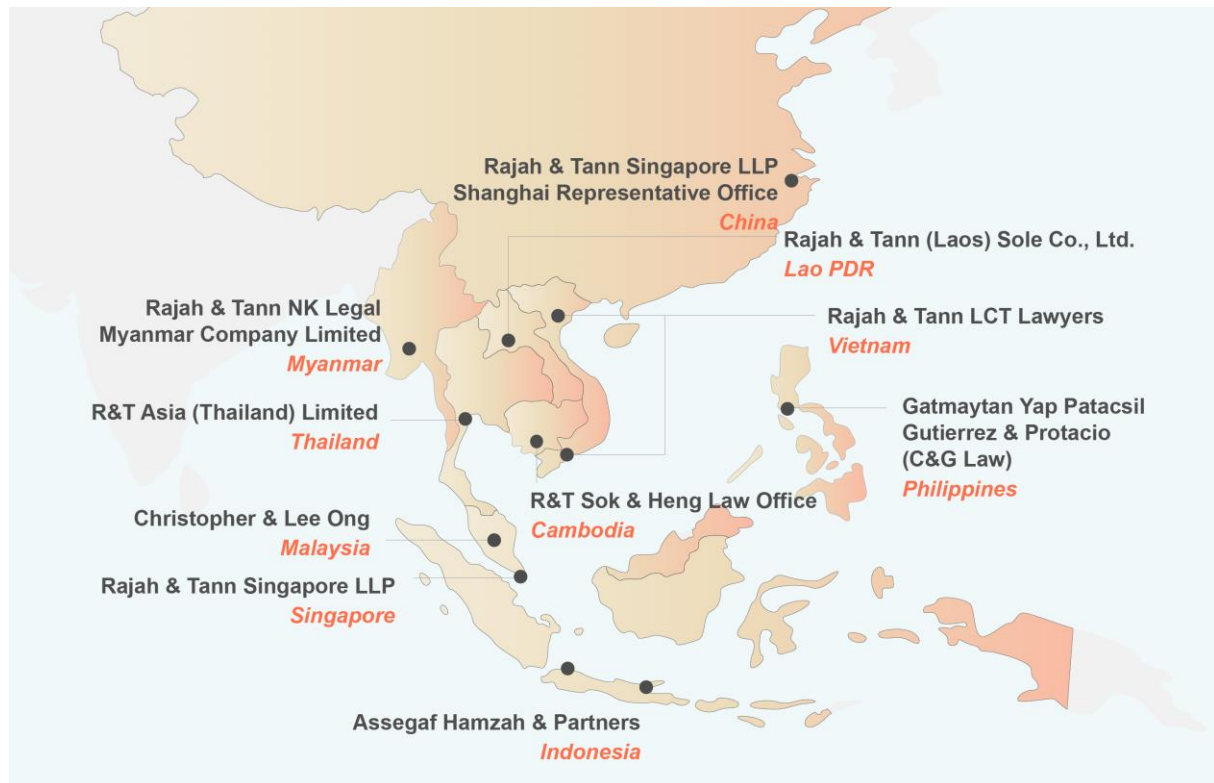
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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