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Personal Data Protection Act

## Notifications on Personal Data Protection

### Introduction

On 1 June 2022, the Personal Data Protection Act B.E. 2562 (2019) ("**PDPA**") became fully effective after a two-year long postponement of the effective date of key operative provisions.

On 20 June 2022, four Notifications of the Personal Data Protection Committee ("**PDPC**") were published in the Government Gazette, clarifying the rules for implementation of the following provisions of the PDPA:

- 1) The Notification of the Personal Data Protection Committee Re: An Exemption from the Records of Processing Activities of the Data Controller which is a Small Business B.E. 2565 (2022) ("**PDPC Notification Re: Businesses Exempted from ROPA**");
- 2) The Notification of the Personal Data Protection Committee Re: Criteria and Procedures in Preparing and Maintaining Records of Personal Data Processing Activities for the Data Processor B.E. 2565 (2022) ("**PDPC Notification Re: Criteria and Procedures on ROPA for Data Processor**");
- 3) The Notification of the Personal Data Protection Committee Re: Security Measures of the Data Controller B.E. 2565 (2022) ("**PDPC Notification Re: Security Measures**"); and
- 4) The Notification of the Personal Data Protection Committee Re: Criteria on Determining an Order to Impose an Administrative Fine of the Expert Committee B.E. 2565 (2022) ("**PDPC Notification Re: Criteria on Determining Administrative Fine**").

A summary of these Notifications is given below for your information.

### Businesses Exempted from the Requirements of Records of Processing Activities

*Effective date: 21 June 2022.*

Under Section 39 of the PDPA, the data controller is obliged to maintain the records of processing activities ("**ROPA**") in order to enable the data subjects or the Office of Personal Data Protection

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Committee to review them. However, such obligation does not apply to a small business pursuant to the rules as prescribed by the PDPC.

The PDPC Notification Re: Businesses Exempted from ROPA has now been issued to clarify the scope of "small business" to be exempted from the duty to maintain the ROPA.

Under the aforementioned Notification, a small business exempted from having a duty to maintain the ROPA shall have one of the following characteristics:

- 1) being a small or medium-sized enterprise under the laws on small and medium enterprise promotion;
- 2) being a community enterprise or community enterprise network under the laws on community enterprise promotion;
- 3) being a social enterprise or a group of social enterprises under the laws on social enterprise promotion;
- 4) being a cooperative, cooperative federation, or farmer's group under the laws on cooperatives;
- 5) being a foundation, association, religious organization or non-profit organization; or
- 6) being a household business or other businesses in a similar manner.

However, the aforementioned exemption does not apply to a small business which is a service provider obliged to retain computer traffic data in accordance with the laws on computer-related crime, unless such service provider is an internet cafe service provider.

In addition, the aforementioned exemption does not apply to small businesses (i) whose collection, use or disclosure of personal data is likely to result in a risk to the rights and freedoms of the data subjects; (ii) whose business involves more than the occasional collection, use or disclosure of personal data; or (iii) involved in the collection, use or disclosure of sensitive personal data under Section 26 of the PDPA.

## Criteria and Procedures for Maintaining the Records of Processing Activities for Data Processor

*Effective date: 17 December 2022*

As the data processor has a duty under Section 40 (3) of the PDPA to prepare and maintain the ROPA in accordance with the rules and procedures set forth by the PDPC, the PDPC has now issued the

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PDPC Notification Re: Criteria and Procedures on ROPA for Data Processor, which will come into force 180 days following the date of its publication in the Government Gazette.

According to the aforementioned Notification, the data processor shall prepare and maintain the ROPA for each type of activity, with at least the following details:

- 1) name and details of the data processor and its representative (if any);
- 2) name and details of the data controller which the data processor operates pursuant to the instruction given by or on behalf of such data controller, and the data controller's representative (if any);
- 3) name and details of data protection officer (if any), including his/her contact details and contact channel;
- 4) type and nature of the collection, use or disclosure of personal data that the data processor operates pursuant to the instruction given by or on behalf of the data controller, including the personal data and the purposes for which personal data is collected, used or disclosed as assigned by the data controller;
- 5) type of person or entity receiving personal data, in case of cross-border transfer of personal data; and
- 6) explanation of the security measures per Section 40 paragraph one (2) of the PDPA.

## Security Measures of the Data Controller

*Effective date: 21 June 2022.*

Section 37 (1) of the PDPA requires that the data controller shall provide appropriate security measures for preventing the unauthorized or unlawful loss, access to, use, alteration, correction or disclosure of personal data in accordance with the minimum standard specified and announced by the PDPC. The PDPC Notification Re: Security Measures was then issued to set out the minimum standard.

One of the interesting requirements under the aforementioned Notification is that the data controller must review the security measures to maintain the efficiency of the appropriate security measures, not only when it is necessary, or when the technology has changed, but also when there is an incident of data breach, unless such data breach does not constitute a risk to the rights and freedoms of a person.

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## Determination of Administrative Fine

*Effective date: 21 June 2022.*

Section 90 paragraph two of the PDPA provides that, in determining whether to issue an order to impose an administrative fine, the expert committee shall take into consideration the severity of the circumstances of the act of offense, size of the business of data controller or the data processor, or other circumstances according to the rules prescribed by the PDPC.

The PDPC Notification Re: Criteria on Determining Administrative Fine has been issued to specify the key factors which the expert committee must take into account when determining an order to impose an administrative fine. Among other things, the expert committee shall determine an order according to the appropriateness to apply the measures and the level of severity of the offence, which can be divided into 2 levels as follows:

- 1) Non-severe cases
  - (a) The expert committee may issue a warning notice or an order to the data controller or the data processor or related person to resolve, cease, suspend, refrain or abstain from an act which violates or does not comply with the law;
  - (b) The expert committee may issue an order to prohibit any act which causes damage to the data subject, or to proceed with any act to suppress such damage; or
  - (c) The expert committee may issue an order to restrict the collection, use or disclosure of the personal data relevant to the commission of the offence in order to suppress such damage.
- 2) Severe cases, including when the order to resolve or the warning is ineffective
  - (a) The expert committee may impose an administrative fine on the data controller, the data processor or the related person according to the rules and the table of fines determined by the PDPC by taking into account the severity and other circumstances to determine the appropriate administrative fine. The expert committee may also issue any order as aforementioned.

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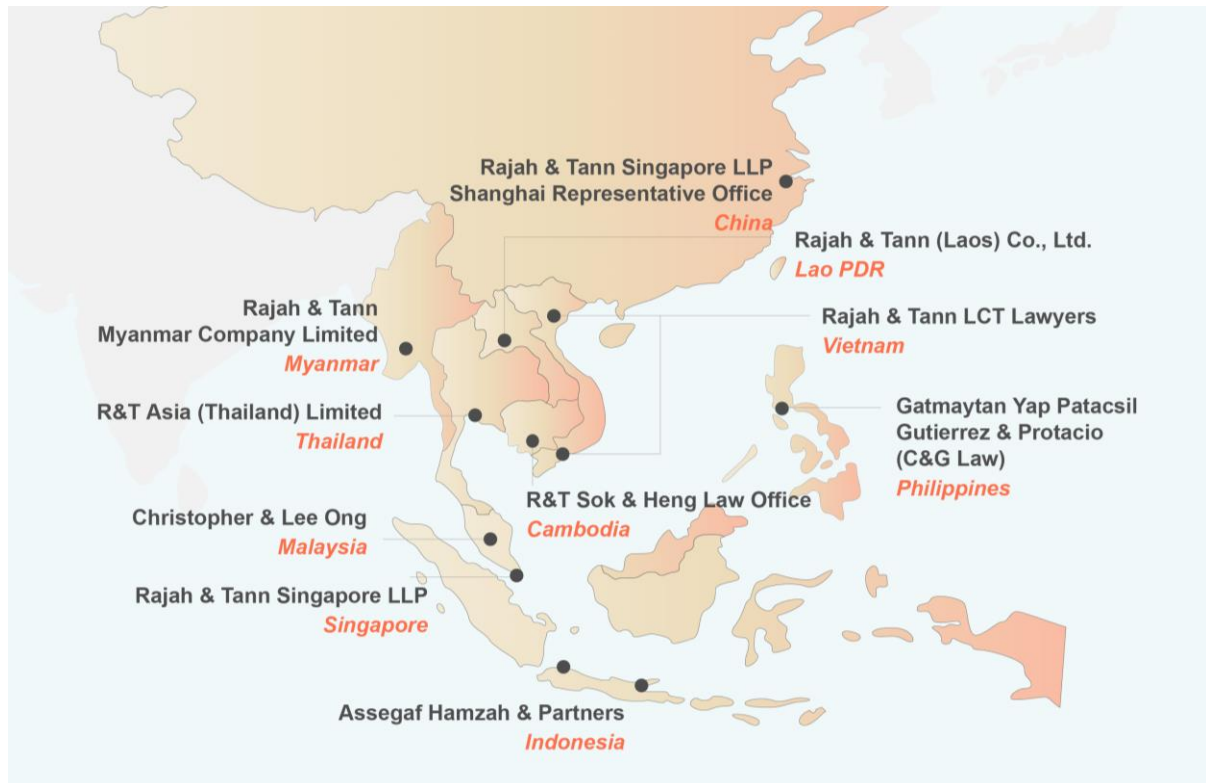
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