

The Development of Personal Data Protection in Malaysia

The Personal Data Protection Bill 2009 (“PDP”) has recently received Royal Assent in June this year. Since the PDP was first mooted, Malaysia has seen a literal explosion in the number of companies and service providers that have taken to the internet, offering Malaysians a plethora of goods and services that are no longer confined by the limitations of time and geography. However, with this move towards the internet as an accepted medium of commerce, comes the unfortunate need to exchange and disclose personal data. In light of this, the lack of regulation in this arena was particularly troubling.

Therefore, it comes as no surprise that the PDP has often been regarded as the “missing link” in Malaysia’s slew of IT-centric legislation, one borne out of an increasing and obvious need to regulate the unchecked ability of companies and service providers to utilise, share, disclose and disseminate personal data.

The PDP achieves this aim by specifying standards by which personal data is collected, stored and managed and creating specific “rights” for persons providing their personal data to such entities. These rights include the obligation of non-disclosure imposed on data users and the limitation on the purpose of use wherein personal data may only be utilised for the purpose for which it was collected.

Those familiar with the data protection regime in Europe will most likely notice the similarities in the Malaysian approach towards data protection. Within the European Union, the Data Protection Directive (Directive 95/46/EC) was implemented in 1995 by the European Commission as an integral part of its bid to improve upon the human rights and privacy laws of member states. The Directive contains provisions with obligations that are not entirely dissimilar from the PDP.

Enforcement of the new legislation has been enhanced by provisions in the PDP providing for the appointment of a personal data protection commissioner, the setting up of a data user forum, a personal data protection fund, an appeal tribunal and a data protection advisory committee to advise the commissioner on the administration and enforcement of the PDP.

The consideration of candidates for the post of commissioner and the formation of an associated regulatory commission is already in progress, as highlighted by the recent announcement in June this year by the Malaysian Information, Communication and Culture Minister, Datuk Seri Dr. Rais Yatim. The new commissioner and commission will be closely linked to the Malaysian Communications and Multimedia Commission (“MCMC”) and is expected to be formalised by January next year.

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