

Dewan Rakyat Passes Proposed Amendments to PDPA

As previously discussed in our [June 2020 Newsletter](#) and [August 2022 Legal Updates](#), amendments to the **Personal Data Protection Act 2010** (Act 709) (“PDPA”) have been in the pipeline. After much anticipation, the Personal Data Protection (Amendment) Bill 2024 (the “Proposed Amendments”) was tabled at the Dewan Rakyat (i.e. the House of Representatives) for its first reading on 10 July 2024 and eventually passed on 16 July 2024. The Proposed Amendments will still have to be tabled at the Dewan Negara (i.e. Senate) and if passed, be subject to royal assent, before the Proposed Amendments become law.

Before delving into the Proposed Amendments, it is to be noted at the outset that the term “*data user*” will as a result of the Proposed Amendments be substituted with the term “*data controller*”, which is to be defined in the same manner as the term “*data user*”. This proposed amendment appears to be merely cosmetic rather than semantic, given the preservation of the statutory definition¹. The discussions below on the key aspects of the Proposed Amendments will therefore adopt the now-preferred term “*data controller*”.

1. Increased penalties

Under the Proposed Amendments, the penalties for non-compliance with any of the Personal Data Protection Principles will be increased, with fine of up to RM1,000,000 and/or imprisonment for a term not exceeding three years. For context, the PDPA currently provides only for fine of up to RM300,000 and/or imprisonment for a term not exceeding two years.

2. Introduction of compliance responsibilities by data processors

The Proposed Amendments will extend the application of the Security Principle to data processors². Non-compliance by a data processor with the Security Principle can be punishable by a fine of up to RM1,000,000 and/or imprisonment for a term not exceeding three years. Currently, proceedings for breach of the PDPA may only be taken against data controllers.

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Data processors are generally not in direct contact with the data subjects (i.e. the individuals who are the subject of the personal data), as data processors only perform the processing of personal data on the basis of the instructions given by the data controllers. Through this proposed amendment, notwithstanding the lack of direct contact as mentioned, data processors shall be responsible for the security of the data subjects' personal data, by taking practical steps to protect the personal data from any loss, misuse, modification, unauthorized or accidental access or disclosure, alteration or destruction.

3. Mandatory notification of personal data breaches

The Proposed Amendments require data controllers to notify any personal data breach that has occurred to the Personal Data Protection Commissioner ("Commissioner") as soon as practicable³. This notification must be implemented in the manner and form to be determined by the Commissioner. Non-compliance with the obligation to notify personal data breaches to the Commissioner is punishable by a fine of up to RM250,000 and/or imprisonment for up to two years.

Further, where the personal data breach causes or is likely to cause any significant harm to a data subject, the data controller shall notify the personal data breach to the data subject without unnecessary delay, in the manner and form as determined by the Commissioner.

This proposed amendment is necessary to ensure that data breach incidents involving personal data are not spared from the monitoring and enforcement activities by the Commissioner. In addition, this obligation is also intended as an immediate mitigation measure by the Commissioner to prevent more serious data breaches and so that data breach control actions can be taken immediately.

4. Appointment of data protection officer

Data controllers and data processors will have to appoint one or more data protection officers ("DPO") in light of the Proposed Amendments. The DPOs shall be accountable to the data controller or data processor that appointed them. The appointed DPO will likely serve as a liaison officer between the data controller (or data processor) and the Commissioner and data subjects.

The appointment of DPO is a mechanism introduced to ensure that all processing of personal data by data controllers and data processors complies with all the Personal Data Protection Principles.

5. Introduction of data portability rights

The Proposed Amendments aim to grant to data subjects the right to request for the transfer of their personal data from one data controller to another data controller of their choice. A data subject intending to exercise such right shall make the request directly by giving a notice in writing by way of electronic means to the data controller. However, this right is subject to the degree of technical feasibility and compatibility of the data format. This proposed right to data portability will likely benefit the data subjects as they will then no longer need to resupply their personal data to new data controllers they encounter.

6. Abolishment of transfer whitelist

The PDPA at present prohibits data controllers from transferring the personal data of a data subject to any place outside Malaysia unless to such place determined by the Minister (charged with the responsibility for the protection of personal data) by notification published in the Gazette (“**Whitelist**”). The Proposed Amendments seek to abolish the Whitelist approach and allow the transfer of personal data to places outside Malaysia so long as the relevant prescribed conditions are met. Once the Proposed Amendments come into force, a data controller may transfer any personal data of a data subject to any place outside Malaysia if:

- (a) there is in that place in force any law which is substantially similar to the PDPA; or
- (b) that place ensures an adequate level of protection in relation to the processing of personal data which is at least equivalent to the level of protection afforded by the PDPA.

This proposed amendment appears to hold data controllers responsible for ensuring that an adequate or at least equivalent level of protection (to that accorded by the PDPA) will be given to the personal data transferred abroad. This proposed amendment is also likely intended to facilitate international trade negotiations as many international trade agreements contain elements of cross-border data transfer.

7. New definitions

Several new or revised definitions will also be introduced pursuant to the Proposed Amendments. Among others, the introduction of the defined term “biometric data” read in tandem with the amended definition of “sensitive personal data” means that any personal data resulting from technical processing relating to the physical, physiological or behavioural characteristics

of a person will also be considered as “sensitive personal data” and subject to the PDPA provisions relating to such special category of personal data.

The proposed revision to the definition of “data subject” will also see the scope of the PDPA being limited to protection of personal data of living individuals only, as the proposed revision expressly excludes deceased individuals from being considered as data subjects. Data controllers are however advised to exercise caution regarding the processing of personal data of deceased individuals, as there remains a likelihood for such personal data to concurrently be the personal data of living individuals.

Concluding remarks

Businesses that process personal data, either as data controllers or data processors, are advised to monitor the legal developments and be ready to take proactive steps in implementing the necessary measures and refining operational procedures as may be required by the Proposed Amendments to ensure compliance once the Proposed Amendments come into force.

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¹ “Data user” (or “data controller” once the Proposed Amendments become law) means a person who either alone or jointly or in common with other persons processes any personal data or has control over or authorises the processing of any personal data, but does not include a data processor.

² “Data processor” means any person, other than an employee of the data user, who processes the personal data solely on behalf of the data user, and does not process the personal data for any of his own purposes.

³ “Personal data breach” means any breach of personal data, loss of personal data, misuse of personal data or unauthorised access of personal data.