

How Personal Data Protection Act affects business

The PDPA and you

The Personal Data Protection Act recently passed by Parliament is a subject of intense discussion in the business community. Here's an example of how the act will affect you:

A wishes to sign up for a mobile phone line offered by ABC-Mobile. In ABC-Mobile's application form, A would need to disclose personal information such as IC number, address, home phone number, etc. Under the act, A is the "data subject" while ABC-Mobile is the "data user". As a data user, ABC-Mobile would have to comply with data protection principles under the act when dealing with A's personal data.

Specifically, ABC-Mobile may process A's personal data only if he consents. It must also inform A of the purpose of collecting his personal data and inform him of his right to request access to his personal data. A must be allowed access to his personal data at all times and be entitled to correct it if necessary.

ABC-Mobile cannot utilise or disclose A's personal data for any other purpose without his consent, and must ensure that A's personal data is accurate, complete and kept up-to-date. Additionally, personal data may not be kept for a longer period of time than necessary for the fulfilment of its intended purpose; practical steps to protect personal data from potential loss, misuse, alteration, unauthorised access, accidental disclosure or destruction must be taken by ABC-Mobile; and A may stop ABC-Mobile from processing his personal data if it causes him any distress or if it is used in direct marketing. Any non-compliance by ABC-Mobile with these obligations would amount to an offence under the PDPA.

The act also has provisions that may require specific classes of data users to be registered as data users. Any data user falling under a specific class must register, and failure to do so would be an offence. In the example given, if a specific class was created for telecommunications

providers, ABC-Mobile must register itself as a data user.

What is the PDPA about?

In a nutshell, it governs the conduct of any individual who collects and processes personal data, i.e. a "data user". A "data subject" is the individual whose personal data is being processed. "Personal data" refers to any information that identifies and relates directly or indirectly to a data subject. Processing data includes collecting, recording, storing or organising such data, and includes the selling of personal data and the unauthorised use of such data for direct marketing purposes. The PDPA only applies to personal data used in commercial transactions within Malaysia but does not apply to the government.

Impact on businesses

Businesses must begin to integrate data protection as part of their business instead of merely looking at it as an administrative burden. There

are many aspects of data protection within a business organisation such as its human resource department, which would have access to the personal data of its employees, and usually, the personal data of job applicants. Information requested or stored must not be irrelevant or inadequately excessive. Standard forms used by companies for such purposes must be re-examined and redrafted to be in line with the PDPA's requirements. Companies must bear in mind that personal data should be used only for its intended purpose. Reasonable measures must be taken to ensure that the storage of personal data is safe and secure.

Non-compliance

An infringement of the act is a criminal offence and attracts, on conviction, a fine of up to RM500,000 or jail term of up to three years or both. If a company is found guilty of an offence, its officers such as its directors, chief executives, managers and secretaries shall be deemed

guilty of such offence. In the example given, if ABC-Mobile is guilty of selling A's personal data without his consent e.g. using it for direct marketing purposes, its officers may be liable to fines and/or jail sentences.

Conclusion

Experts speculate that the PDPA may come into force within a year and when it does, data users will have three months to fully comply with it. Grave penalties await the ignorant and ill-informed. Everyone should familiarise themselves with this critical piece of legislation, and business entities in particular should begin to take active steps to protect personal data and comply with the act before time runs out.

Remember, ignorance of the law is no defence.

This article was written by **David Dass**, **Kuok Yew Chen** and **Jeremy Tan** of Christopher Lee & Co (www.christopherleeco.com). Comments: letters@thesundaily.com