Data User Registration: Why is it Important?

Malaysia’s Personal Data Protection Act 2010 (PDPA) came into force on 15 November 2013. What do you need to know about the PDPA, and how should you prepare for it?

Our goal is to provide you with a working knowledge of the PDPA and tips on how businesses and industry associations can prepare for the new law.

Together with the enforcement of the PDPA on 15 November 2013, various subsidiary legislation, which cover different aspects of PDPA enforcement, have also been gazetted.

One of the issues that these subsidiary legislation address is that of data user registration. The Personal Data Protection (Class of Data Users) Order 2013 sets out the classes of data users that must be registered under the PDPA, while the Personal Data Protection (Registration of Data User) Regulations 2013 sets out the procedures for registration.

But what exactly does data user registration entail? How about data users who do not fall under any of the stipulated classes?

The first thing that data users should know is that data user registration only applies to data users that fall under specified classes. These have been identified as users involved in the following industries/sectors:

1. Communications;
2. Banking and financial institution;
3. Insurance;
4. Health;
5. Tourism and hospitality;
6. Transportation;
7. Education;
8. Direct selling;
9. Services (including legal, audit, accountancy, engineering and architecture);
10. Real estate; and
11. Utilities.

A data user who belongs to two or more classes must make an application separately for each class to which that user belongs.

Once registration is complete, the data user will be issued with a certificate of registration. Without this certificate, a data user that falls under any of the classes in the said Order, who continues to process personal data without the certificate of registration, would be liable to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding three years, or to both.

The certificate of registration is just like applying for a licence to carry on business operations, except in this case, it is a licence to process personal data. The certificate may be revoked if the data user does not comply with the provisions of the PDPA, which indicates that registration allows the Personal Data Protection Commissioner to keep tabs on and regulate the processing of personal data to ensure that it is done in accordance with the PDPA.
The information sought in the application form for registration as a data user would be easily attainable if a company conducts a Privacy Impact Assessment (PIA) to assess the state of its compliance. The information required — for example, the types of personal data collected and purposes for processing — would be examined through a PIA.

As for data users who do not fall under any of the categories in the Order, s 13(2) of the PDPA makes it clear that they would still have to comply with all the provisions of the PDPA, other than that relating to data user registration. Therefore, even if such companies do not need to register as a data user, they would still need to conduct a PIA as part of a PDPA compliance exercise, in order for them to be fully PDPA-compliant.

As such, data users that do fall under the categories stated should conduct a PIA and a PDPA compliance exercise, and register themselves with the Personal Data Protection Commissioner as soon as possible. As there is a three-month grace period for registration, which started from the date of enforcement of the PDPA (i.e. 15 November 2013), data users will only have until 14 February 2014 to be registered.
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