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2 APRIL 2018

Privacy & Data Protection

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Global Effect of the General Data Protection Regulation

GDPR to Come into Effect on 25 May 2018

| by Kelly Yeo Chei Jun |

On 27 April 2016, the European Parliament issued the General Data Protection Regulation,^[1] which rapidly became known as the GDPR. The GDPR replaces the Directive of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.^[2]

Since then, there has been a flurry of activity by companies across and beyond the European Union (EU) to comply with the GDPR before it comes into effect on 25 May 2018. As the GDPR is an EU instrument, many companies in Malaysia may not be aware of the effect that the GDPR may have on their businesses.

In particular, the GDPR applies to the processing of personal data by data controllers^[3] and data processors, whether or not they are situated in the EU, if the processing activities relate to:

- (a) the offering of goods or services to data subjects in the EU, irrespective of whether payment of the data subject is required; or
- (b) monitoring of the behaviour of data subjects in the EU, as far as their behaviour takes place within the EU.

Companies in Malaysia are already receiving, from their EU business counterparts, notices to update or supplement data processing agreements and arrangements, in order to comply with the GDPR.

As fines of an infringement of the GDPR could go up to 4% of a company's total worldwide annual turnover, companies (whether or not situated in the EU) processing personal data pursuant to the activities described above should take note and take measures to comply with the GDPR.

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Published by the Regulatory & Compliance Practice Group

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[1] Regulation(EU) 2016/679

[2] Directive 95/46/EC

[3] "Data controllers" in the EU are the equivalent of "data users" under Malaysian laws