



DATA PROTECTION LAW IN MALAYSIA – 13.12.19



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PRIVACY AND DATA BREACH CASES IN MALAYSIA



2019 (c) Sonny Zulhuda



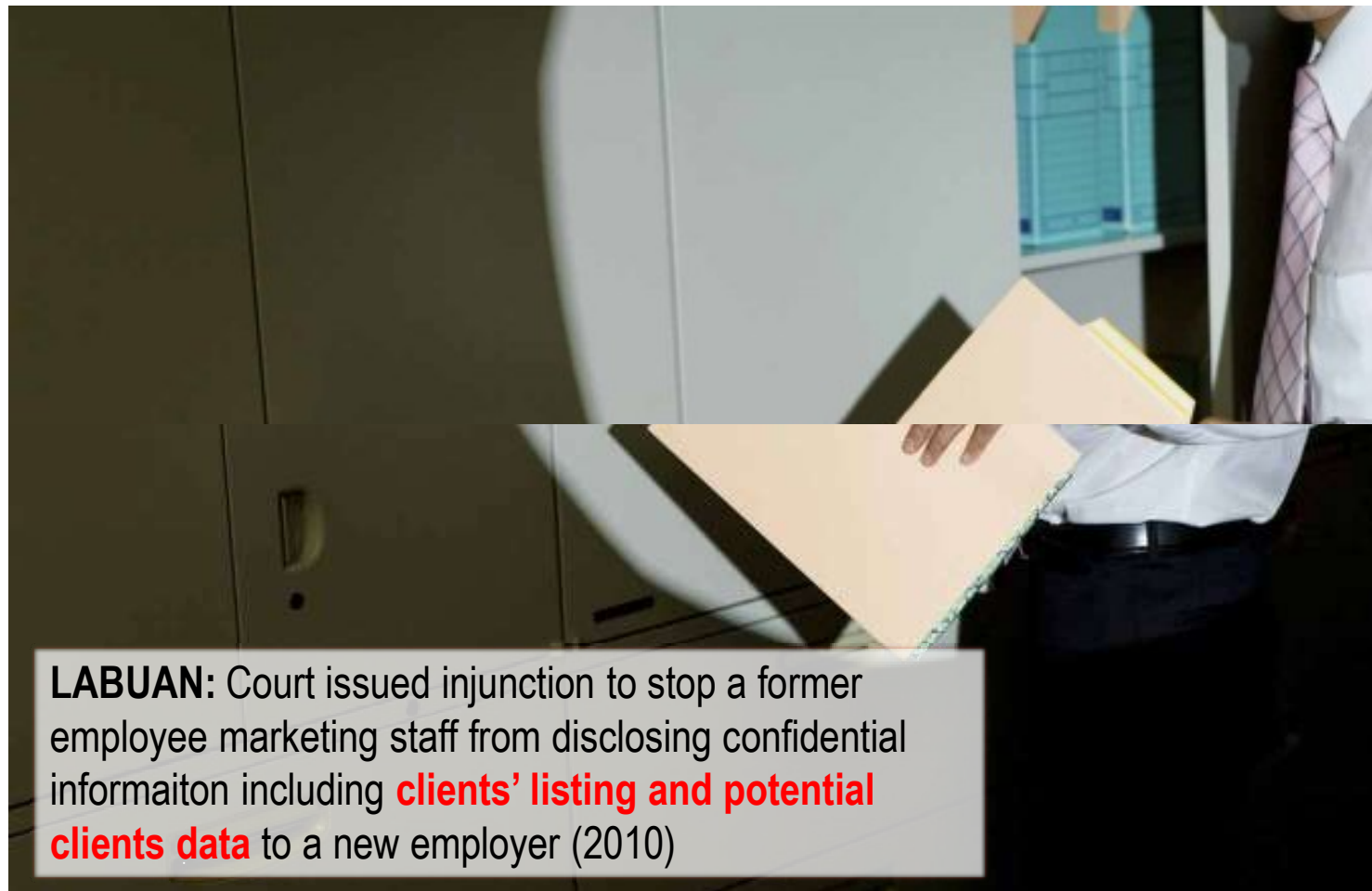
Mislocated CCTV can be privacy-intrusive!

Lew Cher Phow v Pua Yong Yong [2011] H.C. Johor Bahru



Data Leakage due to Exiting employees

Equity Trust (Labuan) Ltd v Mohammad Sofian Mohamad [2010] – Labuan

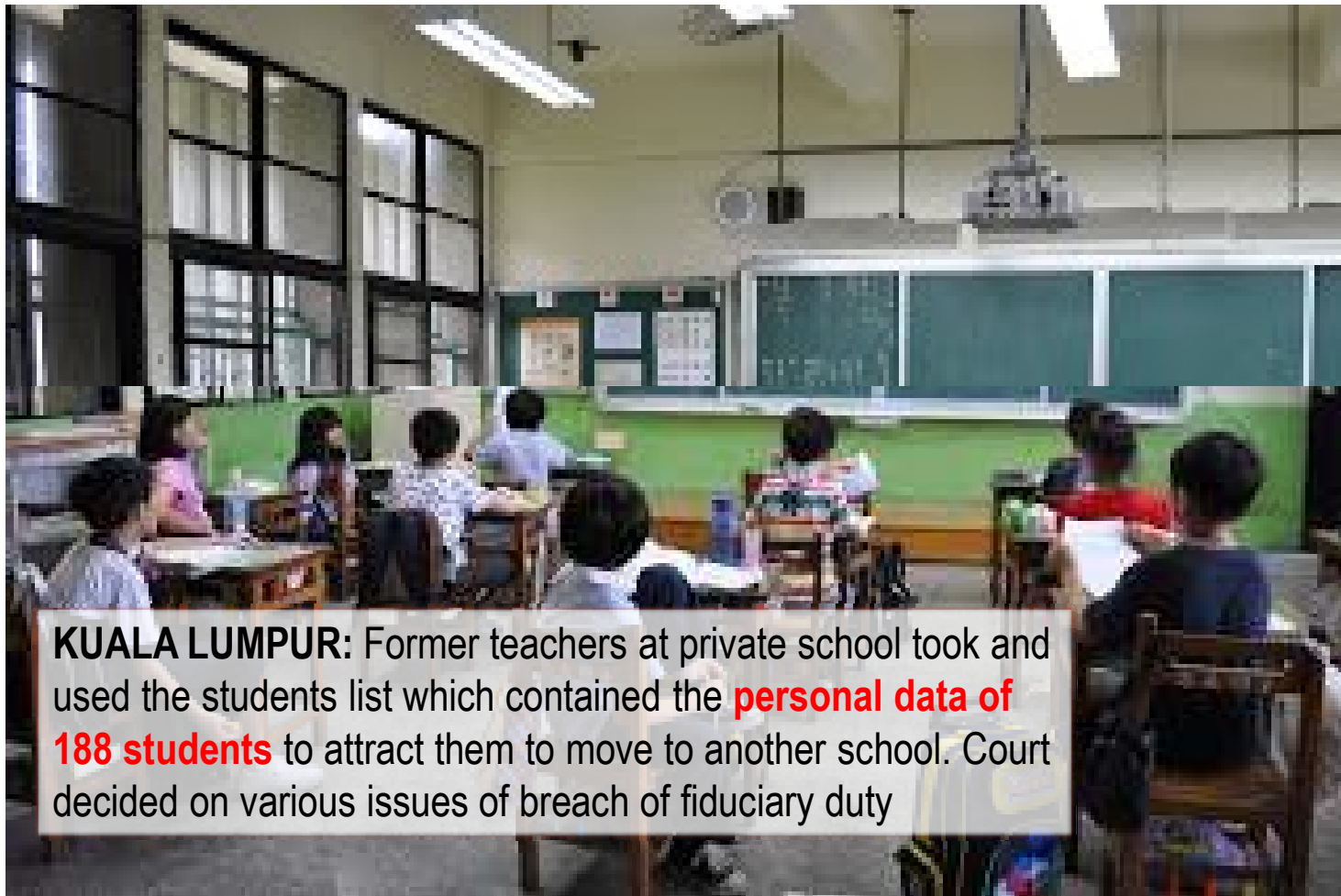


LABUAN: Court issued injunction to stop a former employee marketing staff from disclosing confidential information including **clients' listing and potential clients data** to a new employer (2010)



Students' list misused by former teacher

Sundai (M) Sdn Bhd v Masato Saito [2013] – High Court K.L.



Taking patient's picture without consent breaches privacy - Lee Ewe Poh v Dr Lim Teik Man [2011] – High Court Penang



Deliberate disclosure of passengers' data (2014)



HOME / MALAYSIA

Deputy minister: Probe to determine if 2018's massive telco data leak due to sabotage or hacking

malaymail

Tuesday, 26 Nov 2019 11:44 PM MYT

Malindo Air says data breach caused by ex-employee of e-commerce firm

Justin Lim / theedgemarkets.com

September 23, 2019 16:13 pm +08

THE EDGE
MARKETS

Over 17,000 patients' personal data exposed on national neurology registry website

NATION

Wednesday, 23 Oct 2019

12:12 PM MYT

PETALING JAYA: In yet another data breach, more than 17,000 patients' personal data have been exposed on the government-linked National Neurology Registry (NNeuR) website due to a scripting error, news portal Free Malaysia Today (FMT) reported.

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THE
Star
ONLINE

Universiti Malaya, JPDP looking into report of massive data breach affecting the university

TECH

Saturday, 19 Oct 2019

1:34 PM MYT

By Qishin Tariq



Hacker claims to have stolen personal data of Universiti Malaysia Sabah students

TECH

Tuesday, 05 Nov 2019

4:50 PM MYT

By Angelin Yeoh



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College operator first to be hauled to court under PDP Act

NATION

Thursday, 04 May 2017

12:00 AM MYT

By M. MAGESWARI



KUALA LUMPUR: College operator Khas Cergas Sdn Bhd is the first to be hauled to court for running afoul of the Personal Data Protection (PDP) Act 2010.

The company, which owns Victoria International College in Jalan Ipoh, was charged with processing the personal data of the college's former maintenance technician, A. Marimuthu, 39, without a certificate of registration issued by the Personal Data Protection Commissioner.

A company official claimed trial to the charge at the Sessions Court yesterday.

Khas Cergas was alleged to have committed the offence at the college at about 12.15pm on June 6 last year.

The offence is punishable under the Act with a maximum fine of RM500,000 or up to three years in jail, or both, if convicted.

Sessions judge Harmi Thamri Mohamad @ Shaharudin fixed May 22 for mention.

The company was asked to engage a lawyer while the prosecution was told to provide

UiTM students' data allegedly stolen

NATION

Saturday, 26 Jan 2019

12:00 AM MYT

By ANGELIN YEOH, QISHIN
TARIQ and SANDHYA
MENON



PETALING JAYA: Private information of over a million students and alumni of Universiti Teknologi MARA (UiTM) enrolled between 2000 and 2018 has been leaked in a massive data breach.

The leaked data includes personal details like students' names, MyKad numbers, house and email addresses, campus codes, campus names, programme codes, course levels, student IDs and mobile numbers.

Tech portal Lowyat.net reported that records of 1,164,540 students had been compromised, affecting records from UiTM campuses around the country, including the main one in Shah Alam.

It also affects students enrolled in UiTM accredited courses at external colleges like Kolej Yayasan Terengganu, Institut Teknologi Perak and Institut Yayasan Bumiputera Pulau Pinang.

The data breach had apparently occurred between February and March last year,

Personal Data Protection Act 2010

An Act to regulate the processing of personal data in commercial transactions and to provide for matters connected therewith and incidental thereto.

- Applicability: “Personal data processing” in commercial transactions.
- Binding on: Data Users & Data Processors
- Excluded: Federal & State Government; Non-commercial transactions; Personal & Domestic purposes
- Passed in 2010, enforced in 2013.



“Personal Data” is any information:

in respect of **commercial transaction**;

- any transaction of a commercial nature, whether contractual or not (*includes goods, services, agency, employment, etc*)

that relates directly or indirectly to a **data subject**

- an individual who is the subject of the personal data (*regardless nationality/residence*)

Where that data subject is identified or identifiable

- from that information alone or from that and other information in data user’s possession

including any **sensitive personal data**

- On his physical/mental health/condition, his political opinions, religious beliefs, the (alleged) commission of any offence

Including **expression of opinion** about the data subject

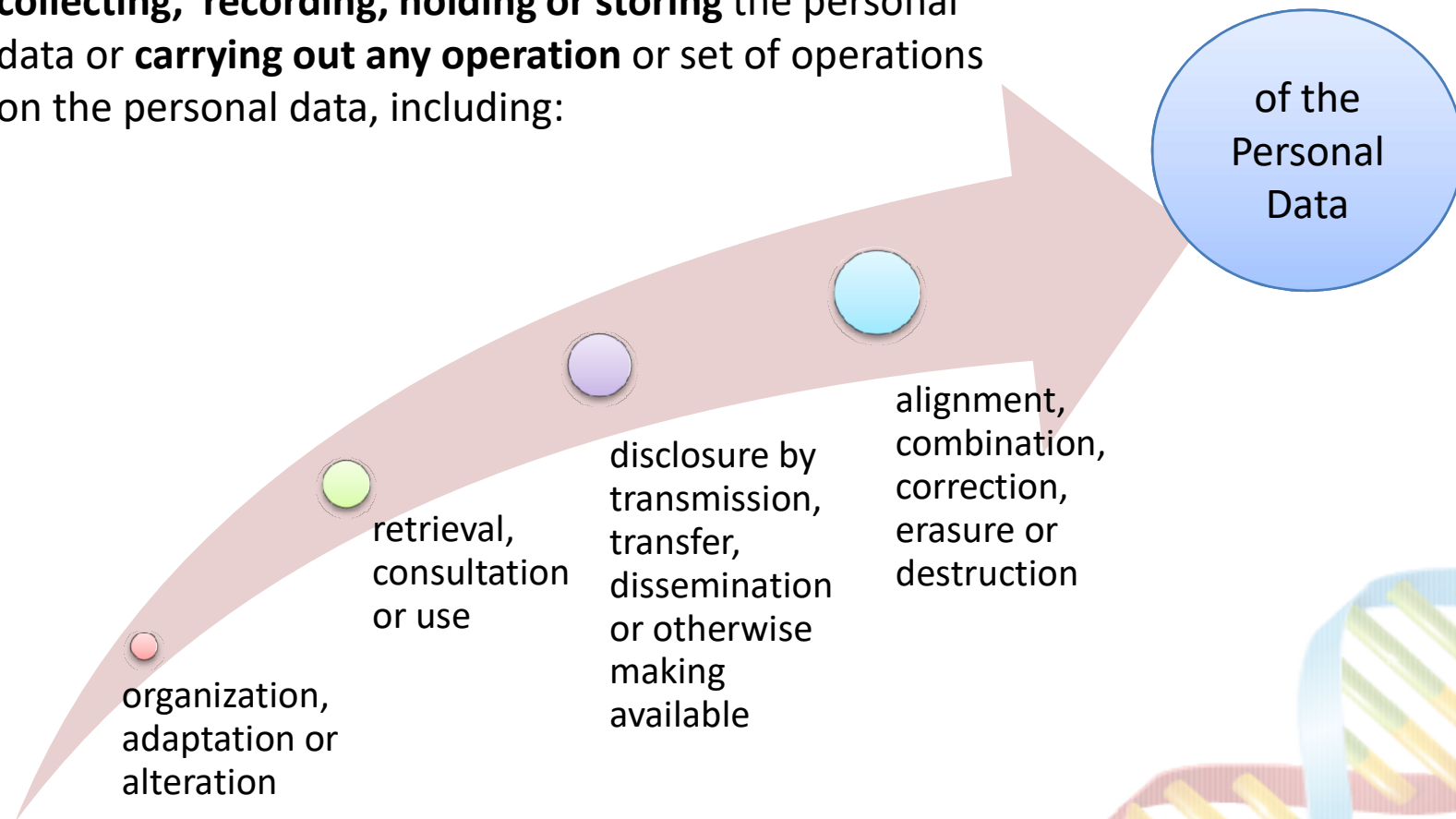
- *e.g. data user’s opinion his former employee*

Processed by **automated** means OR is recorded as part of **relevant filing system**

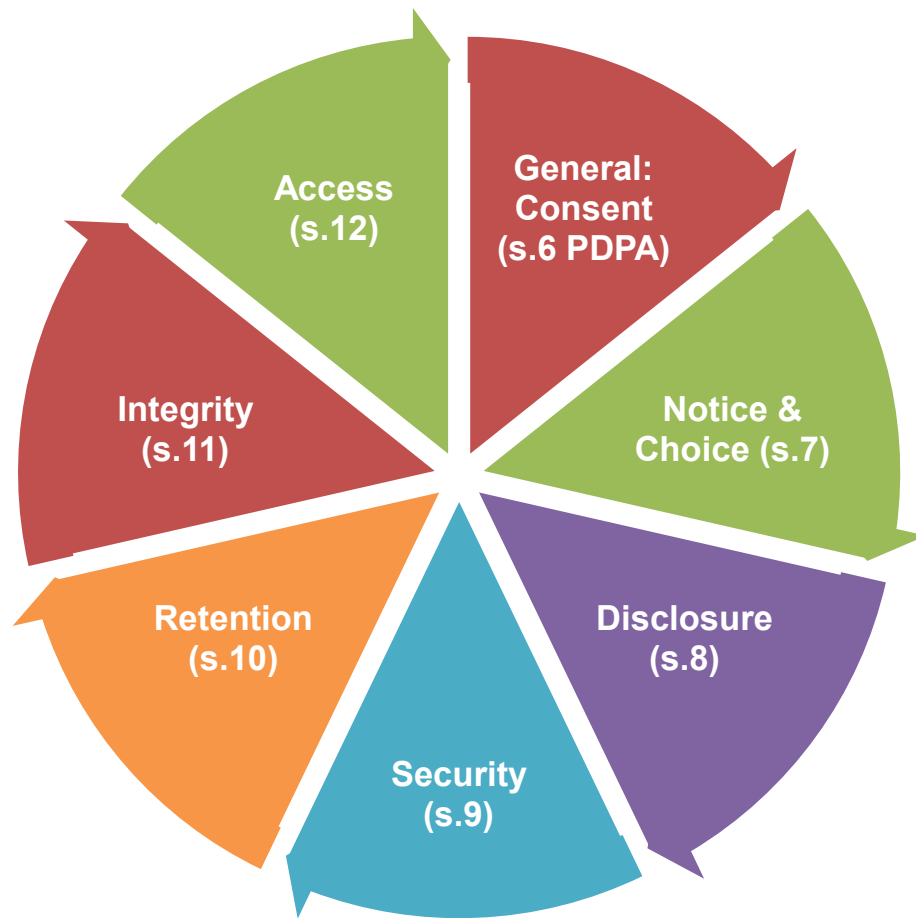
- *Thus it applies to both electronically processed data and paper-based document*

“Processing” – what does it mean?

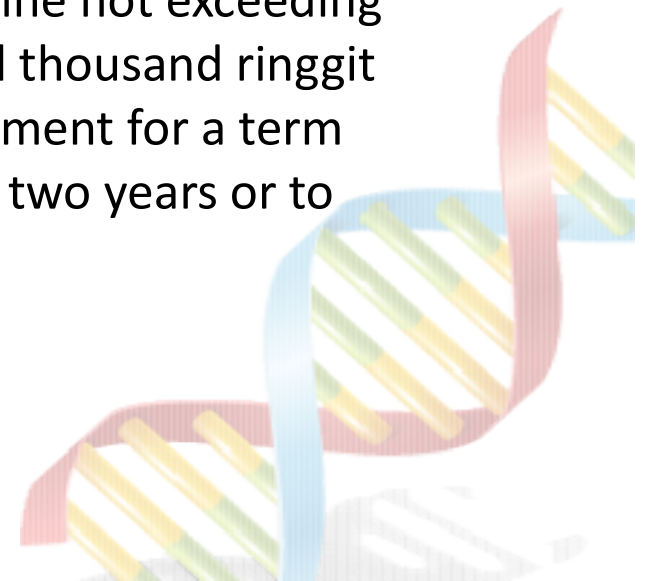
Processing, in relation to personal data, means **collecting, recording, holding or storing** the personal data or **carrying out any operation** or set of operations on the personal data, including:



Seven Personal Data Protection Principles



Data user who contravenes the above Principles commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.



Personal Data Protection Act 2010

Regulates **processing of PII** in commercial transactions

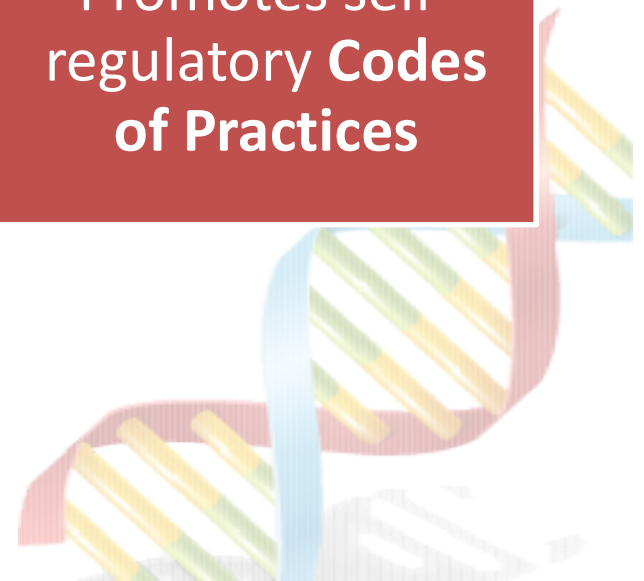
New sets of obligations for **data users**

New **offences** relating to data abuses etc.

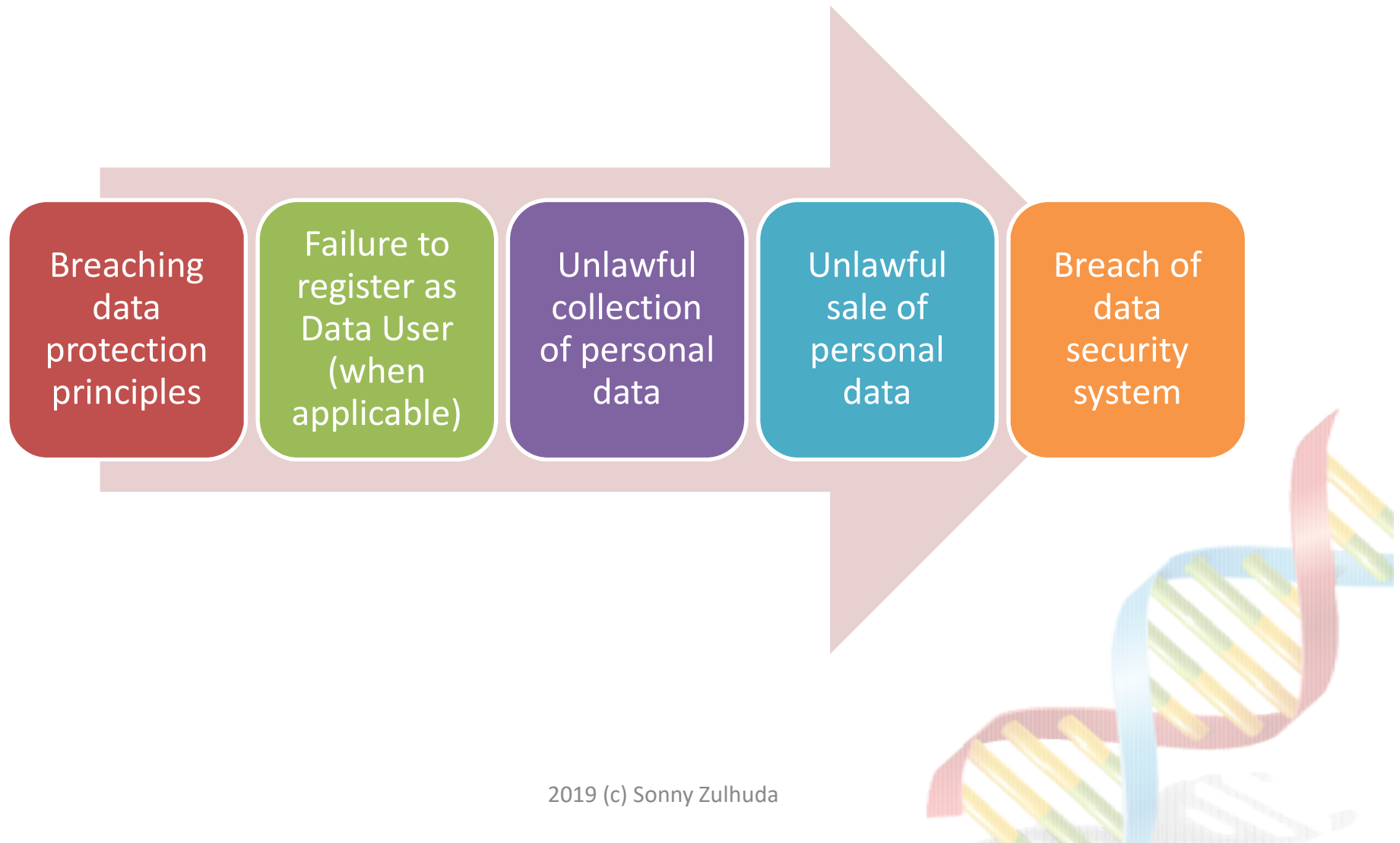
Rights for individuals

Information governance and **Data due diligence**

Promotes self-regulatory **Codes of Practices**

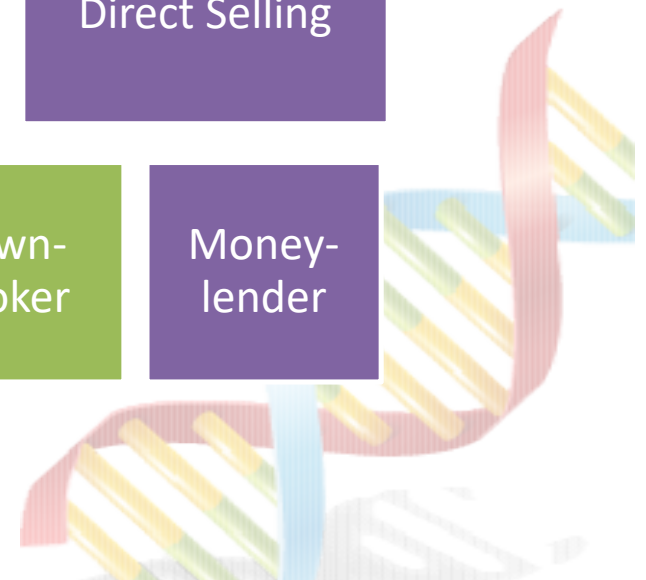
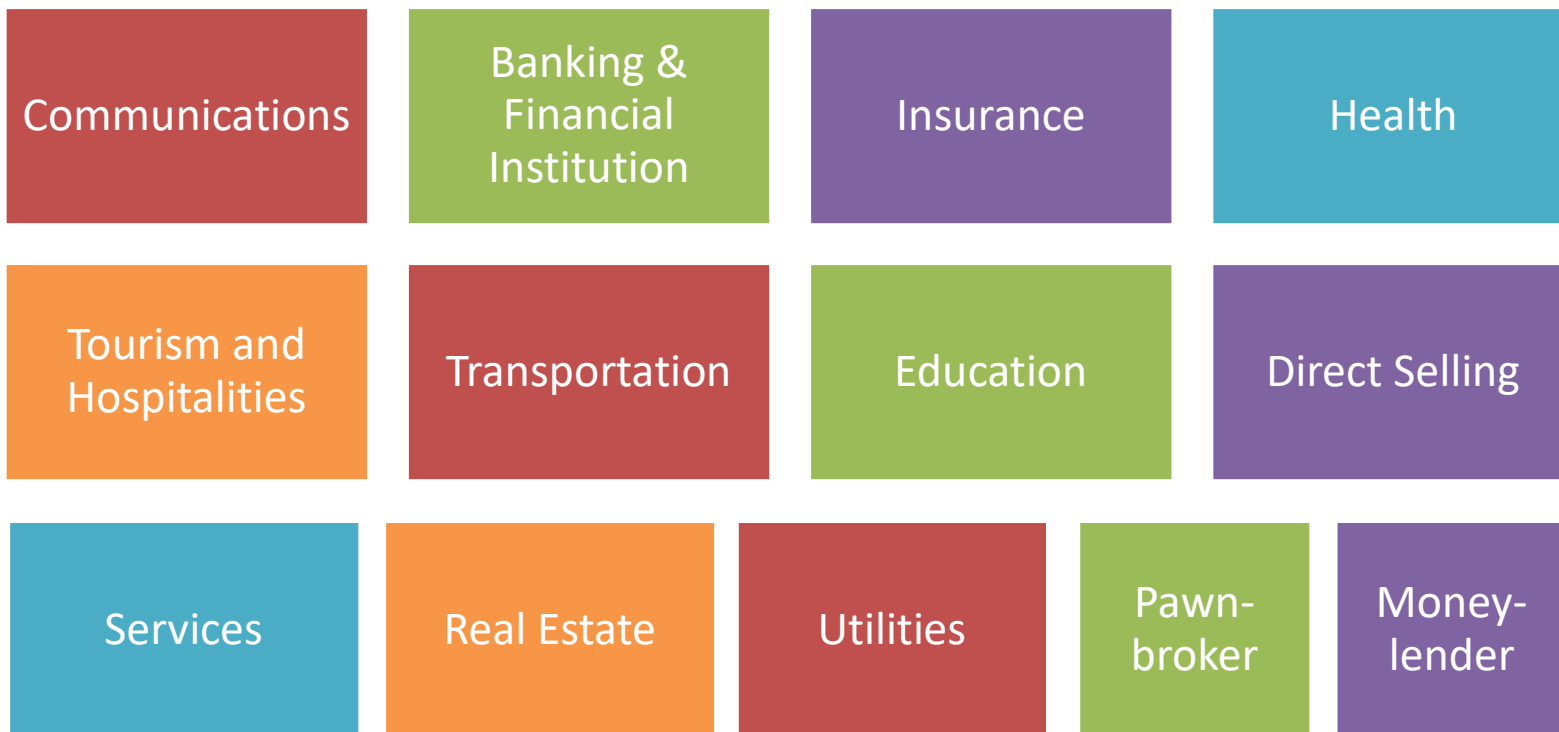


PDPA 2010 creates new data offences



Classes Of Data Users

[Gazetted under PDP (Class of Data Users) Order 2013]



Updates on Laws and Rules

- **Existing subsidiary rules**

- Personal Data Protection (PDP) (Registration of Data User) Regulations 2013
- PDP (Class of Data Users) Orders 2013 & 2016
- PDP Regulations 2013
- PDP Standards 2015
- PDP (Compounding of Offences) Regulations 2016

- **Draft rules in the pipeline**

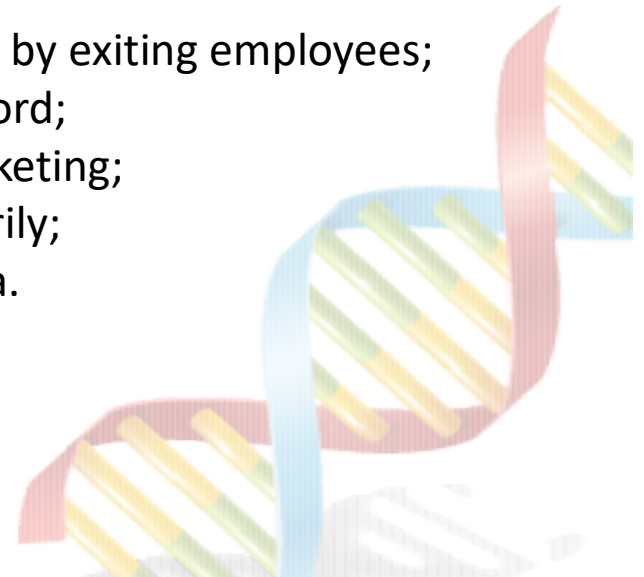
- Proposed Guideline on Trans-border data transfer: List of Countries where transfer is allowed
- Proposed Guideline on Data Breach Notification



Audit, Enforcement and Prosecution



- More than **18,000** issues referred to since Nov. 2013, including **140** complaints and reports;
- **82** cases followed up by the PDP Commissioner (by end of 2015);
- Banking sector, property and services are the top three sectors with most cases/reports.
- Complaints relate to
 - un-consented processing and disclosure of personal data;
 - unauthorised use of data by exiting employees;
 - poor security of data record;
 - un-consented direct marketing;
 - data retained unnecessarily;
 - unauthorised sale of data.



Public Education on PDPA 2010

Public education through

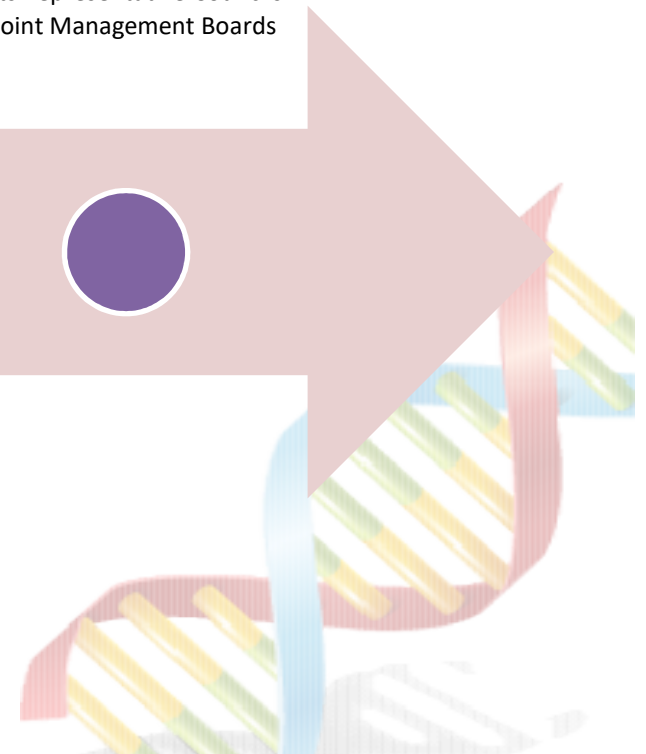
- conferences,
- exhibitions,
- media releases & interviews, etc.

Among the target groups identified:

- Govt agencies
- Young data subjects
- Institutions of Higher Learnings – both Public and Private
- Municipality residential representation committees
- Students Representative Councils
- Strata Joint Management Boards
- NGOs
- Media

Data Users & Data Subjects

- Before 2018: Focus on data users
- 2018 & beyond: Focus on data subjects



Inspection of Personal Data System



- More than 57 inspections have been done in 2018
- Powered under s 101 to inspect the system used to process personal data, including the record of any application, notice, request or any other information relating to personal data and any document and equipment forming part of the system.
- Purpose:
 - To promote the compliance with law
 - To ascertain the status of compliance
 - To assist the Commissioner in making recommendations to the relevant data user

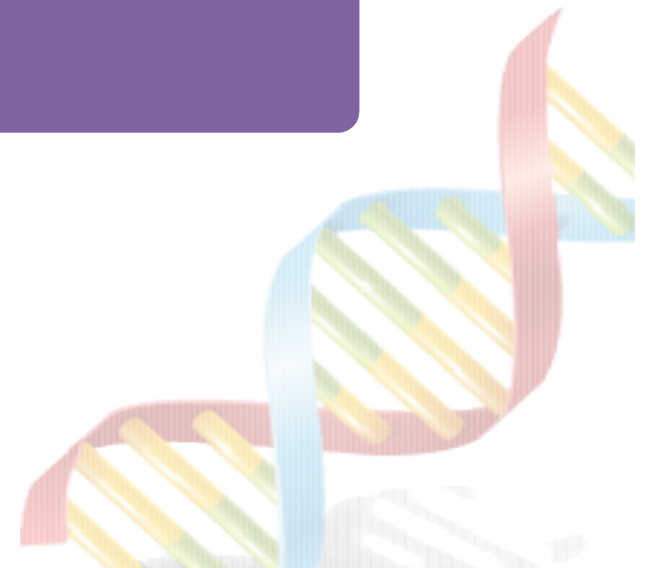
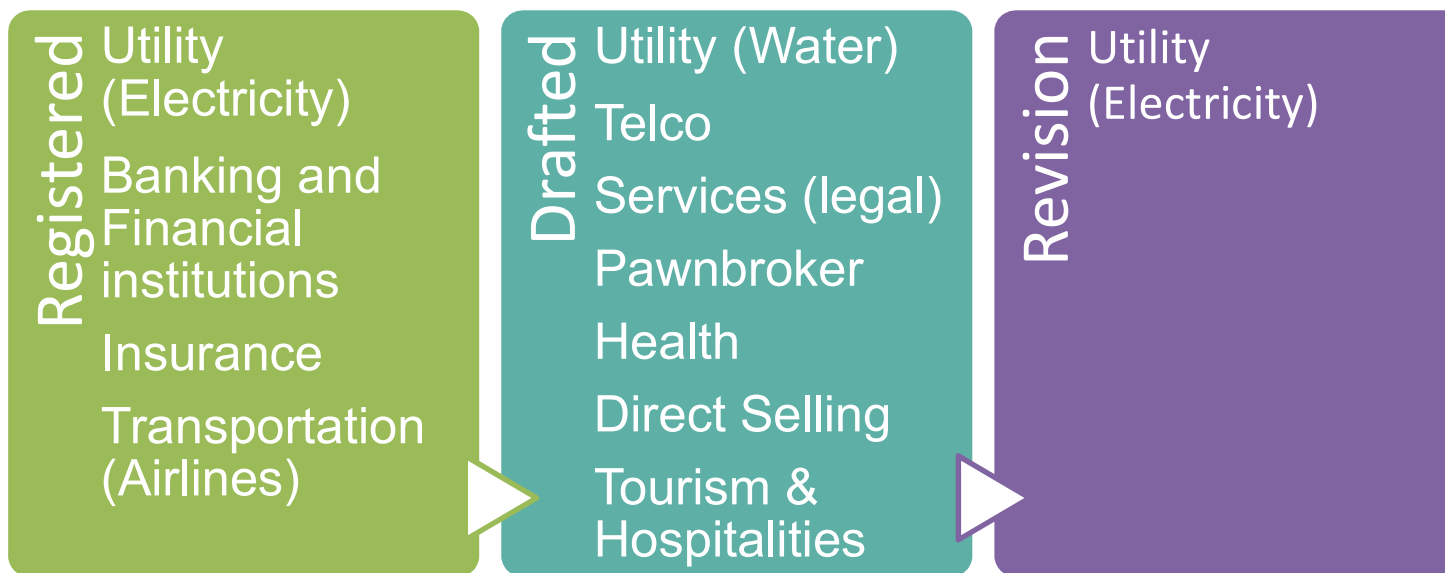


Enforcement

No	Sector	Offence(s)	Provision	Sanction
1	Tourism (Hotelier)	Processing personal data without the Commissioner's Certificate Processing without consent	Section 16(4) Section 5(2)	MYR10,000 fine or 8 months imprisonment for each of the offence
2	Education (Private university)	Processing without Certificate	Section 16(4)	MYR10,000 fine or 3 months-imprisonment
3	Service sector (Employment agency)	Processing without Certificate	Section 16(4)	MYR10,000 fine
4	Education (Private University)	Processing without Certificate	Section 16(4)	Compound RM10,000
5	Service (Job agency)	Processing without Certificate	Section 16(4)	MYR10,000 fine



Code of Practice (COP)



Emerging Issues involving Data Governance:

Governance	Data Breach Notification	Cross-border Data transfer	New technologies:	Trans-national privacy laws
<ul style="list-style-type: none">• New market skill• DPO certification• Risk Management• Privacy by Design	<ul style="list-style-type: none">• Defining the breach• Strict timeline	<ul style="list-style-type: none">• CBPR• The White List	<ul style="list-style-type: none">• Artificial Intelligence• Cloud Processing• Blockchain• New security threats	<ul style="list-style-type: none">• GDPR• APAC• ASEAN Community



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Gobind orders action on leak of 36mil phone users' data **EARD...**

FMT Reporters | May 27, 2018

Communications minister says investigations into bot attacks and blocks on news sites will be carried out, and calls for proposals on amending the communications law.



Communications minister Gobind Singh wants action on a mass

KUALA LUMPUR: The communications ministry has been ordered

22 Nation

THE STAR, FRIDAY 5 OCTOBER 2018

Gobind: We'll update data protection

Local and foreign threats to user information call for stronger legislation, says minister

By YIMIE YONG
yimie.yong@thestar.com.my

PETALING JAYA: Malaysia is looking to update its data protection laws by the middle of next year to prevent data breaches, says Communications and Multimedia Minister Gobind Singh Deo.

He said the update could be modelled after the European Union's General Data Protection Regulation (GDPR), which took effect in May.

"Malaysia needs to be on par with global legislation on data protection because Malaysians are not exposed to just local retailers but also other parties seeking to use their data for a variety of purposes.

"We should find ways to stop a breach before it gets out of hand.

"The GDPR was brought to my attention and the ministry is looking at it.

"By the middle of next year, hopefully, we will put something to the Parliament," he said.

Speaking at The Future of Digital Advertising In A Privacy-First World forum at Menara Star here yesterday, Gobind noted that organisations that breached the GDPR could be fined up to 4% of their annual global turnover or €20mil (RM95.31mil).

"That is a lot. But that is what you need to do to send clear signals that you are serious about it.

"We have to reinvent departments that work with these (regulations). It is not enough to have a small

team of people to deal with enforcing the Personal Data Protection Act (PDPA) 2010," he said.

The PDPA came into force in November 2013.

Gobind also said Malaysia was looking to work with other Asean countries to develop a framework on data protection as well.

Meanwhile, during the panel discussion, CIMB Group group chief marketing officer Mohamed Adam Wee said companies should not collect data that they do not need.

"In some cases, customers' personal data are not really required.

"These companies will still be able to market their products or services to the targeted audience without having to know their names or contact numbers," he said.

AirAsia Group Bhd Group legal counsel and compliance manager Kelvin Xiawei said more automation was needed in the system to better manage customers' data.

"We collect personal data to better serve our customers.

"Some of the data collected are required for security purposes.

"We do share the data with the subsidiaries of our group but customers can opt out and we also ensure that their data will be safe," he said.



Discussing digital defence: (Front from left) Star Media Group Bhd group managing director and chief executive officer Datuk Seri Wong Chun Wai, Gobind and Malaysian Advertisers Association (MAA) president Mohamed Kadri Mohamed Taib attending the forum at Menara Star. Behind them are (from left) Malaysian Communications and Multimedia Commission chairman Al-Ishsal Ishak, Communications and Multimedia Consumer Forum of Malaysia chairman Mohamad Yusrizal Yusoff and MAA vice-president Claudian Navin Stanislaus.

Watch the video
thestartv.com





MINISTRY OF COMMUNICATIONS
AND MULTIMEDIA MALAYSIA

The Personal Data Protection Act (PDPA) review will be premised on the needs for effective and efficient implementation and streamlined with international requirements on personal data protection.

GOBIND SINGH DEO

Minister of Communications and Multimedia

CONFERENCE ON THE EUROPEAN UNION
GENERAL DATA PROTECTION REGULATIONS
(EU GDPR) | 18 MARCH 2019



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What to Watch in the Review?

Shifting the focus to Data Processors?

Specific technology regulations?

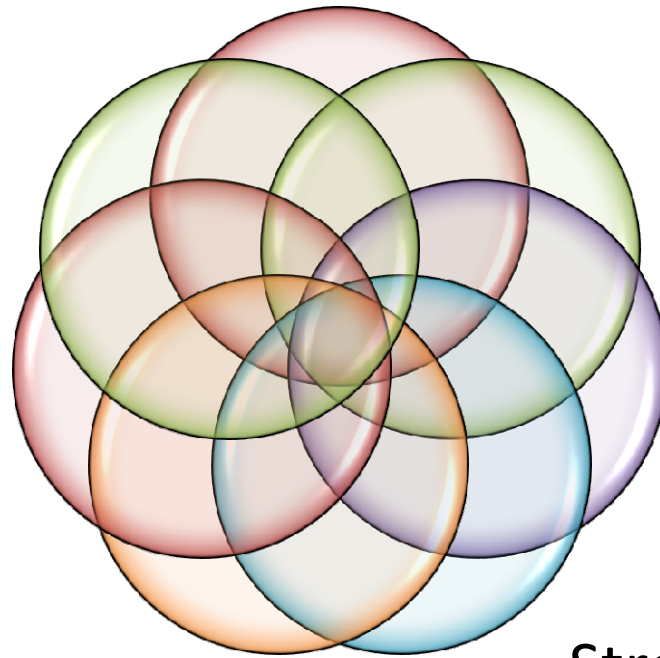
Options for Cross-border data transfer?

Civil redress for data subjects?

Mandatory DPO?

Data Breach Notification?

Strengthening the Data User Forum?



Conclusion


- In Malaysia, protection of privacy is underway in parliaments and courts, and through state agency as well as the industry.
- A parallel track of enforcement: One is through promoting the **industrial Code of Practice**, and the other is through **enforcement and prosecution**.
- The Commissioner has been addressing the effects of the European General Data Protection Regulations (GDPR) since 2018 to Malaysian context.
- Regional development sets new benchmark – A law review is necessary



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 Jabatan Perlindungan Data Peribadi

Thank You.

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