PERSONAL DATA PROTECTION IN THE TIME OF PANDEMIC: ISSUES & CHALLENGES

PERSIDANGAN PERLINDUNGAN DATA PERIBADI (AKTA 709) DI KUALA TERENGGANU
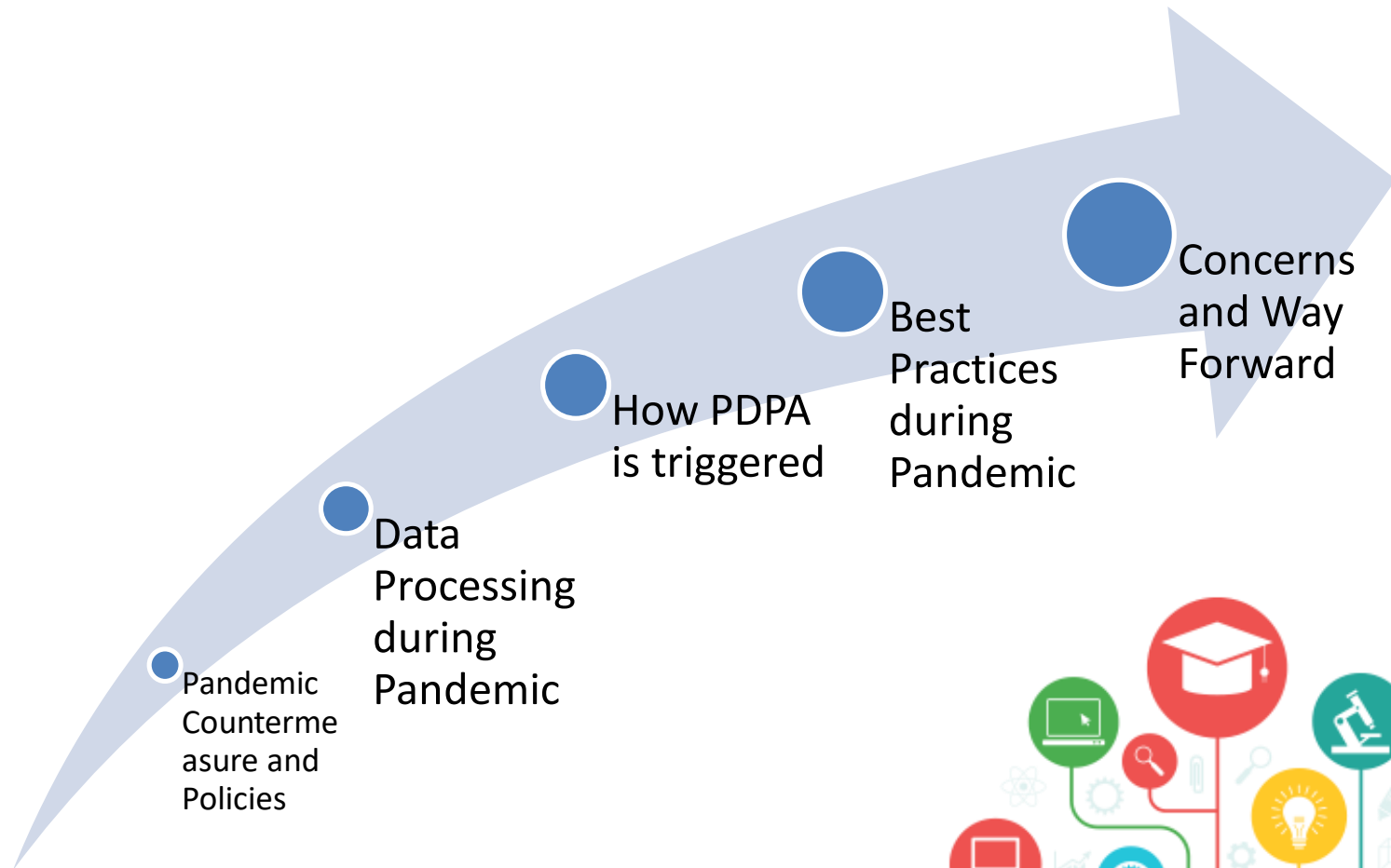
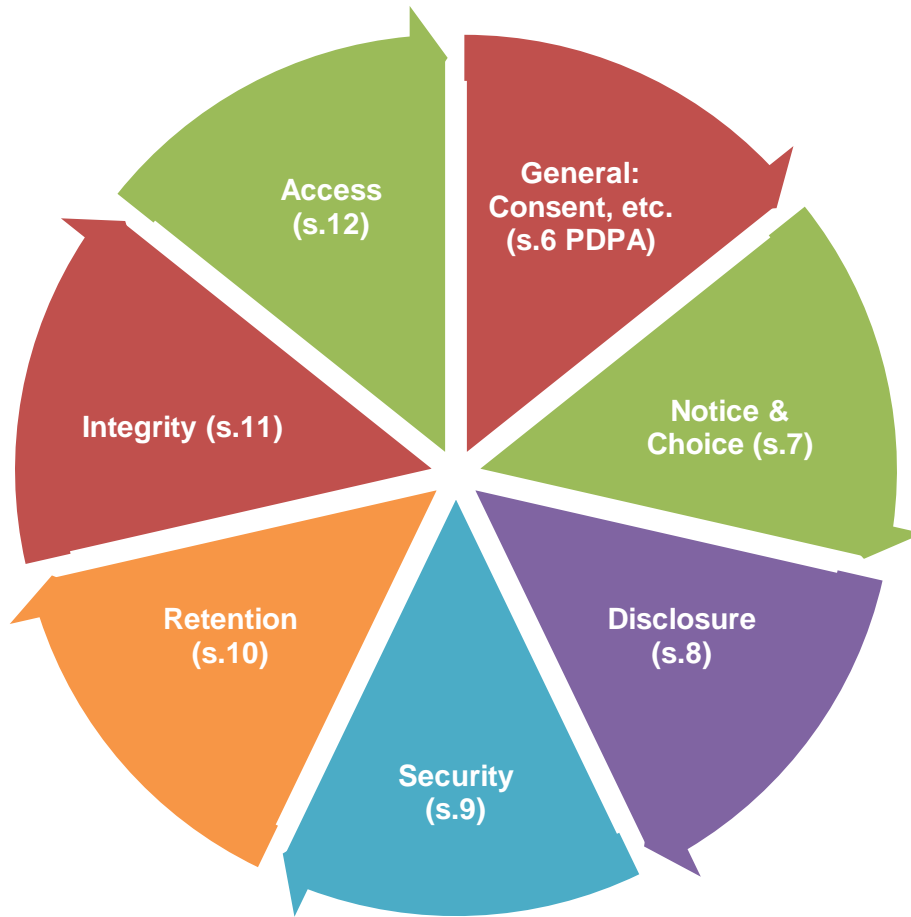**24 AUGUST 2020**

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sonnyzulhuda.com

TIMELINE

Pandemic Countermeasure and Policies

Data Processing during Pandemic

How PDPA is triggered

Best Practices during Pandemic

Concerns and Way Forward

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.

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The Milestone of PDPA 2010

Regulates **processing of PII** in commercial transactions
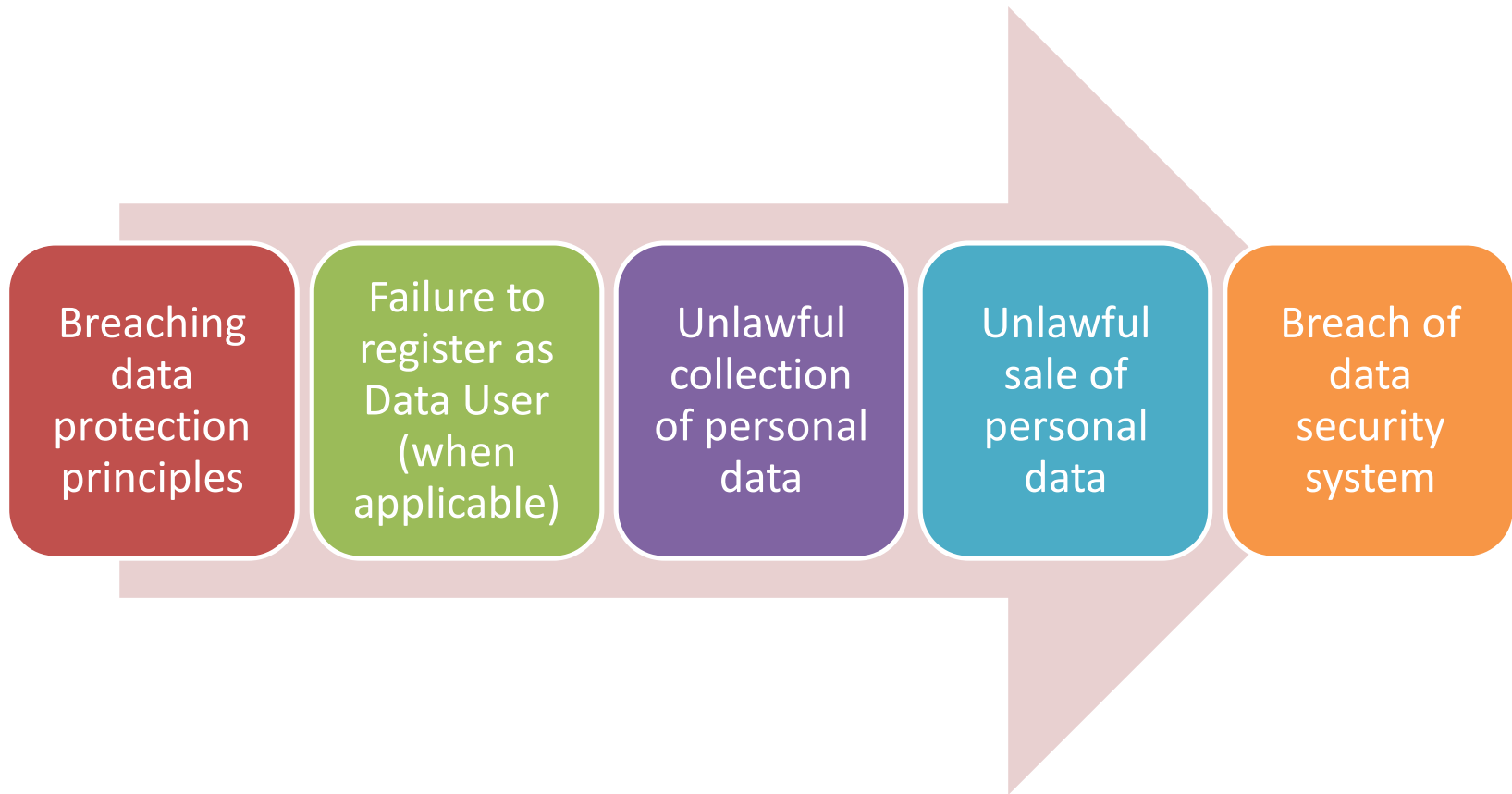
New sets of obligations for **data users**

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

Rights for individuals

Information governance and **Data due diligence**

Promotes self-regulatory **Codes of Practices**

And... creates new data offences

| Breaching data protection principles | Failure to register as Data User (when applicable) | Unlawful collection of personal data | Unlawful sale of personal data | Breach of data security system |

Pandemic and Movement Control Order

ACT 342: PREVENTION AND CONTROL OF INFECTIOUS DISEASES ACT 1988

Section 11. Declaration of an infected local area.

…

(2) The Minister may, by regulations made under this Act, **prescribe the measures** to be taken to control or prevent the spread of any infectious disease within or from an infected local area.

(3) During the continuance in force of an order made under subsection (1), it shall be lawful for any authorized officer to direct any person or class or category of persons living in an infected local area or in any part thereof to subject himself or themselves-

    (a) to **treatment or immunisation**;

    (b) to **isolation, observation or surveillance…**; or

    (c) to **any other measures** as the authorized officer considers necessary to control the disease.

(4) It shall be lawful for an authorized officer to use such force, with or without assistance, as may be necessary and to employ such methods as may be sufficient **to ensure compliance** with any direction issued under subsection (3).

Some Provisions of Relevance

- A general exemption on the processing of personal data by Government (s. 3(1))
  - ➢ Is it a blanket exemption?
  - ➢ What about a third party working for the Government?
  - ➢ What about a private entity that exploits data in the pretext of complying with Government's Order?

- Sensitive personal data (section 4)

  "any personal data consisting of information as to the physical or mental health or condition of a data subject…"

Some Provisions of Relevance
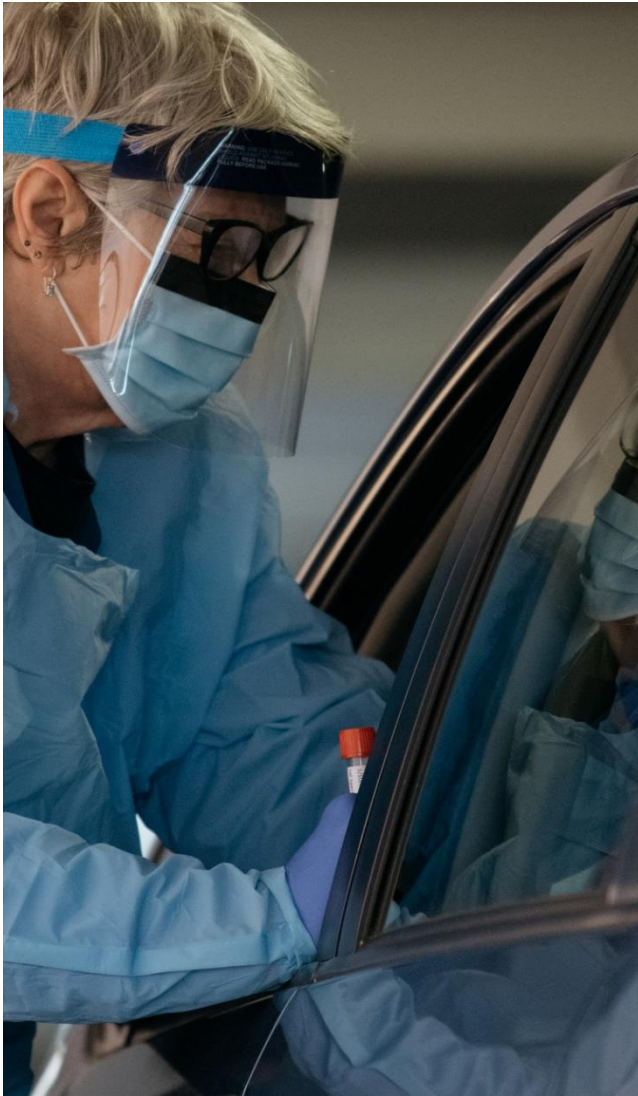
- The processing of "sensitive data" (s. 40)
  - ➢ With explicit consent, or
  - ➢ Necessary processing, including to protect the vital interests of the data subject or another person.
  - ➢ Necessary for medical purposes by a healthcare professional or someone under confidentiality.

- "Medical purpose" includes the purposes of preventive medicine, medical diagnosis, medical research, rehabilitation and the provision of care and treatment and the management of healthcare services.
  - ➢ Mobile Apps on health assessment?
  - ➢ Plan of Apps on contract tracing?

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Partial Exemptions that Apply (s.45 PDPA 2010)

In relation to information of the physical or mental health of a data subject…
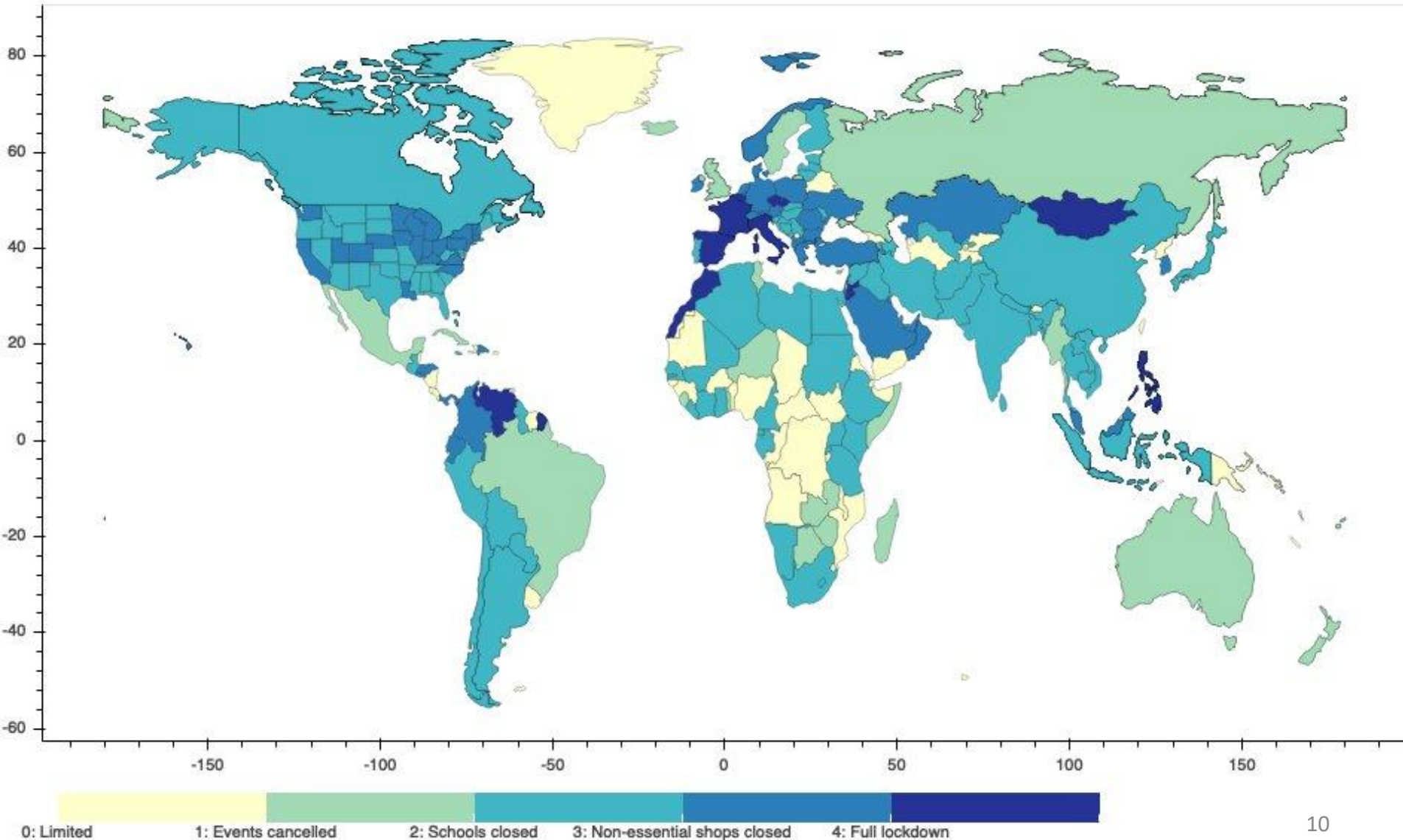
For preparing statistics or carrying out research

(should) not (be) processed for any other purpose and that the resulting statistics or the results of the research are not made available in a form which identifies the data subject;
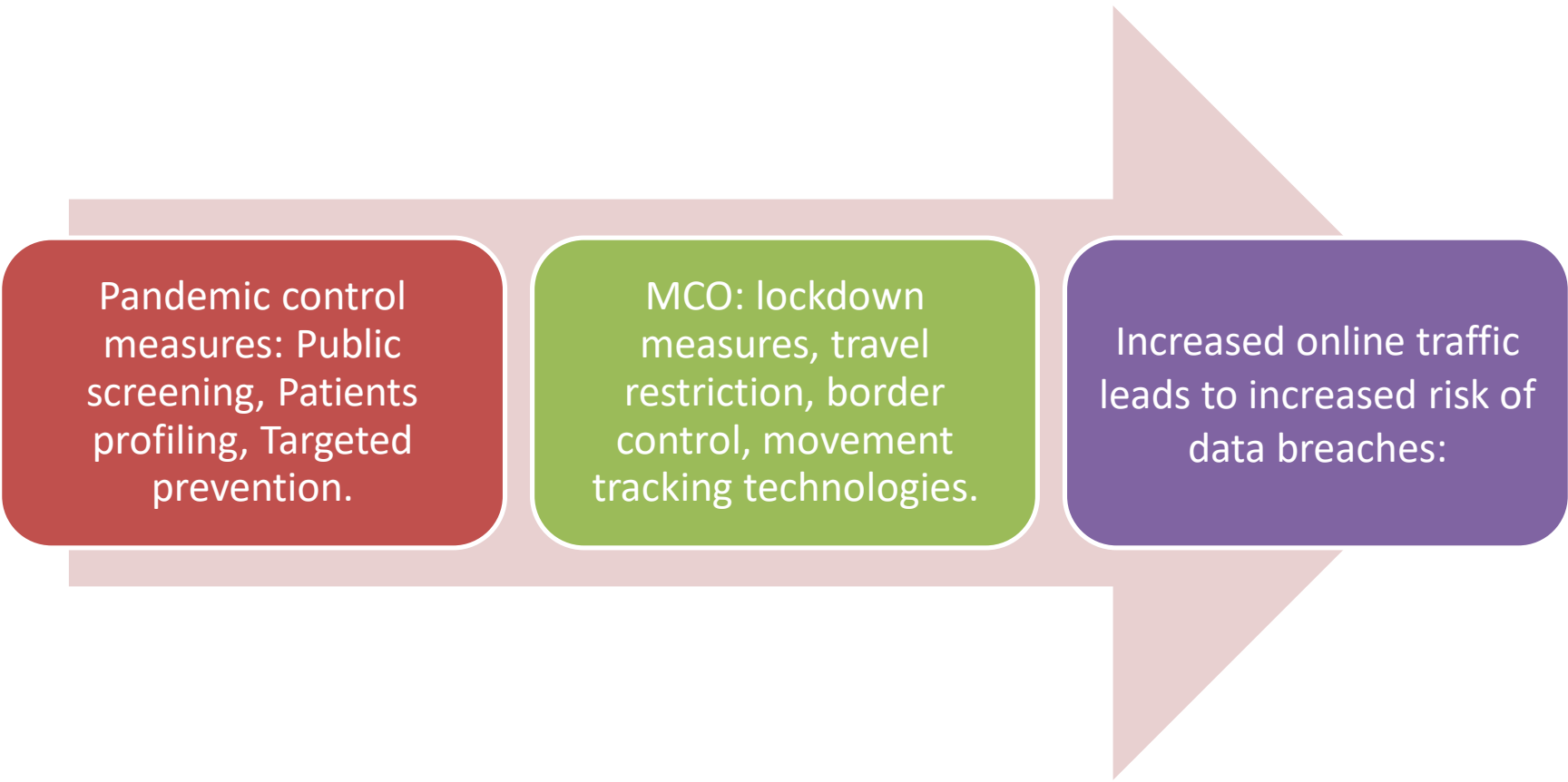
Also some partial exemptions apply on the discharging of regulatory functions and journalistic purposes.

Global Lockdown Measures per March 2020

How do coronavirus containment measures vary across the world? Snapshot as of 19 March 2020 (source: olejeune.com)

0: Limited   1: Events cancelled   2: Schools closed   3: Non-essential shops closed   4: Full lockdown
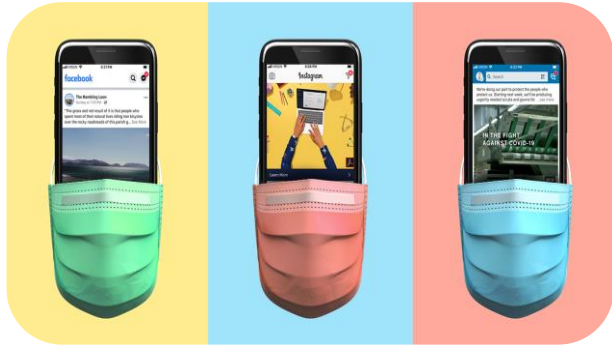
Reality Check in Malaysia

Pandemic control measures: Public screening, Patients profiling, Targeted prevention.

MCO: lockdown measures, travel restriction, border control, movement tracking technologies.

Increased online traffic leads to increased risk of data breaches:
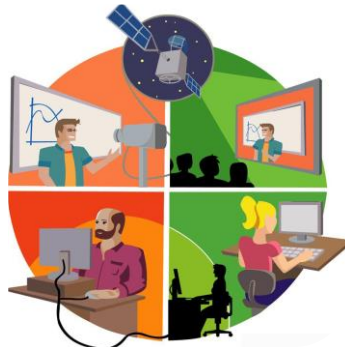
Rise of Data Protection Risks

Data exploitation through illicit requests of personal data for online services, Apps, etc;

Fraud and scam via fake accounts begging for donation, fake charities, etc.

Misinformation: Rise of citizen news portals with unaccountable stories – a test-bed for phishing attacks.

Unsecured online platforms prone to personal data breaches (online shopping, online meeting, social media, etc).

Rise of private surveillance

Beware of cyberattacks!

Total number of incidents

> Cybersecurity cases increased by 82.5% during the MCO 2020 (March 18 to April 7) compared to the same period in 2019.

- 2018: 417
- 2019: 459
- 2020 (during the current MCO): 838

Tips to stay safe online

Working from home

> Update all systems including Virtual Private Networks (VPN) and devices with the latest security patches
> Alert employees about phishing attempts.
> Avoid logging in to your work environment using public Internet Wi-Fi. Connect through your home or mobile network data.
> Enable Multi Factor Authentication.

Covid-19 scams

> Always verify information from emails, text messages and social media posts about Covid-19.
> Do not share personal or financial information in emails
> Do not click on suspicious links provided to you on Covid-19, verify with the sender or agencies that can help.
> Use legitimate, government websites for up-to-date, fact-based information

Video teleconferencing apps

> Use the latest version of apps and security software
> Only download software from its official website or app store.
> Never share confidential information during a meeting
> Enable non-recordable videos and audio, and limit file sharing.
> If something is suspicious, log out.
> If you lose your computer or mobile phone, log out from all clients immediately and change your login password.
> Do not share or publish the confer
> Log out from the app after a meeting.

Source: CyberSecurity Malaysia

CyberSecurity MALAYSIA
An agency under MOSTI

TheStar

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TOPICS ▸ Political Crisis | Covid-19 Watch | Asean+ | True or Not | Do You Know | Star Golden Hearts Award

Cybersecurity cases rise by 82.5%

FOCUS

Sunday, 12 Apr 2020

By YUEN MEIKENG

MORE people are online now – be it for business, education, entertainment, socialising or working from home due to the movement control order (MCO).

But the higher usage of technology also means bigger risks of running into cyberthreats

About 352 accounts on the video conferencing app Zoom were compromised on Wednesday, including a healthcare provider in the US and seven educational institutions.

There is yet to be any report on hacked Zoom accounts from Malaysia.

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TOPICS ▶   **Political Crisis** | **Covid-19 Watch** | **Asean+** | **True or Not** | **Do You Know** | **Star Golden Hearts Award**

UM researchers design digital thermometers that can collect real time data

NATION

Thursday, 02 Apr 2020

By **CHRISTINA CHIN**

PETALING JAYA: Universiti Malaya's researchers have come up with the country's first infrared (IR) digital thermometer that can collect real time data.

The Internet of Things (IoT) innovation can be used to predict and detect Covid-19 hotspots in real time and it is expected to be ready for testing by next week.
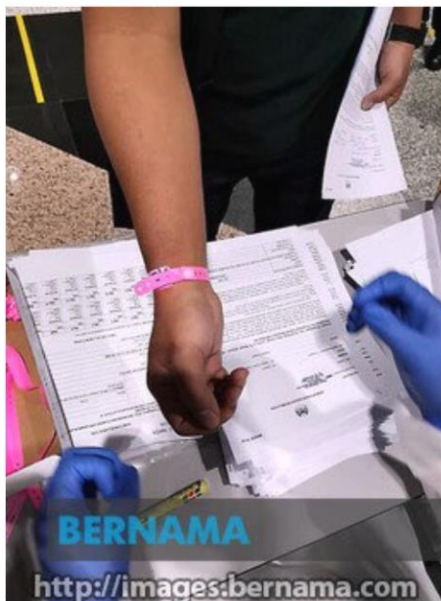
The team led by Prof Dr Ng Kwan Hoong from the Faculty of Medicine and Assoc Prof Dr Nahrizul Adib Kadri from the Faculty of Engineering includes Assoc Prof Dr Yeong Chai Hong from Taylor's University and engineers Darween Reza Sabri and Ricky Liew from a local startup.

Private Data Collection

SILA TULIS 8
TEMBAK KEDALA
SENDIRI. OK TQ.

Menteri Kanan Keselamatan, Dato Seri Ismail Sabri hari ini memaklumkan bahawa setiap pelanggan yang memasuki setiap kedai dan premis perniagaan di pusat membeli belah tidak perlu memeriksa suhu badan.

Beliau menambah lagi bahawa, kewajipan untuk memeriksa suhu badan kini ditetapkan hanya pada pintu masuk di pusat membeli belah dan hanya diperiksa sekali sahaja.

Walaubagaimanapun, pelanggan masih perlu mencatit nama dan nombor telefon di premis kedai yang dimasuki

The Star

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TOPICS ▶ Political Crisis | Covid-19 Watch | Asean+ | True or Not | Do You Know | Star Golden Hearts Award

Covid-19: Residents take coronavirus surveillance into their own hands

INTERNET 🔓

Sunday, 05 Apr 2020
5:40 PM MYT

By **Thin Lei Win** and **Beh Lih Yi**

As governments around the world urge citizens to stay indoors to contain the deadly virus, concerned communities are taking surveillance matters into their own hands, reporting alleged breaches of quarantine and questioning anyone they deem suspicious. — Reuters

ROME/KUALA LUMPUR: A week after Malaysia ordered a partial lockdown to slow the

Private Surveillance?

- With their gadget and social media, people turn to private/individual surveillance practices to spot or spread those who are suspected break the MCO or quarantine rule.

- This practice of private surveillance may lead to other potential legal issues such as
  - breach of privacy,
  - violation of child protection
  - breach of confidential information,
  - defamation and
  - workplace/professional disciplinary breaches.

- The best practice: Send any such information to the authority (police or KKM)

Private Surveillance?

IPOH

GEORGETOWN

KUALA LUMPUR

TM's Ewar system helps identify people in a crowd, who might have a fever, and by extension Covid-

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TOPICS ▶ Political Crisis | Covid-19 Watch | Asean+ | True or Not | Do You Know | Star Golden Hearts Award

Bukit Aman: Over 300,000 people registered so far with Gerak Malaysia app

NATION 🔓

Sunday, 26 Apr 2020

8:33 PM MYT

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#JustStayAt 🏠 For You News Business Sport Metro Lifestyle Food **Tech** Education Opinion Vi

TOPICS ▶ **Political Crisis** | **Covid-19 Watch** | **Asean+** | **True or Not** | **Do You Know** | **Star Golden Hearts Award**

Govt launches pilot project to monitor spread of Covid-19 pandemic via app

MOBILE APPS 🔓

Monday, 06 Apr 2020

5:15 PM MYT

By **Qishin Tariq**

MySejahtera

What would you like to do?

Things to know | Things to do 1

CPRC KKM
Tue Mar 10 2020, 4:21:08 PM

What is the Coronavirus (COVID-19)?

Day 0 Patient has check-in at 📍Gayatri Nagar
Tue Mar 24 2020, 4:07:51 PM

CPRC KKM has the following feedback for your
check-in for 2020-03-17 to 2020-03-24
Tue Mar 24 2020, 4:06:05 PM

🔍 Supervisor has reviewed your
checkin and commented ＞

Day 0 Patient has check-in at 📍Gayatri Nagar
Tue Mar 24 2020, 4:04:16 PM

MySejahtera

What would you like to do?

Things to know | Things to do 1

CPRC KKM has invited you to provide
fee

CP
Cla

Choose Action

← **Tweet**

Khairy Jamaluddin ✔
@Khairykj

Satu app juga sedang dibangunkan dengan segera
bersama @kkmm_gov untuk memudahkan contact
tracing terutamanya selepas PKP tamat. The app will
enable @KKMPutrajaya to alert people who have been
exposed to those infected with COVID-19, an important
mitigation strategy post MCO.

3:29 PM · Mar 25, 2020 · Twitter for iPhone

1.3K Retweets **2K** Likes

22

Assess COVID-19 health risk for you and your family

Get COVID-19 health guidelines

Get guidance on actions to be taken based on COVID-19 risk category

Get information about the nearest health facilities

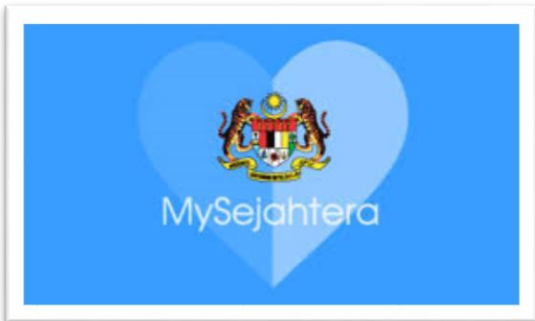**Receive the latest information and guideline from a trusted source**

HELP US
TO
HELP YOU

KEEP YOU AND YOUR FAMILY SAFE FROM COVID-19

Strategic Collaboration: NSC, MOH, MAMPU & MCMC

MySejahtera

← MySejahtera
App permissions

Version 1.0.21 may request access to

◉ Camera
  · take pictures and videos

◉ Location
  · access precise location (GPS and network-based)
  · access approximate location (network-based)

◉ Telephone
  · directly call phone numbers

◉ Storage
  · modify or delete the contents of your SD card
  · read the contents of your SD card

◉ Other
  · android.permission.FLASHLIGHT
  · have full network access
  · view network connections
  · prevent phone from sleeping

GERAK MALAYSIA

← GERAK MALAYSIA
App permissions

Version 2.6.73 may request access to

◉ Camera
  · take pictures and videos

◉ Location
  · access precise location (GPS and network-based)
  · access approximate location (network-based)

◉ Telephone
  · read phone status and identity

◉ Storage
  · modify or delete the contents of your SD card
  · read the contents of your SD card

◉ Other
  · run foreground service
  · This app can appear on top of other apps
  · view network connections
  · prevent phone from sleeping
  · view Wi-Fi connections
  · receive data from Internet
  · read Google service configuration
  · ha...
  · Pl...
  · Pair with Bluetooth devices

MyTrace

← MyTrace
App permissions

Version 1.0.30 may request access to

◉ Location
  · access precise location (GPS and network-based)
  · access approximate location (network-based)

◉ Storage
  · modify or delete the contents of your SD card
  · read the contents of your SD card

◉ Other
  · run foreground service
  · Access Bluetooth settings
  · run at startup
  · have full network access
  · view network connections
  · retrieve running apps
  · prevent phone from sleeping
  · Play Install Referrer API
  · Pair with Bluetooth devices
  · receive data from Internet

Data Protection during the Pandemic

- <u>Lawful</u> collection? By Law, Necessity, Consent
- <u>How</u> are data collected?
- Data <u>adequacy</u>? What can or cannot be collected?
- Adequate <u>notice</u> by data user? Who is data user?
- Who to <u>disclose</u> the data to?
- How the data is retained and <u>secured</u>?
- How long the data is <u>retained</u>?
- Who <u>manages</u> the data?

Perintah Kawalan Pergerakan Pemulihan
10 Jun – 31 Ogos 2020

Amalkan Kebiasaan Baharu Kehidupan dan Patuhi Semua Arahan Standard Operasi Prosedur (SOP) yang ditetapkan oleh Kerajaan.

ELAKKAN 35 SESAI SEMPI

GARIS PANDUAN PERLINDUNGAN DATA PERIBADI BAGI PENGENDALI PREMIS PERNIAGAAN

KAUNTER (IN)

NOTIS PRIVASI PENGUMPULAN DATA PERIBADI MENGIKUT AKTA 342

2 PREMIS PERNIAGAAN WAJIB PAPAR:
Satu notis yang jelas sebagai maklumat pengunjung/pelanggan berhubung tujuan pengumpulan data peribadi

Pengumpulan maklumat ini adalah selaras dengan keperluan yang telah ditetapkan di bawah Akta Pencegahan dan Pengawalan Penyakit Berjangkit 1988 [Akta 342] dan ianya adalah diwajibkan.

Anda hanya dikehendaki untuk memberikan butiran seperti berikut:
i. Nama pengunjung/ pelanggan;
ii. No. telefon yang boleh dihubungi; dan
iii. Tarikh dan masa ketibaan.

Kegagalan anda untuk memberikan maklumat yang diperlukan boleh menyebabkan pihak kami tidak dapat menawarkan sebarang perkhidmatan.

Sekian, terima kasih.

f ⟳ ⌨ @jpdpmalaysia   + www.pdp.gov.my

GARIS PANDUAN PERLINDUNGAN DATA PERIBADI BAGI PENGENDALI PREMIS PERNIAGAAN

Subjek Data
(Pelanggan/Pengunjung)
☑ Nama
☑ No Telefon
☑ Tarikh
☑ Masa kehadi

1 CATATKAN
Data peribadi yang dibenarkan sahaja selaras dengan Akta 342

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GARIS PANDUAN PERLINDUNGAN DATA PERIBADI BAGI PENGENDALI PREMIS PERNIAGAAN

Kumpul Simpan Guna Kongsi Musnah Lapor

3 PREMIS PERNIAGAAN WAJIB PATUH:

● Kumpul data peribadi yang dibenarkan sahaja

● Dilarang menyalahgunakan data peribadi pelanggan / pengunjung

● Dilarang kongsi data peribadi

● Musnahkan data peribadi secara kekal selepas 6 bulan tamat tempoh PKPB selaras dengan Akta Pencegahan dan Pengawalan Penyakit Berjangkit [Akta 342]

Kegagalan premis perniagaan untuk mematuhi Prinsip Perlindungan Data Peribadi ini dan sekiranya disabitkan di bawah Akta 709, boleh didenda maksimum RM300,000.00 atau dipenjarakan 2 tahun atau kedua-duanya sekali.

f ⟳ ⌨ @jpdpmalaysia   + www.pdp.gov.my

Other Concerns
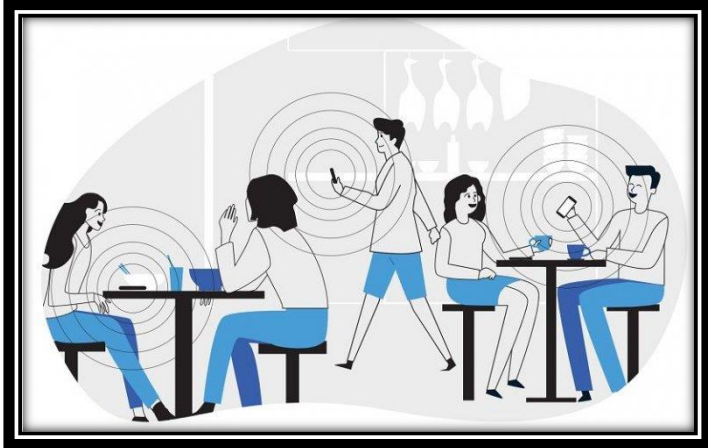
- Any 3ʳᵈ party **service provider** is a data processor, thus subject to Security, Disclosure as well as Retention principles.
- **Privacy policies** on those initiatives will need to be notified and publicised to achieve **transparency** and to ensure due diligence.
- Privacy is not only a matter of PDPA compliance but also **a common law rights for individuals.**
- Room for improving the Law: e.g. Data breach notification duty, Data protection officer, Regulating data processor, and trans-border data transfer.

Way Forward
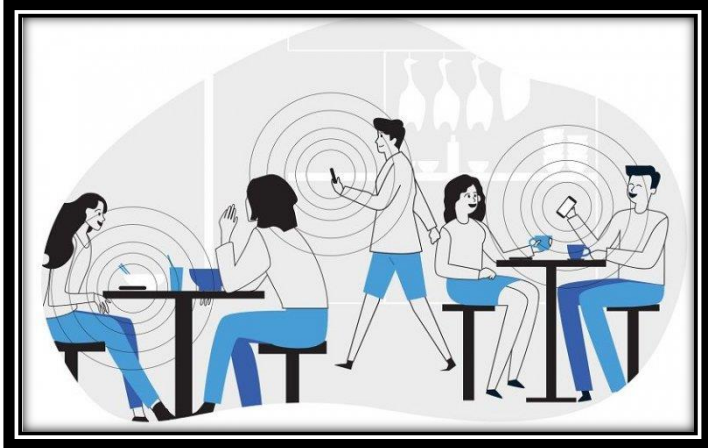
- Pandemic is not a basis for relaxing the Rule. The Pandemic leads to **system and governance vulnerabilities** – Alert mode on data protection.

- The massive exemption given to the Government is **not a "license" to downgrade** their data protection.

- **Private entities do not enjoy the same exemption**. While complying with the rules is one of those, relaxing on data protection principles is not an option.

- As Malaysia is battling Covid-19, we shall strengthen trust and maintain sustainability. Relaxing data protection will only create **elements of distrust** among members of society and citizen-government relationship.

THANK YOU

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