

CYBERSECURITY AND PRIVACY

WORKSHOP ON THE DIGITAL ECONOMY
INSTITUTE PENTADBIRAN AWAM 26-10-2020

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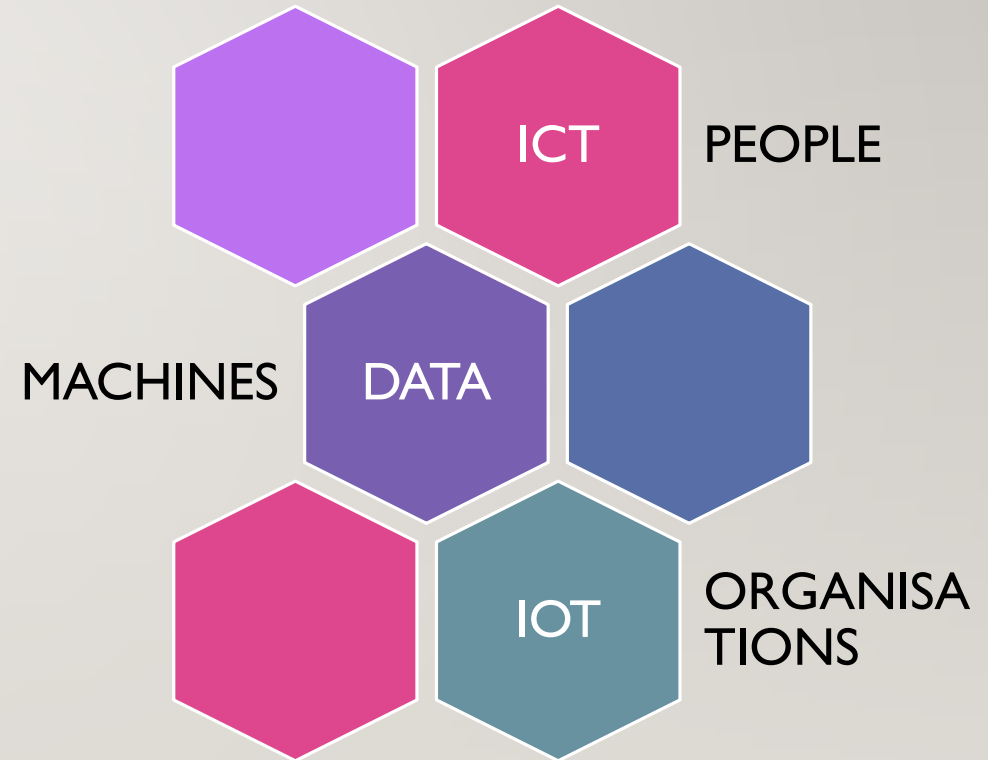
sonnyzulhuda.com

2 OUTLINE

- Setting Up the Context
- Key Barriers to the Digital Economy in Malaysia
 - Eliminating Barrier #1: Creating a Dynamic Regulatory Ecosystem
 - Eliminating Barrier #2: Stronger Consumer Protection
 - Eliminating Barrier #3: Enhancing Personal Data Protection
 - Eliminating Barrier #4: Data Security for Sustainability
- Challenges in Data Governance
- Moving On

3 DIGITAL ECONOMY

- The worldwide network of economic activities, commercial transactions and professional interactions that are enabled by information and communications technologies (Techtarget).
- The economic activity that results from billions of everyday online connections among people, businesses, devices, data, and processes, with the interconnectedness of people, organisations, and machines that results from the Internet, mobile technology and the internet of things (IoT) is deemed a backbone (Deloitte).



4 THE ENABLING TECHNOLOGY



Today's Digital

From electronic
to online to
mobile to
intelligent



The inter-connectivity

Global reach
Digital natives



Future governance

Open
Government
Open Data



5 DATA AS A BACKBONE - BIG DATA!

- Behind this digital economy revolution is the massive use, sharing and exploit of data in a new intensified level of Volume, Velocity, Variety, Variability, Veracity, Visualization, and Value; a.k.a Big Data.
- From automation to digitization to datafication...
- S. Zulhuda, I.M. Abdul Ghani Azmi, N. Hakiem. 2015. "Big Data, Cloud and Bring Your Own Device: How the Data Protection Law Addresses the Impact of Datafication." *Advanced Science Letters* 21 (10), 3346-3350.



6 THE OTHER SIDE OF DIGITAL ECONOMY

CIMB BANK

CIMB Clicks

Home

Welcome to CIMB Clicks Internet Banking Malaysia

Stay safe online!

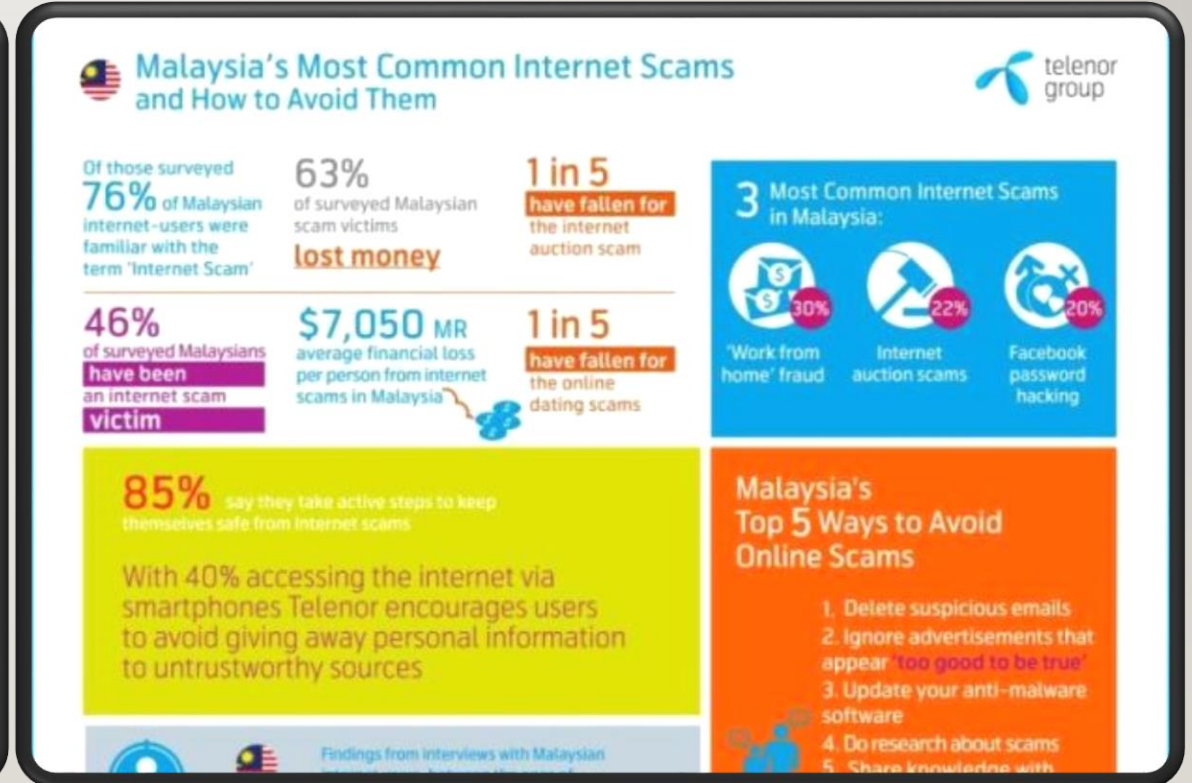
Protect yourself from Phishing or SMS scams! Find out how.

Current Highlights

SecureWord and New TAC Methods
Introducing the latest security enhancements; SecureWord and New TAC Methods.

Click with Octo
Sign up and transact for CIMB Clicks and you could win yourself attractive prizes.

Phishing Webpage



7 DIGITAL ECONOMY IN MALAYSIA?



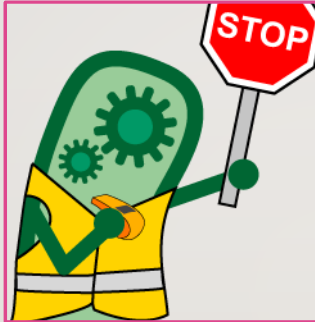
“Businesses in Malaysia have adopted digital technologies less readily than the government and population.”

...digital divide where Malaysia lags behind international peers in digital adoption by businesses.

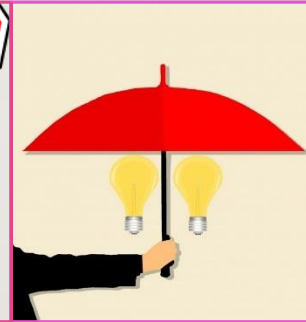
Only 62% of businesses are connected to the Internet, 46% has fixed broadband and 18% have a web presence.

“World Bank Group. 2018. Malaysia's Digital Economy : A New Driver of Development. World Bank, Washington, DC. © World Bank.”

8 “KEY BARRIERS RELATED TO DIGITAL CONNECTIVITY, ENTREPRENEURSHIP AND TAXATION”



Creating a dynamic ecosystem for the digital economy to improve the infrastructure, regulations, skills and public finance..



Increasing digital transactions “and digital cash” requires overhauling regulations and increasing consumer comfort.



Ongoing tensions between data protection and its legitimate use for commercial purposes...



Lack of data sharing, often cautiously approached due to security concerns.

“World Bank Group. 2018. Malaysia's Digital Economy : A New Driver of Development. World Bank, Washington, DC. © World Bank.”

9 ELIMINATING BARRIER #1: CREATING A DYNAMIC REGULATORY ECOSYSTEM FOR THE DIGITAL ECONOMY



- Strengthening Electronic Commerce Law by upholding the legality of e-Contract, digital transaction, mobile communications, and smart contracts.
- The legitimate usage of e-contract and e-evidence depends on the integrity and retrievability of the data [s.8 of E-Commerce Act 2006]. See: Yam Kong Seng & Anor v Yee Weng Kai [2014] 4 MLJ 478.
- Legal recognition of electronic payment system and Financial Technology (FinTech).

10 WHAT CHANGES: FINANCIAL SERVICES & DIGITISATION

- With the financial industry moving towards digitisation, new dimensions of risk management have emerged.
 - Datafication: Tendency to record not only the critical data, but also everything else.
 - More gadget, more potential security breaches
 - Same thief, new method!
 - CIA of data security: Managing the confidentiality, integrity and availability of data
 - Legal risks surrounding data : From reputation to financial detriments

“Datafication” – the process of quantifying all information around us: our location, movement, communications, usage of devices, etc. which will allow us to use such information in new ways, such as in predictive analysis. This will help us further to unlock the implicit, latent value of the information.

V. Mayer-Schonberger and K. Cukier (2013)
Big Data: A Revolution That Will Transform
How We Live, Work and Think.

WHAT REMAINS: THE NEED FOR FINANCIAL INTEGRITY AND CONSUMER PROTECTION

Financial inclusion

- Accessibility for all
- Affordability
- Technological adoption and adaptation

Financial integrity

- Security of transaction
- Security of data
- Security of financial system

Consumer protection

- Fraudsters
- Industrial exploit
- Right to privacy
- Public security, social stability, economic resilience



12 FINTECH DOES NOT PLAY IN LEGAL VACUUM

Capital Markets
and Services
Act 2007

Financial
Services Act
2013

Central Bank of
Malaysia Act
2009

Penal Code

Personal Data
Protection Act
2010

Capital Markets and
Services (Prescription of
Securities) (Digital
Currency and Digital
Token) Order 2019

Islamic Financial
Services Act 2013

Credit Reporting
Agencies Act 2010

Anti-Money Laundering,
Anti-Terrorism
Financing and Proceeds
of Unlawful Activities
Act 2001

Communications and
Multimedia Act 1998

Guidelines on
Recognized Markets SC-
GL/6-2015(R3-2019)

SME Tax Incentives by
Craddle Fund, MDE
etc

**BNM Fintech
Regulatory
Sandbox 2016**

Computer Crimes Act
1997

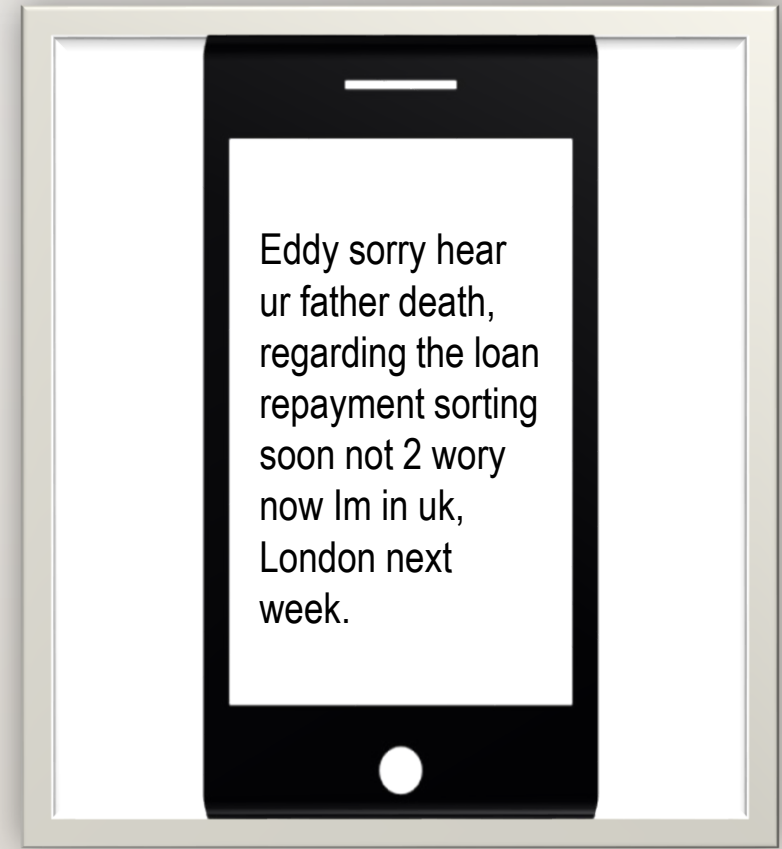
Electronic Commerce
Act 2006

13 THE MALAYSIAN COURT ENFORCES DIGITAL TRANSACTION: YAM KONG SENG & ANOR V YEE WENG KAI [2014]

- Plaintiff took legal action against defendant because the latter did not pay his debt. Defendant denied.
- The evidence of the acknowledgement of debt was based on the SMS sent by defendant to plaintiff's phone. The SMS message clearly acknowledged the debt.
- Defendant argued that SMS cannot be considered as a written document

DECIDED:

A message from an SMS, with all the attributes of [s.8] being present viz accessibility, intelligible and extractable for subsequent reference, *such an electronic message is as good as in writing.*



14 ELIMINATING BARRIER #2: STRONGER CONSUMER PROTECTION IN THE DIGITAL ECONOMY



- Enhancement of consumer protection law:
 - Amended to apply on e-commerce
 - Protects consumers against manufacturing defect, design defect and marketing defect
 - Provision against unfair terms (“a term which causes a significant imbalance in the rights and obligations of the parties arising under the contract to the detriment of the consumer” – CPA 1999 s.24A).
- Consumer-friendly Websites & E-commerce Sites
 - Fair terms for consumers (CPA 1999)
 - Clear notice of privacy protection (PDPA 2010)
- Dispute Resolution & ADR

15 CONSUMER PROTECTION (ELECTRONIC TRADE TRANSACTION) REGULATIONS 2012



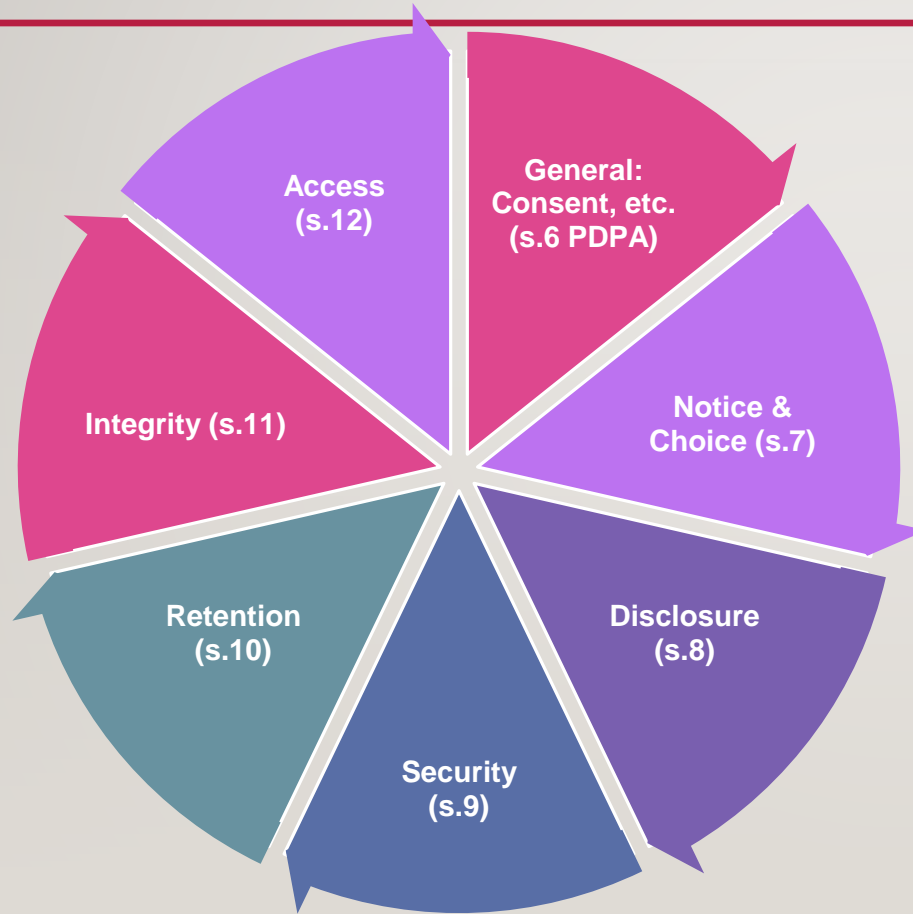
- Disclosure of identification
- Maintenance of Business Record for 2 years
- Ratification of Errors
- Acknowledgement of Receipt

16 ELIMINATING BARRIER #3: PERSONAL DATA PROTECTION AND ITS “LEGITIMATE USE”



- Personal data processing is now regulated in two primary legislations:
 1. Personal Data Protection Act 2010 [Act 709]
 2. Credit Reporting Agencies Act 2010 [Act 710]
- Common Law still plays an important role:
 1. Breach of Privacy
 2. Breach of Confidence

17 SEVEN PRINCIPLES OF PERSONAL DATA PROTECTION



- 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.

18 WHEN IS A USE LEGITIMATE?

- Obtaining a Consent of data subject before or on the collection point [s.6,7 PDPA]
- Performance of contract with data subject [s.6 PDPA]
- Legitimate processing for public interests, e.g. Legal compliance, administration of justice, protecting vital interests, and exercising of law [s.6 PDPA].
- Uses falling under the partial exemptions, e.g. Crime prevention, health purpose, statistics and research, regulatory functions, etc. [s.45 PDPA].
- Uses of data after being de-identified/anonymised [s.10 PDPA].
- When the data has been deliberately made public by the data subjects themselves [s.40 PDPA]

19 MORE AND MORE DATA BREACH?



October 2017: the personal details of some 46.2 million mobile number subscribers in Malaysia were reportedly leaked online.



June 2018: 60,000 Astro customers data have been offered for sale online. The data was being sold for RM4,500 for 10,000 records, or RM0.45 per record.



June 2018: The Ministry of Education's School Examination Analysis System (SAPS) was taken offline, following the discovery of a security exploit that could have potentially exposed the personal details of more than 10 million citizens.

20 STUDENTS' LIST MISUSED BY FORMER TEACHER

SUNDAI (M) SDN BHD V MASATO SAITO & ORS [2013]

KUALA LUMPUR: Former teachers at private school took and used the students list which contained the **personal data of 188 students** such as their postal addresses, email, telephone numbers and other personal particulars to attract them to move to another school. Court decided on various issues of breach of fiduciary duty



21 DATA LEAKAGE BY AN EXITING EMPLOYEE

EQUITY TRUST (LABUAN) LTD V MOHAMMAD SOFIAN MOHAMAD & ANOR [2010]

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)



22 PATIENT'S DATA LEAKED TO OUTSIDER!

KUALA LUMPUR: High Court ordered a university medical centre in Kuala Lumpur to pay a total of RM400,000 to a plaintiff for revealing his **psychiatric medical records** to a third party (2013)



23 MISLOCATED CCTV CAN BE PRIVACY-INTRUSIVE!

LEW CHER PHOW V PUA YONG YONG & ANOR [2011]

JOHOR BAHRU: Court held an installation of **CCTV** directed towards other person's house entrance as a breach to privacy (2011)



24 KEY ISSUES ON DATA PROTECTION



Automatic
Processing of Data



Trans-border Data
Transfer



Data Breaches
Notification



Data Governance
and Transparency



Industry Self-
Regulation



It's About Public
Trust

25 STRENGTHENING DIGITAL ECONOMY THROUGH DATA GOVERNANCE AND TRANSPARENCY

- Data Processing as Governance and Board Room Agenda: sec 133 PDPA
- Open privacy policy: sec 7 PDPA
- Special Data Protection Officer? (PDP Regulations 2013 – Reg 4)
- Audit Requirements: s. 101 & 104 PDPA.
- The involvement of a third party (Data Processor): s. 7,9,12 PDPA.

26 ELIMINATING BARRIER #4: DATA SECURITY FOR A SUSTAINABLE DIGITAL ECONOMY



Criminalising acts that compromise data security (cybercrimes, sabotage, breach of secret)

Computer Crimes Act, Penal Code, Sedition Act

Governing Critical Information Infrastructure

ISMS standards

Security of Personal information through Privacy Governance

Personal Data Protection Act

27 AUDIT, ENFORCEMENT AND PROSECUTION OF DATA PROTECTION ABUSES

- 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.

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

**ENFORCEMENT
AND SANCTION
TAKEN UNDER
THE PDPA 2010
(2017-2018) –
<PDP.GOV.MY>**

29 MORE AND MORE DATA BREACH?



SIARAN MEDIA

ADUAN PENYALAHGUNAAN DATA PERIBADI OLEH SYARIKAT ASIALEND (MY) SDN. BHD. ("ASIALEND")

PUTRAJAYA, 5 OKTOBER 2020 (ISNIN) – Jabatan Perlindungan Data Peribadi (JPDP) telah menerima banyak aduan berhubung penyalahgunaan data peribadi yang telah dikumpulkan secara tidak sah oleh Syarikat Asialend (MY) Sdn. Bhd ("Asialend"). Asialend adalah merupakan sebuah syarikat Pemberi Pinjam Wang (PPW) yang tidak berdaftar melalui semakan dengan Kementerian Perumahan dan Kerajaan Tempatan (KPKT).

Pihak Asialend juga didapati telah menyalahgunakan maklumat syarikat Cashwagon (M) Sdn. Bhd. dan notis tersebut boleh dicapai seperti di pautan berikut, <https://cashwagon.my/blog/important-notice-scam/>.

Dalam hubungan yang sama, rakyat Malaysia dimohon untuk lebih berhati-hati semasa memberikan persetujuan terhadap aplikasi yang telah dimuat turun bagi mengelakkan pihak-pihak yang tidak bertanggungjawab mempunyai akses yang tidak sepatutnya.

Bagi sebarang aduan penyalahgunaan data peribadi oleh Asialend atau syarikat PPW yang lain, semua pihak dialu-alukan untuk melaporkan aduan berkenaan di pautan <https://daftar.pdp.gov.my> untuk tindakan Jabatan ini selanjutnya.

Jabatan Perlindungan Data Peribadi
Kementerian Komunikasi dan Multimedia Malaysia

#JomAmbilPeduli
#LindungiDataPeribadi



SIARAN MEDIA

DAKWAAN KUMPULAN AIRASIA BERHAD ("AIRASIA") MENJUAL DATA PERIBADI PELANGGANNYA KEPADA FIRMA AMERIKA SYARIKAT

PUTRAJAYA, 14 OKTOBER 2020 (RABU) – Jabatan Perlindungan Data Peribadi (JPDP) telah menerima penjelasan daripada Kumpulan AirAsia Berhad ("AirAsia") mengenai laporan media berkaitan penjualan data peribadi syarikat penerbangan itu kepada firma Amerika Syarikat. Pihak Jabatan mengambil maklum bahawa tiada isu ketirisan dan penjualan data peribadi yang berlaku serta berpuas hati dengan penjelasan yang telah diberikan oleh pihak AirAsia berkaitan isu tersebut.

Sehubungan dengan itu, Jabatan ini ingin menegaskan sekali lagi bahawa perbuatan penjualan data peribadi adalah merupakan satu kesalahan di bawah seksyen 130 Akta Perlindungan Data Peribadi 2010 [Akta 709] dan sekiranya disabitkan, boleh didenda tidak melebihi RM500,000.00 atau tiga (3) tahun penjara atau kedua-duanya sekali.

Jabatan Perlindungan Data Peribadi
Kementerian Komunikasi dan Multimedia Malaysia

#JomAmbilPeduli
#LindungiDataPeribadi



SIARAN MEDIA

INSIDEN KETIRISAN DATA PERIBADI YANG MELIBATKAN PELANGGAN SHOPBACK CASHBACK SDN. BHD. ("SHOPBACK")

PUTRAJAYA, 27 SEPTEMBER 2020 (AHAD) - Jabatan Perlindungan Data Peribadi (JPDP) telah menerima notifikasi ketirisan data peribadi melalui wakil yang telah dilantik oleh ShopBack Cashback Sdn. Bhd. ("ShopBack") pada 25 September 2020 (Jumaat) jam 06:01 petang susulan daripada penemuan insiden ketirisan data peribadi yang melibatkan data peribadi pelanggan ShopBack pada 17 September 2020 seperti nama, maklumat perhubungan, jantina, tarikh lahir dan nombor akaun bank.

Notifikasi tersebut telah memaklumkan bahawa ShopBack akan mula menghubungi para pelanggannya melalui alamat e-mel yang telah didaftarkan selain penyediaan laman khusus soal jawab (Q&A) dalam memberi pencerahan serta langkah-langkah selanjutnya yang boleh diambil. Selain itu, Jabatan ini telah dimaklumkan berhubung langkah-langkah mitigasi yang telah diambil oleh ShopBack sehingga kini dalam menangani insiden berkenaan. ShopBack juga telah memberi jaminan bahawa semua langkah mitigasi yang telah diambil akan dapat mengekang sepenuhnya insiden ketirisan data peribadi ini daripada berlanjutan.

Pada masa yang sama, Jabatan ini akan mendapatkan maklum balas lanjut daripada ShopBack termasuklah jumlah sebenar data peribadi rakyat Malaysia yang terlibat. Jabatan ini juga akan bekerjasama rapat dengan semua pihak yang berkepentingan dalam menilai tahap keparahan (severity) insiden ketirisan data peribadi ini selaras dengan peruntukan di bawah Akta Perlindungan Data Peribadi 2010 [Akta 709].

Jabatan ini amat memandang serius perkara ini dan ingin menyeru semua Pengguna Data di Malaysia agar sentiasa memastikan keselamatan data peribadi Subjek Data di bawah kendalian masing-masing seperti yang telah termaktub di bawah Akta 709 untuk dilindungi sepenuhnya.

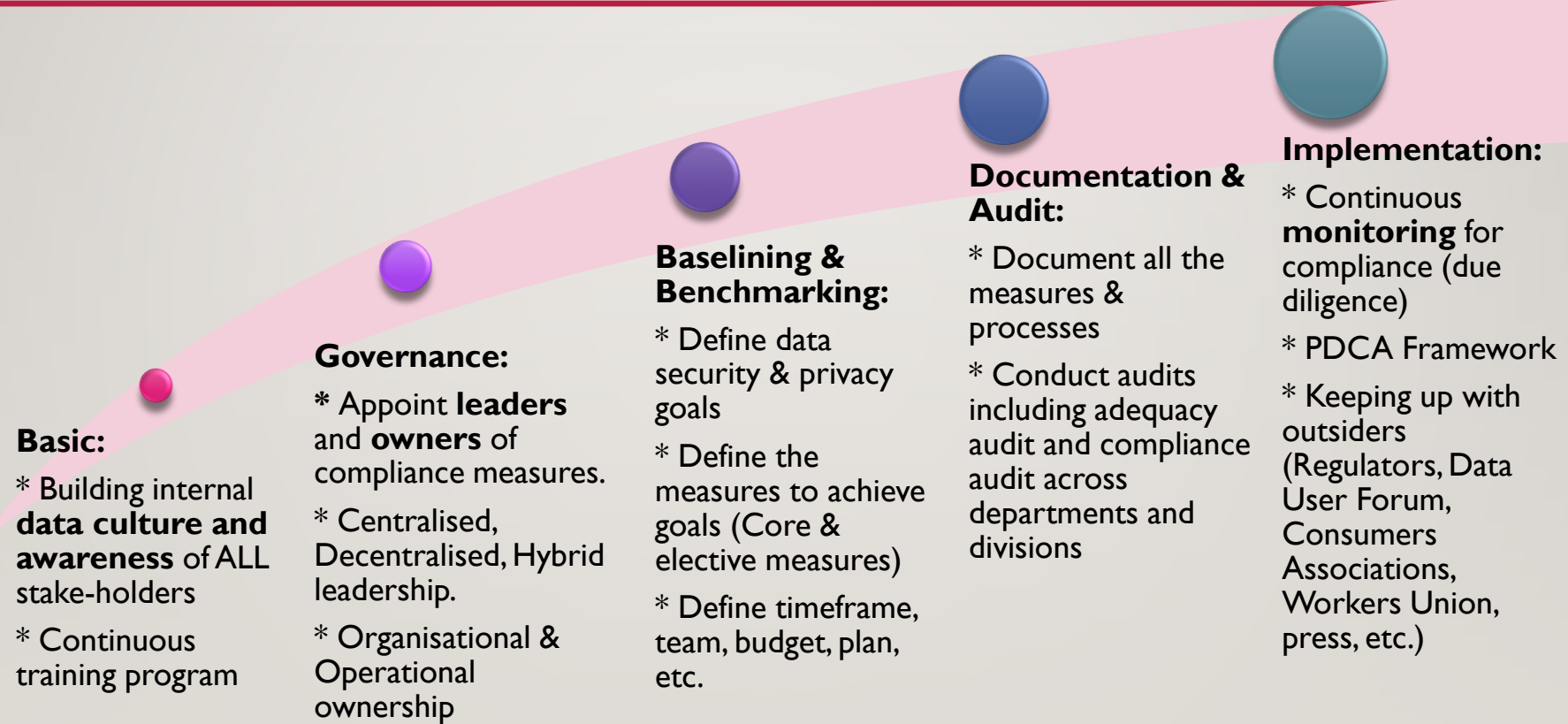
JABATAN PERLINDUNGAN DATA PERIBADI

Untuk maklumat lanjut mengenai siaran media ini, sila hubungi UKK JPDP di talian +603-89117911

30 CHALLENGES OF DATA PROTECTION TODAY

- Ready data vs Synchronised data (location, IP address, face recognition, social networking preferences)
- Data privacy vs Conflicting interests (public health, open data, security)
- Locally stored vs Cloud storage
- Within the country vs Cross-border
- Own definition vs GDPR definition (PDPO, Breach notification duty, standardisation, PIA)
- Reactive Measures vs Preventive Action (Analytical/Predictive)
- Governing data = Managing trust

3 | MOVING ON: THE DATA GOVERNANCE STRATEGY





THANK YOU!

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