

The General Data Protection Regulation (GDPR): Impact on Malaysian Businesses

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10 July 2018



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Introduction

**Directive
95/46/EC**

Rationale

1. Different interpretation of the Directive by each Member State
2. Simplify regulation e.g. introducing the one-stop-shop concept
3. Increase the rights of the individuals in personal data processing

**GDPR
(25 May 2018)**

Application of the GDPR

Applies to processing of the personal data where:

processing is done in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not

Where the activities by controller or processor not established in the Union are related to:

- The offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
- the monitoring of the behaviours of data subjects in the Union

“Establishment”

**“real and effective activity
through stable arrangements”**

**Presence of sales
offices**

**Appointment of sales
agent or representative**

“In the context of activities of an establishment”

“inextricable link”

Non-EU companies offering free services within the EU, which are then financed by making use of the personal data collected by a local EU establishment from users.

Non-EU service provider offers search engine service within EU, which are then supported by promotion or sale of advertising space in local EU establishment.

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“Offering of goods & services”



“Behaviour monitoring”

Web

- Cookies
- Javascripts

Location

- Location privacy
- Location-based services

Social Network

- Online social network
- Mobile online social network

Application to data processors

**Malaysian companies in the capacity of
a data processor to an EU entity**

Who is a data processor?

Data processor means a natural or legal persons, public authority, agency or other body who processes personal data on behalf of the controller

Application to data processors

Obligations of a data processor:

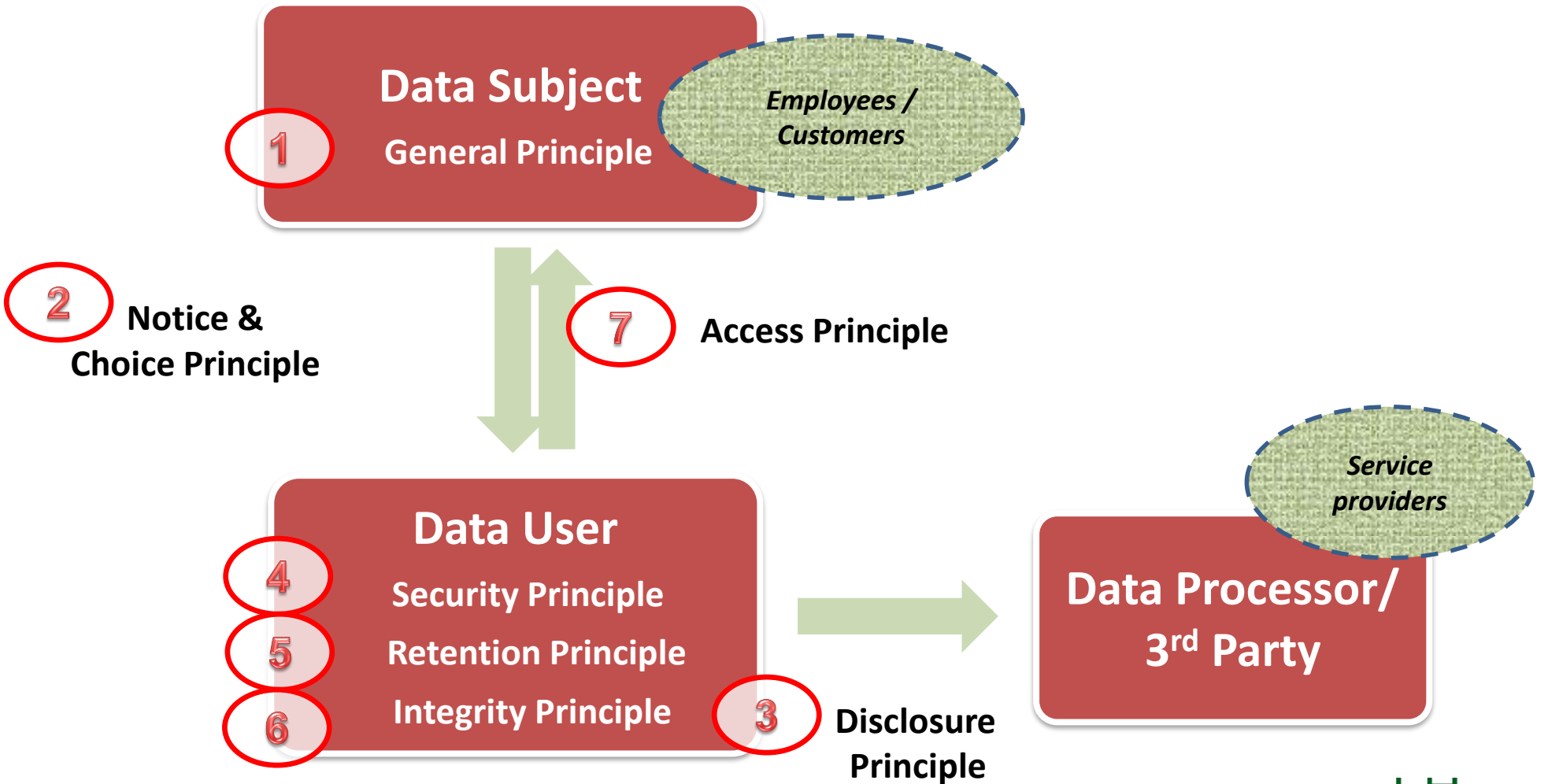
Direct - Obligations under the GDPR

**Indirect - Contractual obligations
with data controller**

Direct obligations under the GDPR



The PDPA principles



GDPR requirements vis-à-vis PDPA

	GDPR	PDPA
Consent	Processing of personal data requires consent by a statement or by a clear affirmation while processing of sensitive personal data requires “explicit consent”	Processing of personal data requires consent in a form that can properly be recorded & maintained, while processing of sensitive personal data requires “explicit consent”
Accountability principle	Data Controller is responsible to demonstrate compliance with data processing principles	Data user required to maintain records which are open to inspection by the PDP Commissioner
Data protection officer	Mandatory for data controller & data processors to appoint a DPO in specified circumstances	N/A
Data breach notification	Mandatory to report to the concerned supervisory authority and affected data subjects respectively	N/A

GDPR requirements vis-à-vis PDPA

	GDPR	PDPA
Right to access	Data subject is allowed to access his personal data held by a data user	Data subject is allowed to access his personal data held by a data user
Right to data portability	Data subject is allowed to request to transfer personal data from one data controller to another where processing is based on consent or necessity for the performance of a contract, or where processing is carried out by automated means	N/A
Right to be forgotten	Right to erasure of personal data is allowed in certain circumstances	Right to withdraw consent to process personal data
Right to rectification of personal data	Data subject is allowed to have incomplete or inaccurate personal data rectified	Data subject is allowed to correct personal data where the personal data is inaccurate, incomplete, misleading or not up-to-date

GDPR requirements vis-à-vis PDPA

	GDPR	PDPA
Right to object processing	Data subject is entitled to object to the processing of his personal data	Data subject has the right to request to not begin processing personal data where the processing causes or is likely to cause substantial damage / distress & the damage / distress is unwarranted
Right to restrict processing	Right to restrict processing of personal data is allowed in certain circumstances	Data subject has the right to request to cease processing personal data where processing causes or is likely to cause substantial damage / distress & the damage / distress is unwarranted
Enforcement	Revenue-based fines	Fines & imprisonment

Thank you

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