



GES NewsFlash

Malaysia – Whistleblower Act 2010, Personal Data Protection Act 2009

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Background

On 5 April 2010, the Malaysian Parliament passed the Whistleblower Protection Act 2010 and the Personal Data Protection Act 2009. However, the enforcement date(s) of these Acts has yet to be determined.

Major Changes in Practice

There are no existing regulations in Malaysia governing whistleblower and data protection. A brief description of each of the Acts is provided below.

Whistleblower Protection Act 2010

Objective

This Act aims to fight corruption and other wrongdoings in the public and private sector. The passing of this Act would further encourage and facilitate the disclosure of any act of corruption and other wrongdoings by providing the whistleblower with protection of confidential information, immunity against civil and criminal action and protection against detrimental action. This Act also empowers the enforcement agency to conduct investigation into such improper conducts and into complaints of detrimental action and the court to make orders for remedies. These powers are to ensure that the disclosure of the improper conduct is dealt with accordingly and the whistleblower is adequately protected. However, the whistleblower protection can be revoked by the enforcement agency if the whistleblower, amongst others, was also involved in the misconduct, intentionally disclosing a false misconduct and have disclosed an improper conduct which was made solely or substantially with the motive to avoid dismissal or disciplinary actions.

There are altogether seven parts in this Act dealing with the administration of the enforcement agency, protection to be given to the whistleblower, dealing with disclosure of improper conduct, complaints of detrimental action and remedies, enforcement, offences and penalties and provision for reward to the whistleblower.

Penalties

Depending on its nature, the penalty for breach of this Act will be as follows:

- a fine of up to RM100,000 or
- imprisonment up to 15 years or
- both fine of up to RM100,000 and imprisonment up to 15 years will be imposed.

Personal Data Protection Act 2009

Objective

This Act seeks to regulate the processing of personal data of individuals involved in commercial transactions by data users so as to provide protection to the individual's personal data. The bill also places high importance on the protection of sensitive personal data. In light of new technologies and the rapid changing market trends which contribute to the increasingly important role of information in the global market economy, personal data of individuals involved in commercial transactions has become a valuable commodity. This, in turn, calls for the need for local laws to regulate the processing of personal data so as to increase consumer confidence.

This Act provides for the appointment of a personal data protection commissioner and the setting up of an advisory committee to advise the commissioner on the enforcement of this Act and new regulations/principles on data protection where personal data would not be given without the consent of its owner. The passing of this Act would ensure that all private database collection agencies do not misuse individual's personal data and credit agencies such as CTOS will be monitored of their activities.

Penalties

The penalty for breach of this Act will be as follows:-

- a fine of up to RM200,000 or
- imprisonment up to 2 years or
- both fine of up to RM200,000 and imprisonment up to 2 years will be imposed.

Deloitte's View

The confidentiality of employees' information will now be increasingly protected with the enactment of these Acts. Employers and parties privy to such information must therefore enhance and exercise controls to avoid abuse and leakage of information.

People to Contact

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