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**Computer Law
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Book review

Personal data protection in Malaysia – law and practice, A.B. Munir, S.H. Mohd Yasin, in: Sweet & Maxwell Asia, Hardback (2010), ISBN 978-967-5040-59-7.

This is the first book of its kind in Malaysia. It substantially takes precedence over the book previously jointly written by the same authors.¹ The authors have painstakingly researched this subject matter for more than a decade and are the leading data protection consultants and advisors to the Malaysian government. In Malaysia, data protection is at embryonic stage. Given this, it takes a considerable period of growth for stakeholders to comprehend, appreciate and understand the fundamental concepts of data protection from various perspectives and angles. Whilst data protection laws worldwide have their own sets of issues, challenges and struggles, it is not too late for Malaysia to learn from these and this is where the novelty of the book resides.

Overall, there are 16 chapters which are based on comparative, observational and analytical approaches. The book seeks to strike a careful balance in the analysis of Malaysian laws. In Chapter 1 (pp. 12–15), privacy regulation in Malaysia, as viewed by the authors, is deemed to be beginning to take place. Whilst the authors appreciate that the word ‘privacy’ has been mentioned in various Malaysian statutes and regulations, these measures nonetheless fail to enlighten understanding as to the rationales and motivations that inspired the legislature in the drafting phase. Interestingly, there is little case law in Malaysia exploring the notion of privacy or much that sets out judges’ observations in relation to prevailing opinion from jurisdictions in England and Wales and the United States of America.² In view of this and concomitantly, the authors tailor discussion of privacy within a selective approach, since the definitions and concepts of privacy are loose-ended and affect meaning within the various contexts in which the term is used.

Chapter 2 discusses, in brief, the leading data protection instruments. Particular emphasis is given to the Council of Europe Convention, OECD Guidelines, EU Data Protection Directive (DPD) 95/46/EC, APEC Privacy Framework and the Madrid Resolution 2009. The chief analyses taken from this chapter are the different approaches and styles of governing data protection. Each instrument tends to pose its own added

value, differences and advantages. However, the question of inter-harmonisation and limitations between instruments is less critically examined while the approaches of the US Safe Harbor principles and data protection regulations in ASEAN (Malaysia, Singapore and Indonesia) and Asia Pacific (Australia, Hong Kong, Taiwan, Macao SAR and New Zealand) are also examined in brief and summarised in Chapter 3 (pp. 43–53). In an earlier section (pp. 37–43), brief updates on ‘how safe is the safe harbor?’ are considered. Although the question sparks a degree of interest for the readers, in this reviewer’s mind, it would have been preferable had the authors separated the US Safe Harbor discussions into a separate chapter or alternatively incorporated into the chapter the much-talked-about Safe Harbor compliance mechanism and the challenges faced when complying with the DPD. This motivation is derived from the ongoing unsettled range of issues that have occupied Safe Harbor and the DPD to date.³

Whilst detailed efforts have been made by the authors to relate the application and key concepts in Chapter 4, it is valuable that similar concepts entrenched in Hong Kong, New Zealand and the United Kingdom (pp. 62–70) are also addressed. This approach deserves praise. Perhaps, the most interesting part is the non-application of the Malaysian Personal Data Protection Act 2010 (PDPA) to the Federal and State Governments.

Subsequent to this understanding, the authors pose a series of questions that demand answers from the readers. There are still uncertainties that relate to the application of the PDPA, which apply to commercial transactions. In considering future reform the authors question the nature of data processing where it concerns non-governmental and charitable organisations, as well as political parties’ affiliations that involve sponsorship of their activities (p. 79).

Selected paraphrasing of the PDPA related sections and comparison with the old UK Data Protection Act 1984 deal with most of the discussions from Chapters 5 to 12. These are: Chapter 5 (Registration of Data Users, pp. 83–85), Chapter 6 (Data Protection Principles, pp. 102–105), Chapter 7 (Exemptions, pp. 122–133), Chapter 8 (Processing of Sensitive Personal Data, p. 140), Chapter 9 (Rights of Data Subject, pp. 158–161), Chapter 10 (Offences and Liability, pp. 172–176), Chapter 11 (Enforcement and Data Protection Commissioner, p. 186) and Chapter 12 (Codes of Practice, p. 191). These chapters are also intertwined with other jurisdictional approaches, particularly from Australia, Canada, Ireland and New Zealand. The chief

¹ Abu Bakar Munir and Siti Hajar Mohd Yasin, *Privacy and Data Protection: A Comparative Analysis with special reference to the Malaysian Proposed Law* (Sweet & Maxwell, 2002).

² See generally *Dr Bernadine Malini Martin v MPH Magazine Sdn Bhd & 2 Lagi* Civil Appeal No W-02-1165-2004 and *Sivarasa Rasiah v Badan Peguam Malaysia & Anor* [2010] 2 AMR 301; [2010] 2 MLJ 333.

³ European Commission Justice http://ec.europa.eu/justice/policies/privacy/thirdcountries/index_en.htm accessed 16 February 2011.

limitation, whilst perusing and comprehending these, is the difficulty created for the first time reader who needs to understand the technical applications beyond the shores of Malaysia. The exception applies to those familiar and competent with the subject matter. Appropriately, a strong influence within the discussion comes from the UK regime, although other jurisdictional regimes also offer similar clarifications.

Transborder Data Flow (TBDF) is a further important discussion that the authors enter into. This is by far the most interesting chapter (pp. 200–212) in the work. Comparative requirements between the non-UK regime (Australia, Canada and Hong Kong) and international instruments, such as relevant OECD measures, are provided for guidance. Two observations are made: firstly, whilst the PDPA does not define the word ‘transfer’ and remains silent on its scope, this defect arguably defeats the purpose of applying TBDF in commercial transactions, which may undermine bilateral and multilateral trade amongst Malaysian trading partners. Secondly, in the absence of this, Malaysian companies and the affected stakeholders to the PDPA may have to rely on contractual terms and obligations, especially within the context of outsourcing. This is when the DPD Binding Corporate Rules may offer a useful lesson to be applied.⁴

Questions as to the PDPA’s adequacy are prevalent. The importance of this is reflected in Malaysia’s status as the EU’s second trading partner within the Association of Southeast Asian Nations (ASEAN), with bilateral goods reaching 24 billion euros in 2009.⁵ ASEAN as a whole is the EU’s third largest trading partner outside Europe, after the United States and China. Bilateral trade in goods and services between the EU and ASEAN reached approximately 158.5 billion euros in 2009. This illustrates that both Malaysia and ASEAN have progressive bilateral trade and investment policies with the EU. These statistics and numbers, however, presented within the context of the PDPA, render it premature to assess its adequacy vis-à-vis the DPD, although the authors frankly remark that the PDPA is a missed opportunity (Chapter 14, p. 224). This reviewer tends to agree.

In the remaining two final chapters (Chapter 15 and Chapter 16), the authors engage, at macro level, in discussions about data protection under the Malaysian Credit Reporting Agencies Act (CRRRA) and other Malaysian regulations. These focus very much on the banking and financial institutions’ regulatory compliance, whilst dealing with consumers’ financial data. Some parts of the discussion relate to data protection in the General Consumer Code under the auspices of the Communications and Multimedia Act 1998 (Chapter 16, p. 238). Against these backgrounds it is disappointing that Chapter 15 presents no more than a condensed and consolidated discussion (pp. 225–235).

Although the rationales of the CRRRA are explained, the majority of readers would have welcomed a more fulsome discussion of the issues that arise. Although the cost of this book is relatively high, its overall content, look and feel offers confidence to readers seeking a text that will explain and illustrate the meaning of the Malaysian PDPA. However, the title of the book might have benefited from being amended to read: ‘Personal Data Protection in Malaysia (*principles and applications*) as opposed to its present emphasis on (*law and practice*). This is partly due to the novelty of the new PDPA and the recognition that it will take some considerable time for growth and maturity in the jurisdiction to engage with the legislation and establish its impact and practices. The answer to the question whether it is worth buying is most definitely yes! It is recommended for readers who are keen to explore this engaging subject matter.

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⁴ European Data Protection Supervisor <http://www.edps.europa.eu/EDPSWEB/edps/EDPS/Dataprotection/Glossary/pid/72> accessed 16 February 2011.

⁵ European Commission Trade <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/malaysia/> accessed 16 February 2011.