



# Data protection law – the European experience

Presentation by Peter Carey for the  
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# European law - overview

- 27 Member States of the EU
- £17 billion 'start up' costs in the UK alone
- National regulators in each Member State
- 10 years on – data users / compliance
- Main provisions similar to Malaysian law
- New Data Protection Directive due 2012

# Definition of 'personal data' (s.4 PDPA)

- Highly controversial aspect of European law
- Meaning of 'identified' and 'identifiable'
- Opinion is included
  - what is opinion / can it be rectified?
- Meaning of 'relevant filing system'
  - case of *Durant v FSA* (2003)
  - need for 'searchability'

# Collecting Personal Data (s.7 PDPA)

- Widely breached provision in European law
- Malaysian requirements more extensive than European requirements, e.g.
  - information on the source
  - choices and means for limiting processing
  - whether it is obligatory or voluntary for the individual to supply the personal data

# Using public domain data (ss.6 & 7 PDPA)

- Misconception as to the status of personal data that is in the public domain
- Usual principles apply, in particular:
  - requirement for reason to process
  - requirement for data subject notice

# What is a data processor?

- Malaysian definition same as EU:

*“any person, other than an employee of the data user, who processes the personal data solely on behalf of the data user, and does not process the personal data for any of his own purposes.”*

- How to identify a data processor
- Can processors also be users?

# Marketing

- Can we use our pre-PDPA contact list for marketing?
- How do we ensure that marketing activities are legal under data protection law?
- Are there special rules about marketing?
  - Marketing by email
  - Marketing using sensitive personal data
- The right to prevent direct marketing

# Foreign transfers

- What circumstances activate the restrictions?
  - adding customer details to globally networked database
  - forwarding an email to a colleague abroad
  - using a call centre located outside Malaysia
- How can we legitimise the transfer?
  - consent (EU & Malaysia)
  - contractual necessity (EU & Malaysia)
  - reasonable precautions and due diligence (Malaysia)

# Thank you

**Peter Carey**  
**Consultant**  
**PDP®**

16 Old Town  
London  
SW4 OJY

United Kingdom

[peter.carey@pdpcompanies.com](mailto:peter.carey@pdpcompanies.com)

