

# Existing Legislations on Data Privacy: A Change to Data Sharing?

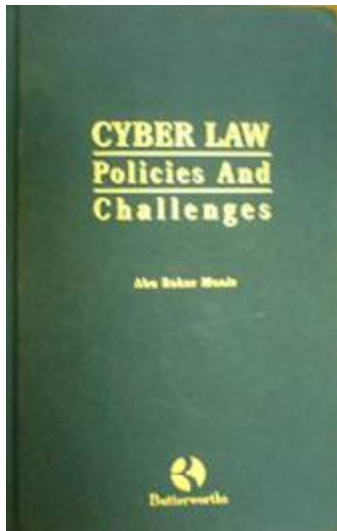
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## National Statistics Conference 2012

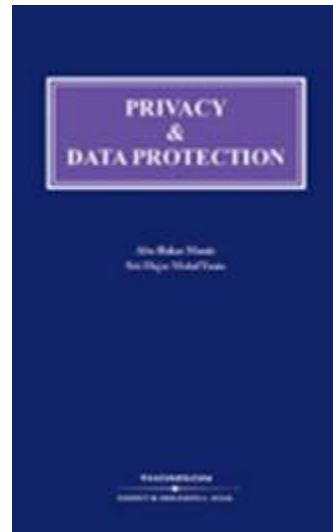
**Professor Abu Bakar Munir  
Faculty of Law, University of Malaya**

**7 November 2012**

# Some of my books on ICT Law



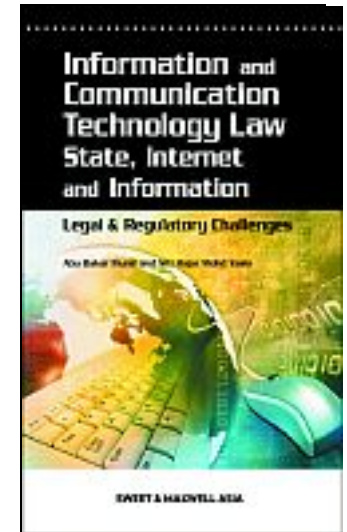
**Cyber Law:  
Policies and  
Challenges**  
Butterworths Asia  
(1999)



**Privacy and  
Data Protection**  
Sweet & Maxwell  
(2002)

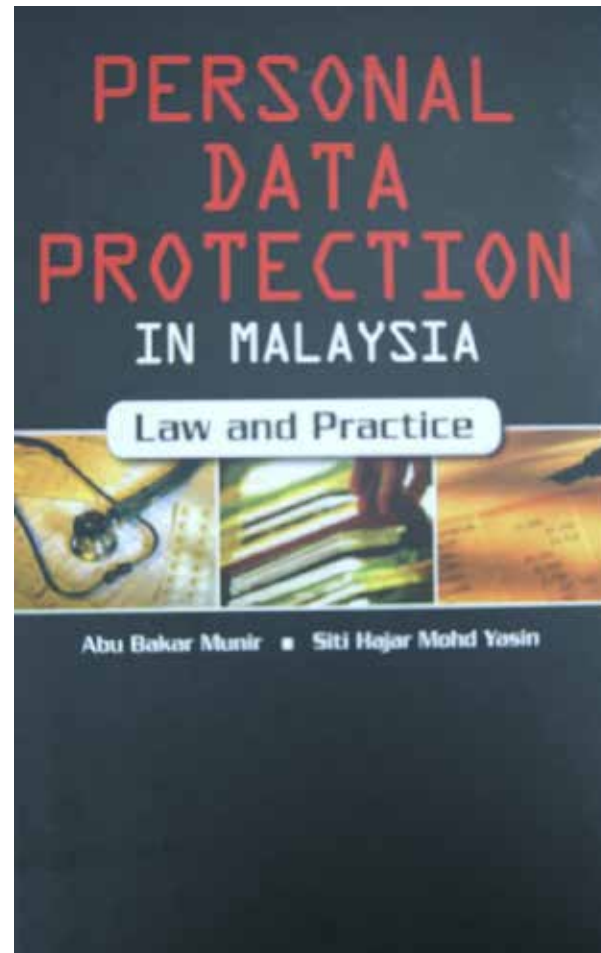


**Internet Banking:  
Law and Practice**  
LexisNexis UK  
(2004)



**Information &  
Communication  
Technology Law  
Legal & Regulatory  
Challenges**  
Thomson Reuters  
(2010)

May I  
recommend you to  
read this!



# NEWS OF THE WORLD

THE WORLD'S GREATEST NEWSPAPER 1843-2011



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**“Personal Data is the new ‘oil’ of  
the 21<sup>st</sup> century”**

World Economic Forum (2011)

# International Instruments

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- OECD Guidelines 1980
- Council of Europe Convention 1981
- European Directive 1995
- APEC Privacy Framework 2004
- Madrid Resolution 2009
- Proposed EU General Data Protection Regulation (issued on 25 January 2012)

# EU Data Protection Regulation

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- One EU – Wide Data Protection Law
- Penalties for breaches up to 1 million Euro or 2% of global annual turnover
- Mandatory data breach notification
- Data Protection Officer – 250 or more employees
- Explicit consent
- Right to be forgotten

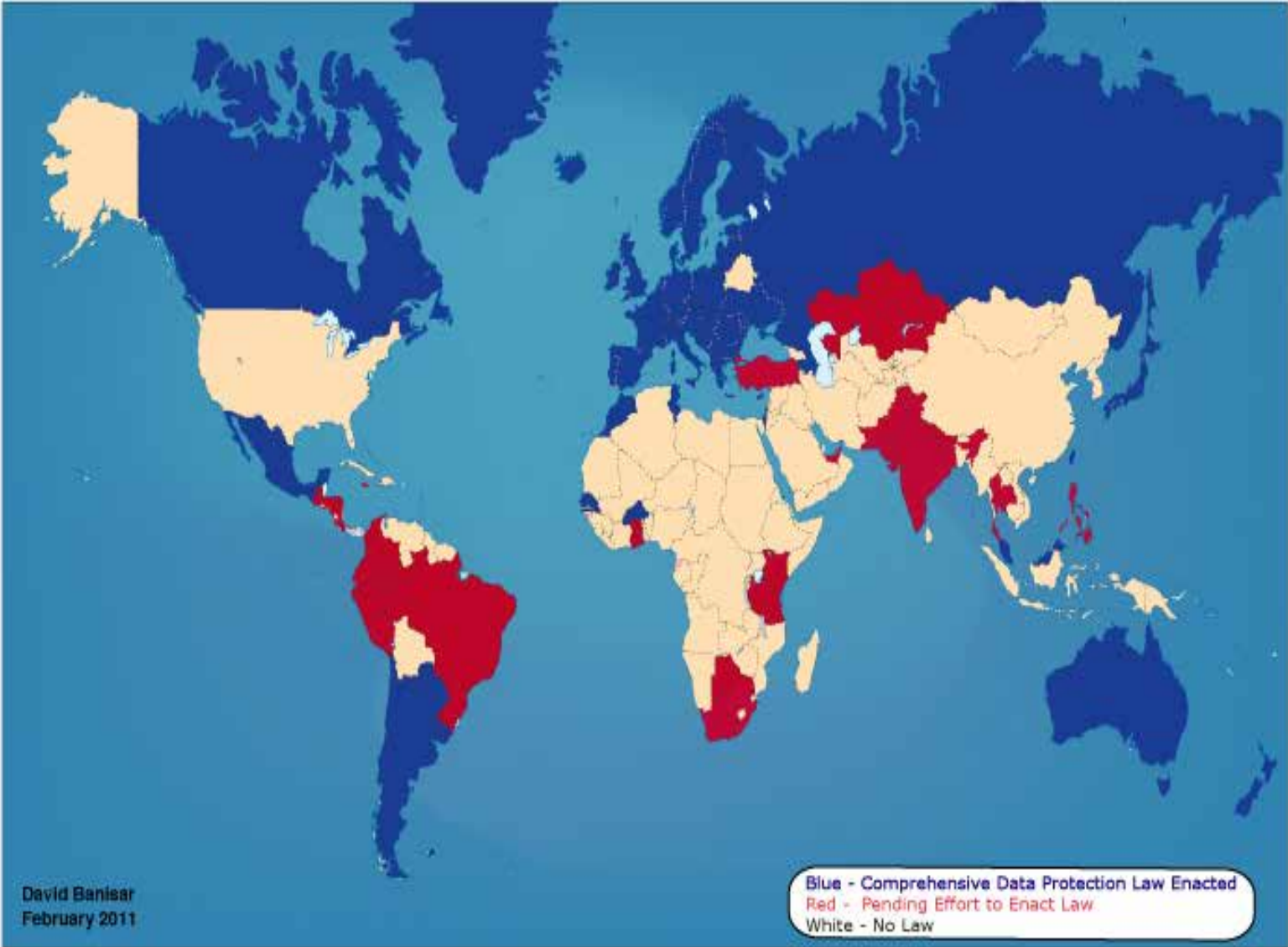
# U.S Consumer Privacy Bill of Rights (February 2012)-work just started

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- Individual Control
- Transparency
- Respect for context
- Security
- Access and Accuracy
- Focused Collection
- Accountability



# Data Protection Laws Around the World





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## End to data abuse

Posted on 23 October 2012 - 05:24am

Last updated on 23 October 2012 - 02:49pm

Pauline Wong

newsdesk@thesundaily.com

**Under the Personal Data Protection Act, all data users (companies, employers, etc) will have to adhere to seven principles**

► **GENERAL:** All personal data other than sensitive personal data (i.e. religious beliefs, political affiliations) can only be processed once the data subject (consumer) gives consent, provided it is lawful. A data user may, however, process data if it pertains to the consumer's vital interest, or for the administration of justice;

► **NOTICE AND CHOICE:** All data users must inform a consumer, in writing in English and Bahasa Malaysia, that his personal data is being processed, its purpose and source. Such notice must be given when the consumer provides the data or at the point where the data is collected;

► **DISCLOSURE:** Subject to consent of the data subject, personal data shall not be disclosed for any purpose other than what the data is intended for, nor can the data be disclosed to an unauthorised third

party;

► **SECURITY:** A data user must take practical steps to protect the personal data from loss, misuse, modification; unauthorised or accidental access or disclosure, alteration or destruction;

► **RETENTION:** Personal data processed shall not be kept longer than necessary for the fulfilment of the purpose, and the data user must take all reasonable steps to ensure this data is destroyed or deleted permanently once it is no longer needed;

► **DATA INTEGRITY:** Data users must take reasonable steps to ensure data is accurate, complete, not misleading and kept up-to-date;

► **ACCESS:** A consumer must be given access to his personal data held by the data user and be able to correct his personal data.

**PETALING JAYA (Oct 23, 2012):** Come Jan 1, you will be able to put an end to pesky telemarketers and report such harassment to the authorities.

This is because the Personal Data Protection (PDP) Act which criminalises unauthorised use of your personal data will finally be enforced after a two-year delay.

Information, Communications and Culture Minister Datuk Seri Rais Yatim told theSun recently that enforcement of the Act was held up due to a delay in the recruitment of personnel for the newly-formed Personal Data Department.

The department, which comes under his ministry, will oversee and be responsible for the enforcement of the Act.

"The department will be operational from Jan 1," Rais said in an SMS reply to queries from theSun as to the enforcement of the Act which had been gazetted in June 2010.

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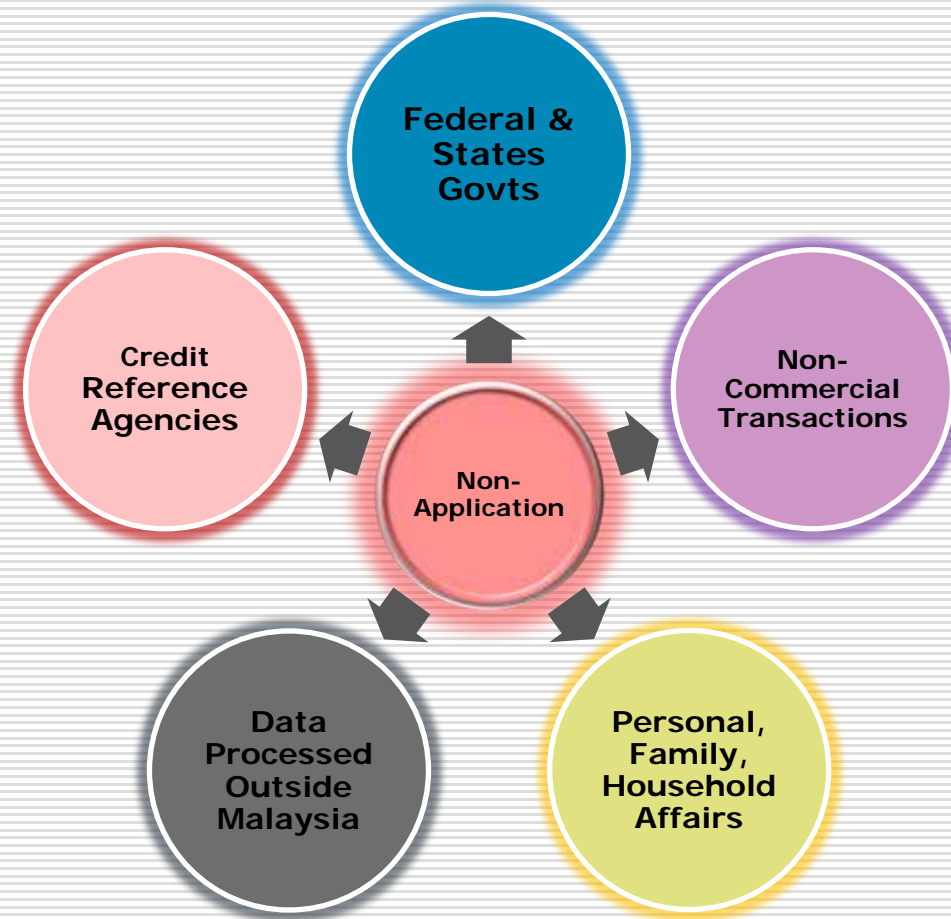


SUCCULENT. TENDER. AND THIS IS CHICKEN DONE RIGHT



# Malaysian PDPA : It's Applicability

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**'Federal Government'** means the Government of Malaysia which includes all the ministries and Prime Minister's Department

**'State Government'** means the government of a state which includes organizations such as the state secretary's office, state department, land and district offices and local authorities

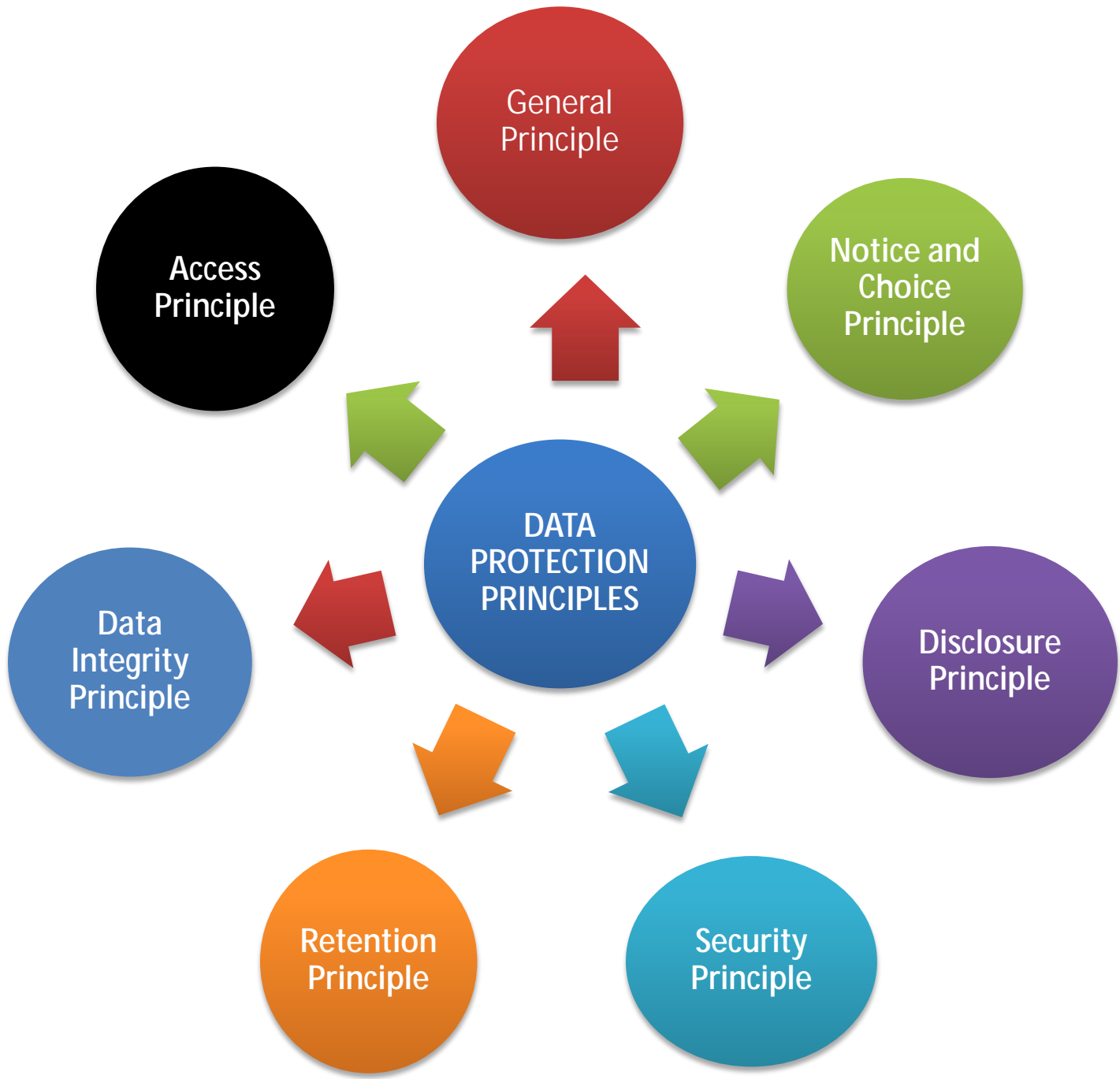
**'Commercial transactions'** means any transaction of a commercial nature whether contractual or not... but does not include credit reporting business

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# Data Sharing

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- Legal Justification for Sharing
- Data Sharing Agreement
  
- Sharing Data between Government Ministries/Departments
- Sharing Data between Government and Private Sector
- Sharing between Private Sectors



# Exemptions

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Partial

- Crime Prevention/Detection
- Offenders Apprehension/Prosecution
- Tax/Duty Assessment/Collection
- Physical/Mental Health
- Statistics/Research
- Court Order/Judgment
- Regulatory Functions
- Journalistic/Literary/Artistic

Total

- Personal
- Family
- Household
- Recreational

Purposes	General Principle	Notice & Choice Principle	Disclosure Principle	Security Principle	Retention Principle	Data Integrity Principle	Access Principle
Crime Prevention/ Detection	X	X	X				X
Offenders Apprehension/ Prosecution	X	X	X				X
Tax/duty Assessment/ Collection	X	X	X				X
Physical/ Mental Health							X
Statistics/ Research	X	X	X				X
Court Order/ Judgment	X	X	X				X
Regulatory Functions	X	X	X				X
Journalistic/ Literary/Artistic	X	X	X		X	X	X



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## Research and Statistics

- The exemption only applies where 'preparing statistics or carrying out research' is the sole purpose
- The data are not processed for any other purpose
- The resulting statistics or research are not made available in the form which identifies the data subject



No.	Section	Offences	Penalty
1	S. 16(4)	Processing without a certificate of registration	Fine <RM500,000.00/ Imprisonment < 3 years/ Both
2	S 18(5)	Processing after registration is revoked	Fine <RM500,000.00/ Imprisonment < 3 years/Both
3	S.5	Contravening Data Protection Principles	Fine <RM500,000.00/ Imprisonment < 2 years/Both
4	S. 29	Non-Compliance with Code of Practice	Fine <RM100,000.00/ Imprisonment < 1 year/Both
5	S. 37(4)	Failure to Inform the Refusal to Comply with the Data Correction Request	Fine <RM100,000.00/ Imprisonment < 1 year/Both
6	S. 38(4)	Processing after consent been withdrawn	Fine <RM100,000.00/ Imprisonment < 1 year/Both
7	S.40(3)	Processing of Sensitive Data	Fine <RM200,000.00/ Imprisonment < 2 years/Both
8.	S.42(6)	Failure to Comply with the Commissioner's Requirement (Processing likely to cause damage or distress)	Fine <RM200,000.00/ Imprisonment < 2 years/Both
9	S. 43(4)	Failure to Comply with the Commissioner's Requirement (Direct Marketing)	Fine <RM200,000.00/ Imprisonment < 2 years/Both
10.	S. 129(5)	Transfer of Data to Places Outside Malaysia without any law or adequate protection	Fine <RM300,000.00/ Imprisonment < 2 years/Both
11	S. 130(3)	Collects, disclose or procure to disclose data without consent of Data User	Fine <RM500,000.00/ Imprisonment < 3 years/Both
12	S. 130(4) and (5)	Selling or offer to sell	Fine <RM500,000.00/ Imprisonment < 3 years/Both
13	S. 131(1) and (2)	Abetment and Attempt to commit any of the offences	Half of the maximum term provided for that offence

# Offences by a body corporate

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A director, chief executive officer, chief operating officer, manager, secretary; or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management - may be charged severally or jointly in the same proceeding with the body corporate; and

If the body corporate is found to have committed the offence, he shall be deemed to have committed the offences unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves :

- that the offences was committed without his knowledge, consent or connivance; and
  - that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.
- (s.133)

# Enforcement Mechanisms

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- Data Protection Commissioner
- Advisory Committee
- Appeal Tribunal
- Codes of Practice
- Enforcement Notice
- Prosecution
- Revocation of Registration

# 1. BNM Guidelines on the Provisions of Electronic Banking (e-banking) Services by Financial Institutions 2010.

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- n Customers should be made aware of the financial institution's privacy policies and relevant privacy issues
- n Financial institutions should not share customer information with third parties for cross-marketing without prior explicit consent of customers
- n Customer information shall not be disclosed beyond what customers have authorized.
- n Customers should be given the option to disallow financial institutions from disclosing their information to third parties, including the financial institution's partners without affecting their access to the e-banking services rendered.

## 2. BNM Guidelines on Data Management and Management Information System (MIS) Framework

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- n Principle 5 – financial institutions should maintain effective controls over security and privacy.
  - o Financial institutions must establish adequate and detection controls to ensure security
  - o Appropriate safeguard must be put in place to ensure personal data is not misused or disclosed in a wrongful manner.
  - o Personal information should be handled properly to ensure confidentiality of the information and compliance with the relevant legislation.



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