

<b>Preface</b>	i
<b>Foreword</b>	v
<b>Acknowledgement &amp; Dedication</b>	ix
<b>List of Abbreviations</b>	xi
<b>Table of Cases</b>	xiii
<b>Table of Legislation</b>	xix
<b>Table of Foreign Legislation</b>	xxxi

## PART I

### **CHAPTER 1 PERSONAL DATA PROTECTION : BEFORE AND NOW**

1.1 History And Context: The 10 Years Journey	1
1.2 Privacy, Personal Data Protection and Information Management	2

### **CHAPTER 2 PERSONAL DATA PROTECTION ACT 2010 INTERPRETATION**

2.1 Enforcement of the Personal Data Protection Act 2010 (Act 709)	11
2.1.1 Section 2 - Scope of Application	12
2.1.2 Section 3 - Non Application	13
2.1.3 Section 4 - Interpretation	14
2.2 Definitions Under the PDPA 2010	19
2.3 Comparative Chart of Definitions between the PDPA 2010 and EU DIRECTIVE (95/46/EC)	21

### **CHAPTER 3 GUIDING PRINCIPLES**

3.1 Personal Data Protection Principles	31
3.2 OECD Personal Data Protection Guidelines	34
3.3 The Law Under PDPA 2010	37

#### **Personal Data Protection Principles**

3.3.1 Section 5(2) - Offence	37
3.3.2 Section 6 - General Principle	37
3.3.3 Section 7 - Notice and Choice Principle	41
3.3.4 Section 8 - Disclosure Principle	43
3.3.4.1 Third Parties	43
3.3.4.2 The Safe Harbor Policy	46
3.3.4.3 Origin of the 'Safe Harbor' Principles	47
3.3.5 Section 9 - Security Principle	49
3.3.6 Section 10 - Retention Principle	52
3.3.7 Section 11 - Data Integrity Principle	53
3.3.8 Section 12 - Access Principle	53
3.3.9 Practical Application - Compliance Audit	53
3.4 The Law Under PDPA 2010	56

#### **Registration**

3.4.1 Section 13(1) - Registration of Specified Data User	56
Section 13(2) - Registration of Non Specified Data User	56
3.4.2 Section 14 - General Registration of Data Users	56

3.4.3	Section 15 - Application for Registration	56	3.6.3	Section 32 - Circumstance Where Data User May Refuse to Comply With Data Access Request	68
3.4.4	Section 16 - Certificate of Registration	57	3.6.4	Section 33 - Notification of Refusal to Comply With Data Access Request	69
3.4.5	Section 17 - Renewal of Certificate of Registration	57	3.6.5	Section 34 - Right to Correct Personal Data	70
3.4.6	Section 18 - Revocation of Registration	58	3.6.6	Section 35 - Compliance With Data Correction Request	70
3.4.7	Section 19 - Surrender of Certificate of Registration	59	3.6.7	Section 36 - Circumstances Where Data User May Refuse to Comply With Data Correction Request	72
3.4.8	Section 20 - Register of Data Users	59	3.6.8	Section 37 - Notification of Refusal to Comply With Data Correction Request	74
3.5	The Law Under PDPA 2010	59	3.6.9	Section 38 - Withdrawal of Consent to Process Personal Data	75
<b>Data User Forum and Code of Practice</b>					
3.5.1	Section 21 - Data User Forum	60	3.6.10	Section 39 - Extent of Disclosure of Personal Data	76
3.5.2	Section 22 - Register of Data User Forums	60	3.6.11	Section 40 - Processing of Sensitive Personal Data	77
3.5.3	Section 23 - Code of Practice	61	3.6.12	Section 41 - Repeated Collection of Personal Data in Same Circumstances	79
3.5.4	Section 24 - Commissioner May Issue Code of Practice	62	3.6.13	Section 42 - Right to Prevent Processing Likely to Cause Damage or Distress	80
3.5.5	Section 25 - Applicable Code of Practice	63	3.6.14	Section 43 - Right to Prevent Processing for Purposes of Direct Marketing	82
3.5.6	Section 26 - Revocation, etc., of Code of Practice	64	3.6.15	Section 44 - Record to be Kept by Data User	83
3.5.7	Section 27 - Submission of New Code of Practice by Data User Forum	65			
3.5.8	Section 28 - Register of Codes of Practice	65			
3.5.9	Section 29 - Non-Compliance with Code of Practice	65			
3.6	The Law Under PDPA 2010	66			
<b>Rights of Data Subject</b>					
3.6.1	Section 30 - Right of Access to Personal Data	66			
3.6.2	Section 31 - Compliance With Data Access Request	67			

3.7 The Law Under PDPA 2010	83	3.8.14 Section 60 - Returns, Reports, Accounts and Information	93
<b>Exemption</b>		3.9 The Law Under PDPA 2012	94
3.7.1 Section 45 - Exemption	83	<b>Personal Data Protection Fund</b>	
3.7.2 Section 46 - Power to Make Further Exemption	85	3.9.1 Section 61 - Establishment of Fund	94
3.8 The Law Under PDPA 2010	86	3.9.2 Section 62 - Expenditure to be Charged on Fund	94
<b>Appointment, Functions and Powers of Commissioner</b>		3.9.3 Section 63 - Conservation of Fund	95
3.8.1 Section 47 - Appointment of Commissioner	87	3.9.4 Section 64 - Reserve Fund	95
3.8.2 Section 48 - Functions of Commissioner	87	3.9.5 Section 65 - Financial year	96
3.8.3 Section 49 - Powers of Commissioner	88	3.9.6 Section 66 - Limitation on Contracts	96
3.8.4 Section 50 - Appointment of Deputy Commissioners and Assistant	89	3.9.7 Section 67 - Bank Accounts	96
3.8.5 Section 51 - Appointment of Other Officers and Servants	90	3.9.8 Section 68 - Accounts and Audit	96
3.8.6 Section 52 - Loans and Advances to Officers and Servants	90	3.9.9 Section 69 - Expenditure and Preparation of Estimates	96
3.8.7 Section 53 - Tenure of Office	91	3.10 The Law Under PDPA 2010	97
3.8.8 Section 54 - Revocation of Appointment and Resignation	91	<b>Personal Data Protection Advisory Committee</b>	
3.8.9 Section 55 - Temporary Exercise of Functions and Powers of Commissioner	91	3.10.1 Section 70 - Establishment of Advisory Committee	97
3.8.10 Section 56 - Vacation of Office	92	3.10.2 Section 71 - Functions of Advisory Committee	97
3.8.11 Section 57 - Remuneration and Allowances	92	3.10.3 Section 72 - Members of Advisory Committee	98
3.8.12 Section 58 - Delegation of Commissioner's Functions and Powers	92	3.10.4 Section 73 - Tenure of Office	98
3.8.13 Section 59 - Direction by Minister	93	3.10.5 Section 74 - Revocation of Appointment and Resignation	98
		3.10.6 Section 75 - Temporary Exercise of Functions of Chairman	99
		3.10.7 Section 76 - Vacation of Office	99
		3.10.8 Section 77 - Allowances	100

3.10.9	Section 78 - Time and Place of Meetings	100	3.11.12	Section 94 - Record of Decision of Commissioner	107
3.10.10	Section 79 - Advisory Committee May Invite Others to Attend Meetings	100	3.11.13	Section 95 - Stay of Decision Pending Appeal	107
3.10.11	Section 80 - Minutes	101	3.11.14	Section 96 - Composition of Appeal Tribunal	108
3.10.12	Section 81 - Procedure	101	3.11.15	Section 97 - Sitting on Appeal Tribunal	108
3.10.13	Section 82 - Members to Devote Time to Business of Advisory Committee	101	3.11.16	Section 98 - Procedure of Appeal Tribunal	108
3.11	The Law Under PDPA 2010	101	3.11.17	Section 99 - Decision of Appeal Tribunal	108
<b>Appeal Tribunal</b>			3.11.18	Section 100 - Enforcement of Decision of Appeal Tribunal	109
3.11.1	Section 83 - Establishment of Appeal Tribunal	102	3.12	The Law Under PDPA 2010	109
3.11.2	Section 84 - Powers of Appeal Tribunal	102	<b>Inspection, Complaint and Investigation</b>		
3.11.3	Section 85 - Members of Appeal Tribunal	103	3.12.1	Section 101 - Inspection of Personal Data System	109
3.11.4	Section 86 - Secretary to Appeal Tribunal and Other Officers, etc.	103	3.12.2	Section 102 - Relevant Data User, etc., to be Informed of Result of Inspection	110
3.11.5	Section 87 - Tenure of Office	104	3.12.3	Section 103 - Reports by Commissioner	110
3.11.6	Section 88 - Resignation and Revocation of Appointment	104	3.12.4	Section 104 - Complaint	111
3.11.7	Section 89 - Temporary Exercise of Functions of Chairman	104	3.12.5	Section 105 - Investigation by Commissioner	111
3.11.8	Section 90 - Vacation of Office	104	3.12.6	Section 106 - Restriction on Investigation Initiated by Complaint	111
3.11.9	Section 91 - Allowances	105	3.12.7	Section 107 - Commissioner May Carry Out or Continue Investigation Initiated by Complaint Notwithstanding Withdrawal of Complaint	113
3.11.10	Section 92 - Disclosure of Interest	106			
3.11.11	Section 93 - Appeal to Appeal Tribunal	106			

3.12.8	Section 108 - Enforcement of Notice	113	3.13.13	Section 122 - Power to Require Attendance of Persons Acquainted With Case	123
3.12.9	Section 109 - Variation or Cancellation of Enforcement Notice	115	3.13.14	Section 123 - Examination of Persons Acquainted With Case	123
3.13	The Law Under PDPA 2010	116	3.13.15	Section 124 - Admission of Statements in Evidence	124
<b>Enforcement</b>			3.13.16	Section 125 - Forfeiture of Computer, Book, Account, etc., Seized	124
3.13.1	Section 110 - Authorized Officers	116	3.13.17	Section 126 - Joinder of Offences	126
3.13.2	Section 111 - Authority Card	116	3.13.18	Section 127 - Power of Arrest	127
3.13.3	Section 112 - Power of Investigation	116	3.14	The Law Under PDPA 2010	127
3.13.4	Section 113 - Search and Seizure With Warrant	116	<b>Miscellaneous</b>		
3.13.5	Section 114 - Search and Seizure Without Warrant	118	3.14.1	Section 128 - Register	127
3.13.6	Section 115 - Access to Computerized Data	119	3.14.2	Section 129 - Transfer of Personal Data to Places Outside Malaysia	127
3.13.7	Section 116 - Warrant Admissible Notwithstanding Defects	119	3.14.3	Section 130 - Unlawful Collecting, etc., of Personal Data	130
3.13.8	Section 117 - List of Computer, Book, Account, etc., Seized	119	3.14.4	Section 131 - Abetment and Attempt Punishable as Offences	132
3.13.9	Section 118 - Release of Computer, Book, Account, etc., Seized	120	3.14.5	Section 132 - Compounding of Offences	132
3.13.10	Section 119 - No Cost or Damages Arising from Seizure to be Recoverable	121	3.14.6	Section 133 - Offences by Body Corporate	133
3.13.11	Section 120 - Obstruction to Search	122	3.14.7	Section 134 - Prosecution	135
3.13.12	Section 121 - Power to Require Production of Computer, Book, Account, etc.	122	3.14.8	Section 135 - Jurisdiction to Try Offences	135

## PART II

### CHAPTER 4

#### CASE LAW AND COMMENTARY

4.1	The Traditional Common Law Route	167
4.2	General Provisions	167
4.3	The Failed Expansion of a Restrictive Rule	171
4.4	Whether Invasion of Privacy Constitute An Actionable Tort	175

### CHAPTER 5

#### PERSONAL DATA PROTECTION IN ASEAN JURISDICTIONS

5.1	Asia- Pacific (APEC) Perspective	183
5.2	ASEAN Perspective	183
5.3	Data Protection in the U.S Jurisdiction	190
5.3.1	Federal Law	190
5.3.2	Sectoral Laws	192

### CHAPTER 6

#### PERSONAL DATA PROTECTION IN THE UK

6.1	Introduction	197
6.2	<i>Campbell (Appellant) v. MGN Limited (Respondents)</i> [2004] UKHL 22	197
6.3	Meaning of Purposes and Registered Purposes	233
6.4	Barnadised 'Personal Data'	242
6.5	Anonymised Statistics and Personal Data	267
6.6	Unlawful Disclosure and Unlawful Obtaining of Personal Data	270
6.7	Disclosure and Access Request of Personal Data	272

3.14.9	Section 136 - Service of Notices or Other Documents	135
--------	---	-----

3.14.10	Section 137 - Public Authorities Protection Act 1948	135
---------	--	-----

3.14.11	Section 138 - Public Servant	136
---------	------------------------------	-----

3.14.12	Section 139 - Protection Against Suit and Legal Proceedings	136
---------	---	-----

3.14.13	Section 140 - Protection of Informers	136
---------	---------------------------------------	-----

3.14.14	Section 141 - Obligation of Secrecy	137
---------	-------------------------------------	-----

3.14.15	Section 142 - Things Done in Anticipation of the Enactment of This Act	138
---------	--	-----

3.14.16	Section 143 - Power to Make Regulations	138
---------	---	-----

3.14.17	Section 144 - Prevention of Anomalies	139
---------	---------------------------------------	-----

3.15	The Law Under PDPA 2010	139
------	-------------------------	-----

#### Savings and Transitional Provisions

3.15.1	Section 145 - Personal Data Processed Before the Date of Coming Into Operation of This Act	139
--------	--	-----

3.15.2	Section 146 - Registration of Persons Who Process Personal Data Before the Date of Coming Into Operation of This Act	140
--------	--	-----

**CHAPTER 7  
PERSONAL DATA PROTECTION  
IN THE EUROPEAN UNION**

7.1 European Privacy Standard	285
7.2 European Union Case Studies	286
7.2.1 Press Freedom & Data	286
7.3 Case Studies Analysis	290
7.3.1 Summary of Case Studies 2008	290
7.3.2 Medical Data	292
7.3.3 Marketing Data	297
7.3.4 Access Request and Information	299
7.3.5 Access Request	302
7.3.6 E-mail Data	304
7.3.7 Address Data	306
7.3.8 Medical Data	309
7.3.9 Document Data	311
7.3.10 Denial of Access	312
7.3.11 Case Studies for Year 2009	314
7.3.12 Disclosure of Data by Private Entity	315
7.3.13 Disclosure of Data by Local Authority	317
7.3.14 Excessive Disclosure of Data	319
7.3.15 Mistaken Transmission of Data	321
7.3.16 Postcard and Data	323
7.3.17 Surveillance by Private Entity	325
7.3.18 A Competitive Legal Analysis of the Data Protection Directive 1995	327
7.3.19 EU Case Law On Personal Data Protection	327

**CHAPTER 8  
PERSONAL DATA PROTECTION IN THE  
COMMONWEALTH JURISDICTIONS**

8.1 Introduction	329
8.2 New Zealand	329
8.2.1 Privacy and Personal Data	330
8.2.2 Identification and Personal Data	371
8.3 Australia	375
8.3.1 Australian Capital Territory	376
8.3.2 Northern Territory	377
8.3.3 New South Wales	377
8.3.4 Queensland	379
8.3.5 South Australia	378
8.3.6 Tasmania	378
8.3.7 Victoria	379
8.3.8 Western Australia	379
8.4 Queensland	380
8.4.1 Privacy and Personal Data Protection	380
8.5 Victoria	386
8.5.1 Privacy and Broadcast of Personal Data	386
8.6 Canada	390
8.7 The Ten Provinces of Canada	392
8.7.1 Alberta	392
8.7.2 British Columbia	392
8.7.3 Manitoba	392
8.7.4 New Brunswick	392
8.7.5 North West Territories	392
8.7.6 Nova Scotia	393
8.7.7 Ontario	393
8.7.8 Quebec	393
8.7.9 Saskatchewan	393
8.7.10 Yukon Territory	393
8.7.10.1 Commercial Data and Protection	394

<b>CHAPTER 9</b>		11.5 Checklist - The Compliance Checklist Approach	475
<b>PERSONAL DATA PROTECTION POLICY CASE STUDIES</b>		11.6 Checklist - The Checklist Approach	491
9.1 Introduction	401	11.7 General Scorecards	496
9.2 UK Example	401	11.8 Compliance Scorecard	501
9.3 An Asean Example : A Singapore Government Website	403	11.9 The Drafting Template Precedent	505
9.4 An American Online Merchant Example	405	11.10 Report	506
9.5 An American Online Search Engine Example	410	11.11 The Toolkits Approach	507
9.6 An Islamic Website Example	416		
9.7 Malaysian Case Studies	418	<b>PART IV</b>	
9.8 An Asean Example	427	<b>CHAPTER 12</b>	
9.9 An American Public University Example	431	<b>PERSONAL DATA PROTECTION AND PRIVACY :</b>	
9.10 A New Zealand Government Website Example	436	<b>THE SYARI'AH PERSPECTIVE</b>	
		12.1 Introduction	513
<b>PART III</b>		12.2 Quranic Guiding Principle	513
<b>CHAPTER 10</b>		12.3 Application of the Theory of Data Protection under the <i>Maqasid Al-Syari'ah</i>	515
<b>LEGAL AND REGULATORY COMPLIANCE</b>		12.4 <i>Syari'ah</i> Provision	516
10.1 Introduction	441	12.5 Hadith Guiding Provision	518
10.2 The Giza Compliance Model	442	12.6 Management of Personal Data Protection According to <i>Syari'ah</i> Perspective	519
10.3 Borobudur Enforcement Model	443	12.7 The Cairo Declaration on Human Rights in Islam	521
<b>CHAPTER 11</b>		12.8 Management Application in the Design of ' <i>Syari'ah</i> Personal Data Protection Balanced Scorecards'	522
<b>PERSONAL DATA PROTECTION POLICY DRAFTING AND STRATEGIC FORMULATION</b>		12.9 <i>Syari'ah</i> Balanced Scorecard	524
11.1 Introduction	447	12.10 <i>Syari'ah</i> Strategy and Vision	527
11.2 Five Key Formulation and Implementation Elements	447	12.10.1 Perspective 5 - <i>Maqasid al-Syari'ah</i>	527
11.3 Policy	449	12.10.2 Perspective 4 - Development and Responsibility Perspective	527
11.4 Corporate and Management Best Practice	476		

12.10.3	Perspective 3 - Internal & External Process Perspectives	527
12.10.4	Perspective 2 - Social Perspective	528
12.10.5	Perspective 1 - Economic Perspective	528
12.11	Core Value: ' <i>Syari'ah</i> Core Responsibility'	530

## **PART V**

### **CHAPTER 13**

#### **EXECUTIVE CONCLUSION**

13.1	Personal Data Protection Act 2010 ('PDPA 2010')	533
13.2	Personal Data Protection in ASEAN and APEC : A Regional Observation Analysis	534

## **PART VI**

### **CHAPTER 14**

#### **EXECUTIVE RECOMMENDATIONS**

14.1	Personal Data Protection Compliance & Transparency Index	537
14.2	Domestic Platform	538
14.3	Personal Data Protection Barometer Application	539
14.4	Policy Recommendations	542

<b>Appendices</b>	545
-------------------	-----

<b>Index</b>	609
--------------	-----