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Judicial Interpretations on Criminal Cases Involving Infringement of Citizens' Personal Information

Introduction

On 8 May 2017, the Supreme People's Court and the Supreme People's Procuratorate (collectively, the "Authorities") jointly issued the Interpretation of Applicable Laws on Handling Criminal Cases Involving Infringement of Citizens' Personal Data (Law Interpretation No. 10 of 2017) (the "Interpretation"). The Interpretation clarifies the judicial position on key issues that arise out of criminal cases which concern the infringement of personal data, and took effect from 1 June 2017 (based on Article 13 of the Interpretation).

Summary of the Applicable Judicial Interpretations

The interpretations of the relevant provisions of the Criminal Law in China in the context of infringement of personal data, as set out by the Authorities in the Interpretation, are as follows:

Violations of Article 253 of the Criminal Law

Article	Relevant Term or Provision	Judicial Interpretation
1	<i>Citizen's Personal Data</i>	Data, recorded electronically or otherwise, which by itself or in combination with other data, can be used to identify an individual or provide information about the activities of an individual
2	<i>"violating the relevant regulations of the State"</i>	Violating laws, administrative regulations and departmental rules concerning the protection of personal information of citizens
3	<i>"providing citizen's personal data"</i>	a. Providing personal information to a specific person and publishing personal data through the information network or by other means; or b. Providing lawfully collected personal data to third parties without consent of individual concerned, except anonymised data
4	<i>"obtaining citizen's personal data through other illegal means"</i>	a. Purchasing, accepting or exchanging personal data in violation of the relevant regulations of the State; or b. Collecting citizen's personal data in the course of employment or providing services

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Article	Relevant Term or Provision	Judicial Interpretation
5	“ <i>Serious circumstances</i> ” in respect of an illegal sale, collection or provision of personal data	One of the following circumstances, amongst others: <ol style="list-style-type: none"> where it concerns information on whereabouts for criminal purposes; when one knows or ought to know that such data has been used to commit criminal offences; where it concerns more than 50 pieces of data relating to whereabouts, communications, credit and property; where it concerns more than 500 pieces of personal data relating to accommodation, communication, health, transactions or other data that may compromise the personal safety of the individual or his property; where it concerns more than 5,000 pieces of data other than those provided in (c) and (d) above; where the gains obtained exceed RMB 5,000; providing personal data obtained in the course of employment or providing services to third parties exceeding half the quantity set out in (c) to (f) above; or re-offending after being convicted of or within two years from receiving any administrative penalty for such offence
	“ <i>Particularly serious circumstances</i> ” in respect of an illegal sale, collection or provision of personal data	One of the following circumstances, amongst others: <ol style="list-style-type: none"> where it causes serious consequences such as death, serious injury, mental disorder or kidnapping of the victim; where it causes significant economic losses or adverse social effects; or where the quantity or amount reaches more than 10 times the prescribed quantities set out above
6	“ <i>Serious circumstances</i> ” in respect of an illegal purchase or acceptance of personal data for lawful purposes	One of the following circumstances, amongst others: <ol style="list-style-type: none"> where the gains from the use of illegally purchased or accepted personal data exceed RMB 50,000; re-offending within two years from receiving any administrative penalty for such offence; or other serious circumstances as provided in Article 5
7	Punishment for violation of Article 253 of the Criminal Law	If an individual is convicted of any offence under Article 253 of the Criminal Law; <ol style="list-style-type: none"> any person who is directly responsible for the offender will be punished in accordance with the rules set out in the Interpretation; and the organisation to which the offender belongs will be subject to a fine

Dual Liability for Illegal Use of Information Network and Infringement of Personal Data

Pursuant to Article 8 of the Interpretation, any person who sets up a website or other communications platform for the purpose of illegally collecting, selling or providing personal data of citizens will, where circumstances are

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serious, be cumulatively liable for the offences of illegal use of information network (under Article 287 of the Criminal Law) and for infringement of personal data of citizens, and will be punished accordingly.

Sanctions on Non-Compliant Network Service Providers

Article 9 of the Interpretation provides that where a network service provider fails to perform its obligations under any applicable law or regulations and refuses to take corrective measures as directed by the relevant authority, hence resulting in a serious case of leakage of its users' personal data, the network service provider will be guilty of an offence under Article 286 of the Criminal Law.

Punishment for First Time Offenders

For persons who first commit the offence of infringement of personal data, if the circumstances are not considered "particularly serious", the offender returns all the criminal proceeds and shows remorse for his or her conduct, then such offender shall not be charged or prosecuted. Even if prosecution is necessary, lenient treatment must be accorded to such offender under Article 10 of the Interpretation.

Relevant Considerations for Financial Penalty

Article 12 of the Interpretation provides that, in relation to the offence of infringing personal data of citizens, the amount of fine should be determined by taking into consideration the following factors:

1. the harm caused by the offence;
2. the amount of criminal proceeds;
3. the prior convictions of the offender (if any); and
4. the level of remorse demonstrated by the offender.

As a general rule, the amount of fine should be more than five times the amount of the criminal proceeds.

Comments

Following the tightening of data protection rules in China, companies should put in place internal controls and security measures (e.g. data encryption), if these are not already done, to comply with the applicable regulations. In addition, companies should also provide adequate training to ensure that employees are aware of how to handle personal data in a way which complies with the legal requirements. This is especially important given that based on the Interpretation, companies and supervisors may be held liable for the acts of their employees or other persons for whom they are directly responsible.

However, it may be of some comfort to know that first-time offenders will be treated with leniency as long as the infringement is not particularly serious, so there is still time for stakeholders to familiarise themselves with the relatively new legislation.

For further queries, please feel free to contact our team below.

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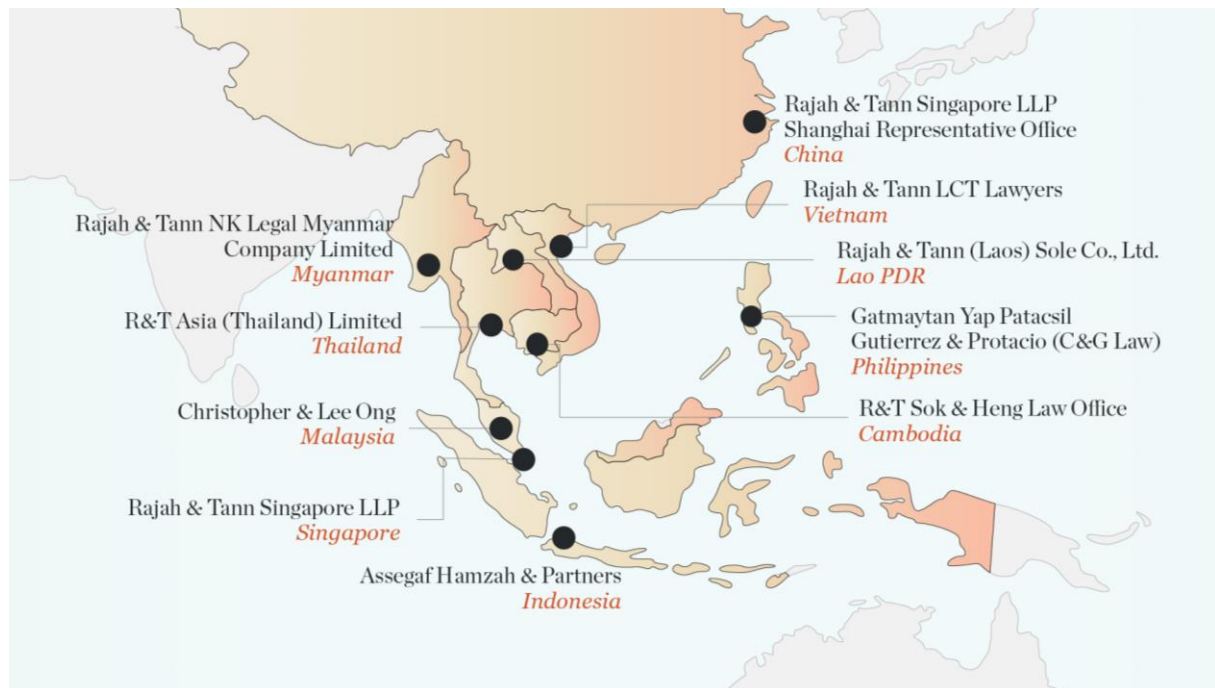
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