

Malaysia

Constitutional Protection

- Malaysia does have a constitution, however, the constitution does not specifically stipulate the right to privacy.
<https://dnh.com.my/5-things-we-should-know-about-privacy-laws-in-malaysia/>
- As can be seen here, Malaysia does not have a constitutional court. It is believed that the current court, the Federal Court, is sufficient enough in upholding the constitution.
<https://www.nst.com.my/news/nation/2019/01/455265/malaysia-doesnt-need-constitutional-court-says-minister>
- The courts do act in protecting the constitutional rights. In the case of Sivarasa vs Badan Peguam Malaysia & Anor it was stated that article 5 of the constitution includes the right to privacy. However, this article also shows a lack of knowledge regarding the right to privacy and the punishments are not severe enough.
<https://www.nst.com.my/opinion/columnists/2019/03/465152/urgent-need-privacy-act>

Score - 2.7 - Some safeguards but weakened protections

Statutory Protection

- Malaysia's main data protection law is the Personal Data Protection Act (PDPA) which came into force in November 2013.
<https://www.dlapiperdataprotection.com/index.html?t=law&c=MY&c2=>
- The PDPA covers many sectors including employment. However, in certain circumstances there are other sectoral laws that include data-related issues, such as, the Anti-Terrorism Financing and Proceeds of Unlawful Activities Act .
<https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/malaysia>
- The courts have implemented fines, enforcing the data protection act. Here, fines were given to 3 different sectors for failure to register as a data user.
<https://www.linklaters.com/en/insights/data-protected/data-protected---malaysia>

Score - 2.7 - Some safeguards but weakened protections.

Privacy Enforcement

- The governing authority in charge of enforcing data protection is the Data Protection Commissioner.
<https://www.dlapiperdataprotection.com/index.html?t=authority&c=MY&c2=>
- The data protection agency is effective in enforcing the data protection act. This is evident with the above mentioned fines and also the fact that they are inspecting businesses to provide recommendations on their data protection practices.
<https://iclg.com/practice-areas/data-protection-laws-and-regulations/malaysia>

Score - 2.9 - Some safeguards but weakened protections.

Identity Cards and Biometrics

- Malaysia does have a national ID card called the MyKad which is mandatory from the age of 12 and also contains biometrics.
<https://www.thestar.com.my/news/nation/2018/10/16/do-you-know-facts-about-the-my-kad>

- As technology advances, so too do the applications for biometrics. This can be seen here with Grab using facial recognition to aid in driver and passenger safety. <https://www.grab.com/my/press/social-impact-safety/grab-mot-facial-recognition-technology/>
- There is a debate surrounding the use of biometrics in Malaysia. For example, due to rapid advancements in technology, some biometric use is very new, which means there aren't any laws referring to it. <https://www.thestar.com.my/news/nation/2019/01/03/use-of-biometric-facial-recognition-must-be-regulated>

Score - 2.4 - Systemic failure to uphold safeguards.

Data Sharing

- The processing of data usually requires written consent. And data should only be used for the purpose it was collected, or purposes directly related to it. <https://globaldatahub.taylorwessing.com/article/data-protection-in-malaysia>
- As can be seen here, Malaysia has MyGDx which facilitates intergovernmental agency data sharing. <https://mygdx.malaysia.gov.my/en>
- In certain situations, companies are required to hand over information to the government. According to anti-money laundering laws any suspicious transactions among other things must be reported to the Bank Negara Malaysia. <https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/malaysia>

Score - 2.6 - Some safeguards but weakened protections.

Visual surveillance

- The use of CCTV in Malaysia, like in most of the world, has increased significantly over recent years. This is evident here with the installation of 40,000 high-definition cameras in Putrajaya. <https://www.malaymail.com/news/malaysia/2017/12/15/40000-cctv-cameras-to-make-ft-smart-and-safe/1532911>
- There are very few safeguards with regard to the use of CCTV. However, it looks like, as part of new CCTV guidelines, companies will have to post a notice on the entrances to where the monitoring occurs. <https://iclg.com/practice-areas/data-protection-laws-and-regulations/malaysia>
- The excessive use of CCTV is debated in Malaysia as can be seen with this older article where an increase in the amount of cameras was halted due to the fact that Kuala Lumpur already had more CCTV cameras than the whole of Australia. <https://www.freemalaysiatoday.com/category/nation/2016/05/30/more-cctv-cameras-in-kl-than-in-australia/>

Score - 2.4 - Systemic failure to uphold safeguards.

Communication Interception

- According to section 252 of the Communications and Multimedia Act, the Public Prosecutor may authorize a police officer (ranked Superintendent or above) to intercept communications. <https://iclg.com/practice-areas/telecoms-media-and-internet-laws-and-regulations/malaysia>

- There are situations when safeguards are less. For example, Section 6 of the Security Offences Act allows for the interception of all communications when it's expected to contain information on security offenses. Security offenses are offenses against the state or offenses relating to terrorism.
<https://iclg.com/practice-areas/telecoms-media-and-internet-laws-and-regulations/malaysia>
- Section 265 of the Communications and Multimedia Act states that "a licensee or class of licensees shall implement the capability to allow authorized interception of communications." showing the requirement for a service provider to provide intercept capability.
https://www.unodc.org/res/cld/document/mys/communications_and_multimedia_act.html/Malaysia_Communications_and_Multimedia_Act_1998.pdf

Score - 2.7 - Some safeguards but weakened protections

Workplace Monitoring

- The PDPA does not specifically prohibit employee monitoring. However, as mentioned above, the CCTV guide set to come into force soon states that CCTV cannot be misused for employee monitoring.
<https://iclg.com/practice-areas/data-protection-laws-and-regulations/malaysia>
- There are many safeguards protecting employees rights, as can be seen here. However, an employer may monitor an employees emails, telephone calls and computer usage on the basis that the equipment belongs to the employer and it's being used for work purposes.
<https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/malaysia>
- As can be seen here the issue of social media posts has been a hot topic in Malaysia recently, with many people being fired for things they posted on social media. Legally, an employer can fire someone for what they post if it is seen to affect their business.
<https://vulcanpost.com/654447/malaysia-employer-control-employee-social-media/>

Score - 2.8 - Some safeguards but weakened protections

Government Access to Data

- Search warrant is usually required to search a person's home. This is laid out in section 54 of the Criminal Procedures Code.
<http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20593%2018%20Dec%202018.pdf>
- According to the Digital Signature Act, law enforcement have search and seizure powers where they have reasonable cause to believe an offense under the Digital Signature Act is being committed. This gives them the power to access computerized data. Access in this case means "being provided with the password, encryption and decryption codes, software or hardware necessary for comprehension of the computerized data."
https://cloudscorecard.bsa.org/2018/pdf/country_reports/2018_Country_Report_Malaysia.pdf
- What also can be seen here is the fact there are multiple laws that allow powers of search and seizure and "powers to compel the production of evidence for

investigations into offenses committed thereunder” to different agencies. These laws include Banking and Financial Institutions Act 1989 and the Anti-Money Laundering Act 2001.

https://cloudscorecard.bsa.org/2018/pdf/country_reports/2018_Country_Report_Malaysia.pdf

Score - 2.7 - Some safeguards but weakened protections

Communications Data Retention

- The personal data protection Act does outline data retention. It states that data should not be kept longer than necessary. Due to the fact there isn't a specified length this can be interpreted to mean different kinds of data will have different retention periods.

<https://thelawreviews.co.uk/edition/the-privacy-data-protection-and-cybersecurity-law-review-edition-5/1175635/malaysia>

- As can be seen here data users are required to delete any data that has been inactive for 24 months. This is significantly less than some limitation periods, such as revenue laws allowing retention for a maximum of 7 years.

<https://www.cpomagazine.com/data-protection/malaysian-personal-data-protection-act-standards-tightened/>

Score - 2.9 - Some safeguards but weakened protections

Surveillance of Medical, Financial and Movement

- As previously mentioned, this data is seen as more sensitive so does have extra safeguards surrounding it.

<https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/malaysia>

- Despite the extra safeguards and protections, the data isn't always protected as well as it should be. For example, this data breach which potentially affected the whole population. <https://www.bbc.co.uk/news/technology-41816953>

- Another example of a data breach can be seen here, this time involving medical data <https://www.todayonline.com/world/personal-details-over-200000-malaysian-organ-donors-leaked-yet-another-data-breach>

Score - 2.5 - Systemic failure to uphold safeguards

Border and Trans-Border Issues

- As can be seen here, Malaysia are using advanced technology as part of their border security.

<https://www.c4isrnet.com/unmanned/uas/2016/04/21/malaysia-buys-thales-drones-for-maritime-security/> But what can be seen here is the demand for further

advancements with the director of customs stating “We acknowledge our equipment is not sufficient”

<https://www.malaymail.com/news/malaysia/2019/08/01/customs-needs-drone-for-border-control/1776774>

- Malaysia has had biometrics at both land borders and at airports for a few years. And what can be seen here is the advancement in this technology with iris scans being introduced.

<https://www.biometricupdate.com/201904/singapore-trials-tascent-face-and-iris-biometrics-at-malaysia-border-checkpoint>

- Law enforcement are part of international agreements in preventing crime. One of these agreements is the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters, 2004. <http://aseanmlatsec.agc.gov.my/>

Score - 2.6 - Some safeguards but weakened protections

Leadership

- As mentioned, Malaysia is the founder of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. This treaty is aimed to encourage law enforcement relations between different countries. Some of the policies include handing over evidence and informing LE of a person's location. This treaty is sensitive to domestic laws. <http://agreement.asean.org/media/download/20160901074559.pdf>
- Since the introduction of the Personal Data Protection Act, Malaysia's data protection has increased. But as mentioned above, since 2010 there have been advancements in technology which means some of the aspects of the law are lacking.

<https://vulcanpost.com/654447/malaysia-employer-control-employee-social-media/>

Score - 2.8 - Some safeguards but weakened protections

Democratic Safeguards

- As can be seen in this article, freedom of expression is outlined in section 10 of the constitution. However, there are restrictions, e.g. regarding such things as hate speech. <https://www.nst.com.my/opinion/columnists/2019/01/446413/freedom-speech-do-not-cross-line>
- Malaysia's journalistic freedom is increasing thanks to a change in politics. Journalists who were previously banned are now allowed to publish again. However, there are still archaic laws restricting publishers' rights. <https://rsf.org/en/malaysia>

Score - 2.3 - Systemic failure to uphold safeguards.