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## GDPR: One Year On

When the General Data Protection Regulation (**GDPR**) was enforced in May 2018, one of the biggest concerns was its extraterritorial scope, as the GDPR applies even to controllers/users and processors located outside of the European Union (**EU**). In this regard, Malaysian controllers/users and processors may also be impacted by the GDPR.

Within a year after the coming into effect of the GDPR, data protection authorities in the EU have imposed fines on EU entities for contravention of various provisions of the GDPR. The highest fine so far has been that imposed by France's privacy watchdog on Google, for €50 million. Fines were also imposed by data protection authorities in Poland and Hungary on EU entities in the respective countries.

Further, we have also seen the first case of the GDPR being enforced on a non-EU entity. In July 2018, the UK's Information Commissioner's Office issued an enforcement notice against AggregatIQ (**AIQ**), a Canadian analytics firm, for processing personal data *"in a way that the data subjects were not aware of, for a purpose that they would not have expected, and without a lawful basis for that processing"*. It was understood that the personal data was used by AIQ to target individuals in the UK with political advertising messages during the Brexit referendum campaign.

To recap, in our earlier update, [Clarifying the Territorial Scope of the GDPR](#), we highlighted that the two criteria for which the applicability of the GDPR to non-EU controller/user and processor can be determined are:

1. The establishment criterion: Where the non-EU controller/user or processor established outside of the EU exercises *"a real and effective activity"* through *"stable arrangements"* in the EU, the processing of personal data that is carried out by the non-EU controller/user or processor *"in the context of the activities of"* such establishment may render the GDPR applicable to them.
2. The targeting criterion: In the absence of an establishment in the EU, a non-EU controller/user or processor established outside of the EU may still be subject to the GDPR if its data processing activities relate to:

- (a) the offering of goods and services directed at data subjects in the EU; and
- (b) the monitoring of data subjects' behaviour takes place in the EU.

It should be emphasised that the fines imposed for infringing the GDPR can be up to €20 million, or four percent of annual global group turnover. Due to the hefty fines that can be imposed, companies that have businesses in the EU, or specifically, those that undertake activities as described in the preceding paragraph, should take immediate measures to comply with the GDPR.

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