



## DIGITAL PERSONAL DATA PROTECTION ACT, 2023 | BEGINNING OF A NEW ERA FOR INDIA

The Digital Personal Data Protection Act, 2023 (**Act**) is India's first comprehensive national legislation on data protection. The bill pertaining to the Act was passed by both houses of the Indian Parliament and following receipt of Presidential assent, the Act was published in the Official Gazette on 11 August 2023. The Act will come into force as per the dates to be notified for enforcement. The Indian Government may notify different dates for the enforcement of different provisions of the Act. Below are certain key highlights of the Act:

- **Legislative scope and extraterritorial applicability:** The Act will apply to personal data collected from data principals (i.e., individuals to whom the personal data relates to) within India if collected: (i) in digital form; and (ii) in non-digital form and digitized subsequently. Further, the Act has an extraterritorial applicability and will extend to processing of digital personal data outside India, if such processing is in connection with an activity related to offering of goods or services to data principals within India. However, the Act excludes 'profiling' of data principals within India from its extra-territorial scope.
- **Grounds for processing of personal data:** Personal data can only be processed on the basis of consent of data principals or for certain legitimate uses such as where personal data is provided voluntarily (provided such use is limited to the specified purpose), for certain employment purposes, etc.
- **Consent:** The consent given by data principals is required to be free, specific, informed, unconditional and unambiguous with a clear affirmative action. The consent is required to be limited to the personal data as is necessary for such specified purpose. Data principals will be required to be given the option to access the consent request in English or in the local Indian languages specified in the Eighth Schedule to the Indian Constitution.
- **Notice** Consent requests are required to be accompanied or preceded by a notice containing details of the nature and purposes of collection of personal data, manner of exercising data principal rights of withdrawal of consent and right of grievance redressal and manner of complaining to the Data Protection Board of India (**Board**). The privacy notice is also required to be made available in English or in the local Indian languages specified in the Eighth Schedule to the Indian Constitution, as per the option of the data principals.
- **Cross-border transfer of personal data:** The Act provides that the Indian Government may restrict the transfer of personal data by data fiduciaries (i.e., entities collecting and determining the purpose and means of processing personal data) for processing to such

country or territory outside India as may be notified. However, any law that provides for a higher degree of protection for or restriction on transfer of personal data by an entity will take precedence.

- **Obligations of data fiduciaries:** Data fiduciaries have been largely made responsible for overall compliance with the Act, including for activities of data processors engaged by them. No specific compliance obligations have been imposed on data processors. Notably, data fiduciaries can engage data processors only under a valid contract. Data fiduciaries are also required to implement appropriate technical and organisational measures, ensure an effective mechanism for grievance redressal, etc.
- **Additional obligations for significant data fiduciaries:** Data fiduciaries may be classified as 'Significant Data Fiduciaries' by the Indian Government based on identified factors, such as volume and sensitivity of personal data processed, risk to the rights of data principals, etc. Such Significant Data Fiduciaries are required to comply with additional obligations such as appointment of a data protection officer residing in India, appointment of an independent data auditor, undertaking of data protection impact assessments and such other measures as may be prescribed.
- **Additional obligations in relation to processing of data of children or persons with disability:** The Act mandates data fiduciaries to obtain 'verifiable consent' from parents / lawful guardians before processing personal data of children (i.e., any individual below 18 years of age) or person with disability who has a legal guardian. Data fiduciaries are not permitted to process personal data which is likely to cause any detrimental effect on the well-being of a child. Further, the Act casts a duty on data fiduciaries to not undertake behavioural tracking of children/ targeted advertising towards children. Additionally, the age of children may be lowered for only those processing activities of a data fiduciary, which are deemed verifiably safe by the Indian Government.
- **Reporting of personal data breaches:** The Act indicates that in case of a personal data breach, data fiduciaries will be required to report the same to the Board and each affected individual in such manner as may be prescribed. Currently, no specific criterion or threshold has been set out for notifying personal data breaches.
- **Exemptions:** Certain exemptions have been provided under the Act, wherein compliance with data fiduciary obligations (except for protection of personal data from breach and compliance with legal obligations regarding data processing activities), rights of data principals and provisions for cross-border data transfer may be exempted in circumstances such as for implementation of scheme of compromise or arrangement or merger or amalgamation (approved by court or tribunal), for the purpose of ascertaining the financial information, assets and liabilities of any person who has defaulted in payment of loans/advances, etc. In addition, the Indian Government (by notification within 5 years) may exempt certain categories of data fiduciaries such as startups from certain obligations.
- **Enhanced financial penalties:** To enable effective deterrence, the Act prescribes strikingly high penalties, such as INR 250 crores (approximately, USD 30 million) for failure to take reasonable security safeguards to prevent personal data breach, INR 200 crores (approximately, USD 25 million) for breach in complying with obligations relating to processing of children's personal data and / or failure to report personal data breaches to the Board and affected individuals, etc.
- **Oversight and enforcement:** The Indian Government will establish the Board, which will be responsible for determining non-compliances under the Act and for imposing penalties. Any person aggrieved by any order or direction of the Board may prefer an appeal before the Telecom Disputes Settlement and Appellate Tribunal within a period of 60 days from the receipt of such order/direction.

## COMMENTS

The Act is largely a principle-based legislation. Clarity regarding granular compliances and further nuances of the Act are expected to be set out by way of issuance of rules under the Act. For the business fraternity, provisions for cross-border transfer of data with introduction of a negative list, manner of obtaining consent from parents / lawful guardians, form and manner for reporting personal data breaches, exemption for certain categories of data fiduciaries including start-ups from compliances, etc, are significant to note.

## AWARDS & RECOGNITION

### LEGAL500 Tier 1: Data Protection



**Leading individuals:**

Supratim Chakraborty,  
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**Recommended Lawyers:**

Abhinav Chandan; Shobhit  
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### ALB: Data Protection Law Firm of the Year

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**Data Privacy &  
Protection**

Supratim Chakraborty

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