



UNLOCK INSIGHTS: INDIA'S DATA PROTECTION LAW DEMYSTIFIED

ABOUT THE ACT:

The Digital Personal Data Protection Act 2023 (hereinafter referred to as “the Act”), having traversed the legislative journey through both the houses of the Indian Parliament, has received the President's assent and is now a law. The government will notify the dates of enforcing different provisions via separate gazette notifications. This legislation marks a significant stride in safeguarding the privacy and security of digital personal data, taking a step towards aligning itself with the spirit of the global data protection framework.

Over the years, this legislation, often referred to as the ‘Indian GDPR equivalent,’ has undergone meticulous deliberations and iterations, culminating in a comprehensive framework that seeks to govern the processing of personal data in digital form. To assist you in comprehending the intricacies of the Act and its implications for businesses, we will deep-dive into its core facets:

SCOPE AND PURPOSE OF THE ACT:

- It regulates the use and processing of Personal Data:
 - i. which is collected in digital form or in non-digital form and is subsequently, digitised
 - ii. within India, or outside India, if such processing is in connection with any activity related to offering goods or services to Data Principals within India
- It mandates the use of Personal Data:
 - i. only for a lawful purpose consented to; or,
 - ii. certain legitimate uses which fall within the ambit of lawful purpose.

KEY CONCEPTS UNDERPINNING THE ACT:

This legislative framework hinges on defining crucial terms -

- Personal Data – information identifying an individual
- Data Principal – individual to whom Personal Data pertains, encompassing parents or lawful guardian of child(ren) and specially-abled person(s)
- Data Fiduciary – person determining Personal Data processing purposes
- Data Processor – person processing Personal Data on behalf of the Data Fiduciary, appointed through contract

EMPHASIS ON CONSENT:

- Consent stands as a cornerstone of the Act, mandating transparent communication between Data Principals and Fiduciaries



REQUEST FOR CONSENT:

Data Fiduciary requests the Data Principal for consent which shall be sought via a notice, detailing:

- i. the Personal Data and the purpose for which the same is proposed to be processed;
- ii. the manner in which the Data Principal may exercise their rights; and
- iii. the manner in which the Data Principal may raise grievances and submit a complaint to the Board.

If a Data Principal had previously consented to their data being processed before the Act came into effect, the Data Fiduciary must provide them with the required notice as soon as practicable. Such processing may continue until the Data Principal chooses to withdraw their consent.

WITHDRAWAL OF CONSENT:

- The Data Principal retains the right to withdraw consent at any time, with the ease of this action being on par with the process of granting consent
- In the event of a Data Principal withdrawing consent for the processing of Personal Data, it is imperative that the Data Fiduciary promptly discontinues and ensures its Data Processors cease processing the said Personal Data within a reasonable time unless such processing without consent is mandated or sanctioned under the provisions of the Act or any other pertinent Indian law
- Consent may be given, reviewed, managed, or withdrawn through a Consent Manager i.e., a person registered with the Board, and a single point of contact to enable a Data Principal to give, manage, review, and withdraw their consent through an accessible, transparent, and interoperable platform

PURPOSE OF DATA PROCESSING:

- Aligns with a specified purpose, upheld unless consent withdrawn
- For the State and its instrumentalities to offer subsidies, benefits, services, certificates, licenses, or permits with prior consent, lawfully
- For performance by the State or any of its instrumentalities of any function under the law or in the interest of sovereignty or security of the State
- For fulfilling disclosure requirements under the law to the State or any of its instrumentalities
- For compliance with any judgment, decree, or order issued pursuant to Indian law or relating to claims of contractual or civil nature under the foreign law
- For responding to a medical emergency involving life or health threats of the Data Principal or any other individual
- For taking measures to provide medical treatment or health services to any individual during an epidemic, outbreak of disease, or any other threat to public health

- For taking measures to ensure the safety of, or provide assistance or services to, any individual during any disaster, or any breakdown of public order
- For the purposes of employment or those related to safeguarding the employer from loss or liability, such as prevention of corporate espionage, maintenance of confidentiality of trade secrets, intellectual property, classified information or provision of any service or benefit sought by a Data Principal, who is an employee

DUTIES OF THE DATA FIDUCIARY INCLUDE:

- Safeguarding Personal Data under its possession or control, including data processed by a Data Processor, by implementing reasonable security measures to avert breaches
- Promptly notifying the Board of any Personal Data Breach, adhering to the prescribed format and procedure
- Unless data retention is mandated by law, the Data Fiduciary must
 - i. erase Personal Data upon Data Principal's withdrawal of consent for processing, or when the purpose of processing is no longer served
 - ii. ensure its Data Processor performs the same erasures
- Disclosing the details of the Data Protection Officer, who is equipped to address inquiries from the Data Principal regarding the processing of their Personal Data
- Instituting an effective mechanism to address the Data Principal's grievances, enabling the rectification, completion, or updating of Personal Data of the Data Principal
- Processing Personal Data of Minors or Persons with Disabilities:
 - i. Obtaining verifiable consent is mandatory from the parent or lawful guardian of the minor or person with disability
 - ii. Personal data that could adversely affect a minor's well-being must not undergo processing

- Data Fiduciaries are prohibited from engaging in tracking, behavioural monitoring of minors, or directing advertisements towards them

RIGHTS OF DATA PRINCIPALS:

- The right to request from the Data Fiduciary -
 - i. a summary of their personal data under processing activities;
 - ii. the identities of other Data Fiduciaries and Data Processors with whom their personal data has been shared, along with descriptions of the shared data; and
 - iii. any additional information pertinent to their related to the personal data and its processing
- The right to rectify, complete, update, and erase personal data, which they have granted prior consent
- The right to nominate a representative to exercise their rights in cases of incapacitation or demise
- The right to seek redressal of grievances arising from any breaches or oversights committed by Data Fiduciaries or Consent Managers in accordance with the Act





RESPONSIBILITIES OF DATA PRINCIPALS:

- To ensure compliance with the provisions of pertinent laws while exercising rights under the Act;
- To ensure not to impersonate another individual when providing Personal Data for a designated purpose;
- To ensure not to suppress any relevant material while submitting Personal Data for documents, unique identifiers, proofs of identity, or proofs of address issued by the State or any of its instrumentalities;
- To ensure not to lodge false or frivolous grievances or complaints with a Data Fiduciary or the Board;
- To furnish information that is verifiably authentic when exercising the right to correction or erasure of Personal Data

CROSS-BORDER TRANSFER OF DATA:

- The Act grants the Central Government the authority to restrict transfer data transfers to specific countries through notifications
- Any Indian law mandating a higher degree of protection for Personal Data outside India will continue to be binding

SIGNIFICANT DATA FIDUCIARY (SDF):

The designation of an SDF will be communicated by the Government based on parameters encompassing the volume and sensitivity of processed Personal Data, the potential risk to Data Principal rights, implications for India's sovereignty and integrity, considerations for electoral democracy, the security of the State, and preservation of public order.

DUTIES OF THE SDF:

- Appoint a Data Protection Officer who -
 - i. represents the Significant Data Fiduciary under the Act;
 - ii. is based in India;
 - iii. holds a position of responsibility towards the SDF's Board of Directors or a similar governing body; and
 - iv. serves as the designated point of contact for the grievance redressal mechanism under the Act.
- Engage in an independent data auditor to conduct comprehensive audits, evaluating the SDF's adherence to the Act
- Undertake periodic Data Protection Impact Assessments, conduct periodic audits, and implement other prescribed measures to ensure compliance with the Act

EXCEPTIONS:

- Processing of personal data necessary for the enforcement of legal rights or claims;
- Processing of personal data by courts, tribunals, or regulatory bodies in India with judicial or quasi-judicial functions
- Processing of personal data for prevention, detection, investigation, or prosecution of offences under Indian law;
- Processing of personal data of Data Principals outside India pursuant to contracts with any person outside India by any person based in India;
- Processing necessary for an approved scheme of compromise, arrangement, merger, an amalgamation of two or more companies, or reconstruction of a company, or transfer of undertaking among companies, or division of companies, by a court or tribunal or other authorities;

- Processing to ascertain financial information such as assets and liabilities of any person who has defaulted in payment due on account of a loan or advance from a financial institution, in accordance with law;
- Personal data processed by individuals for personal or domestic purposes; and
- Personal data made publicly available by:
 - a. the Data Principal to whom such personal data relates; or
 - b. any obligated parties under the Indian law

ENFORCEMENT PROVISIONS UNDER THE ACT:

- Establishment of the Data Protection Board vested with the authority to investigate data breaches and issue orders for mitigation or remedial measures
- A Board decision can be contested within 60 days before the Appellate Tribunal
- Encourages mediation as a dispute resolution mechanism
- Recognises the option for an individual to resolve a complaint by submitting a voluntary undertaking outlining corrective actions, as determined by the Board

- A breach of a voluntary undertaking constitutes a breach of the Act
- Stipulates penalties for breaches, ranging from INR 10,000 to INR 250 crore

IMPLICATIONS FOR BUSINESSES:

The real significance lies in the details. While the Act establishes a comprehensive framework on what is permissible or not, the success of this endeavour hinges on the 'how.' The forthcoming rules and regulations must ensure simplicity and ease of implementation in compliance. Ultimately, businesses must orient their employees to align data collection, storage, and processing with the Act's stipulations.

From an organisational perspective, the following aspects are pivotal for the new law:

- Implementation of robust IT security infrastructure
- Establishment of processes and mechanisms for data procurement, storage, and consent
- Creation of a procedure for data destruction upon request
- Provision of facilities for monitoring and controlling data usage for specified purposes
- Deployment of risk mitigation and transfer mechanisms to address breaches



Notably, the Act elevates the penalties which shift may spur demand for cyber insurance and liability coverage, extending protection against potential liabilities.

As we anticipate the formulation of detailed rules, clarity on nuanced aspects of this new legal landscape will emerge. Until then, we urge businesses to proactively gear up for the forthcoming transformation.



WWW.PRUDENTBROKERS.COM

For any queries, please contact your SPOC at Prudent Insurance Brokers or write to us at specialtylines@prudentbrokers.com

PRUDENT INSURANCE BROKERS PVT. LTD.

Mumbai | Bengaluru | Gurugram | Pune | Chennai | Hyderabad | Ludhiana | Ahmedabad | GIFT City - Gujarat | Kolkata

CIN No.: U70100MH1982PTC027681 | License No. 291 (Validity: 18th February 2023 to 17th February 2026)

Insurance is a subject matter of solicitation

This report and any recommendations, analysis or advice provided herein, are based on our experience as insurance and reinsurance brokers or as consultants, as applicable, are not intended to be taken as advice or recommendations regarding any individual situation. The opinions expressed herein are valid only for the purpose stated herein and as of the date hereof. We are not responsible for the consequences of any unauthorized use of this report. We have used what we believe are reliable, up-to-date and comprehensive information and analysis, but all information is provided without warranty of any kind, express or implied, and we disclaim any responsibility for such information or analysis or to update the information or analysis in this report. We accept no liability for any loss arising from any action taken or refrained from, or any decision made, as a result of or reliance upon anything contained in this report or any reports or sources of information referred to herein, or for actual results or future events or any damages of any kind, including without limitation direct, indirect, consequential, exemplary, special, or other damages, even if advised of the possibility of such damages. Please know the associated risks and the applicable charges, from your policy document issued by the insurance company. For more details on benefits, exclusions, limitations, terms and conditions, please read sales brochure/policy wording carefully before concluding a sale. Commencement of risk cover under the Policy is subject to receipt of payable premium to desired Insurance Company only. Prudent Insurance Brokers Pvt. Ltd. is the registered Broker with IRDAI and does not underwrite the risk or act as an Insurer.