

Deloitte's Privacy and Data Protection (PDP) services

Key highlights of India's Personal Data Protection Bill (draft), 2018

Executive Summary:

Protection of personal data of data principal is at the core of draft Personal Data Protection Bill, 2018 (hereafter referred as "PDPB" or "bill"). This means once the bill is enacted and enforced, privacy will no longer be optional and cannot be ignored. Among many significant provisions, the PDPB proposes substantial penalty for violation of the stated requirements. Such provisions, along with heightened focus on collection and use of personal data, will require organizations (referred in the bill as Data fiduciary and Data processor) to revisit their risk acceptance criteria and establish a robust privacy and data protection framework.

Draft PDPB includes a provision to issue penalties on a two-tier system depending on the type of violation and the history of prior violations. Under one tier system, penalties for data fiduciary may extend up to ₹15 Cr (approx. USD 2.25M*) or 4 percent of its total worldwide turnover of the preceding financial year, whichever is higher. Under another tier-system, data fiduciary may be penalized up to ₹5 Cr (approx. USD 0.75M*) or 2 percent of its total worldwide turnover of the preceding financial year, whichever is higher.

In our view based on prior experience helping organisations with similar global regulations, penalties can potentially be reduced by demonstrating continued focus and efforts towards establishing a strong privacy and data protection framework. Deloitte Touche Tohmatsu India LLP (DTTILLP, Deloitte) offers a comprehensive range of Privacy and Data Protection (PDP) services to help organizations establish, implement, operate, and sustain a robust privacy and data protection program.

What is Personal Data Protection Bill, 2018?

The committee headed by (retd.) Justice B.N. Srikrishna drafted India's Personal Data Protection Bill, 2018. SriKrishna Committee report refers to the Puttaswamy judgement which defines the contours of the right to privacy for the data principal. The Committee reiterates that the data protection framework must ensure the right to autonomy and self-determination in respect of one's personal data while balancing the requirements of the legitimate concerns of the State.

¹ "Data principal" means the natural person to whom the personal data is referred**

² "Data fiduciary" means any person, including the State, a company, any juristic entity or any individual who alone or in conjunction with others determines the purpose and means of processing personal data**

³ "Data processor" means any person, including the State, a company, any juristic entity or any individual who processes personal data on behalf of a data fiduciary, but does not include an employee of the data fiduciary**

*Exchange rate for 1 USD = Rs. 69.00

**Sourced from Chapter I PRELIMINARY - Section 3 Definitions, of THE PERSONAL DATA PROTECTION BILL, 2018

Applicability of the bill

We understand that the proposed bill will be applicable to the following after it has been enacted:

- Organizations (public or private) incorporated under the Indian law engaged in collection, disclosure, sharing or processing of the personal data within the territory of India;
- Organizations not having an establishment within India, if such organizations process personal data in connection with any business carried out in India, or any systematic activity of offering goods or services to data principals within the territory of India, or in connection with any activity which involves profiling of data principals within the territory of India;

Exemption: Apart from exemptions pursuant to a law, the bill will not be applicable to processing of anonymized data.



Sample Requirements



Privacy by design and Data Protection Impact Assessment (DPIA)

- Protect personal data by default and protect privacy throughout data lifecycle
- Develop privacy protections into the core architecture of systems and business processes
- Conduct regular, proactive privacy impact assessments and review of security safeguards



Rights of data principals: The bill proposes four major rights for data principals:

- Right to confirmation and access
- Right to correction
- Right to data portability
- Right to be forgotten



Data Breach Notification requirement

The data fiduciary is responsible to notify the Data Protection Authority within the time period specified (to be decided by Data Protection Authority)

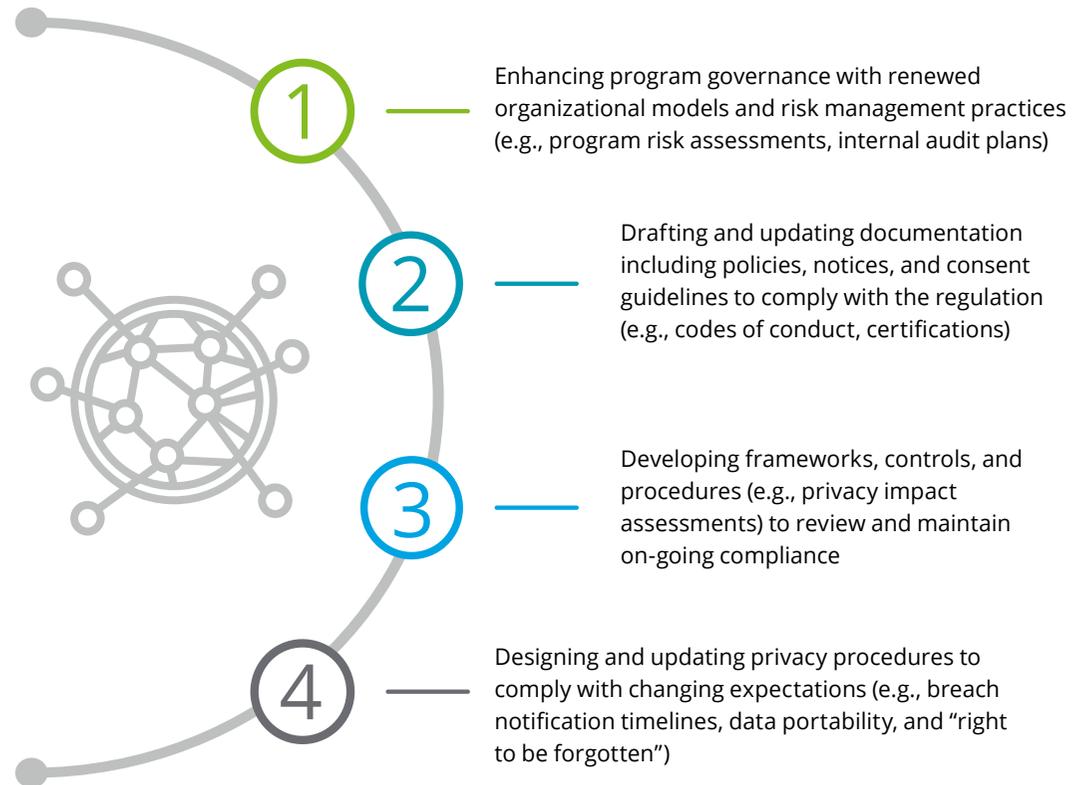


Document Processing

Maintain accurate and up-to-date records of personal information processing activities, safeguards and DPIAs, etc.

How Deloitte can help?

Deloitte is part of a global network of trained, certified, and experienced privacy and data protection professionals. Our practitioners are equipped to assess the impact of the privacy requirement on complex, multinational clients, and develop strategic, prioritized roadmaps tailored to each organization's unique environmental and organizational drivers. Sample projects may include:



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