

Synopsis of Pakistan's Personal Data Protection Bill, 2020



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Pakistan's Personal Data Protection Bill, 2020

The Ministry of Information Technology & Telecommunication (the IT Ministry), Government of Pakistan on April 09, 2020 has released a consultation draft of the proposed Personal Data Protection Bill, 2020 (the Bill). The Bill is aimed to provide for the processing, obtaining, holding, usage and disclosure of personal data while respecting the rights, freedoms and dignity of natural persons with special regard to their right to privacy, secrecy and personal identity.

The consultation stage affords opportunity to all concerned (or stakeholders) to come up with their suggestions for the consideration and adoption thereof by the IT Ministry. After the consultation stage, the Bill will pass through the due process (Law Division review, Cabinet approval, presenting/approval before the National Assembly and the Senate and promulgation by the President) to become the law.

The Bill in essence confers rights on the natural persons to protect and safeguard their interests while their personal

data is being processed by persons termed as “data controller” and “data processor” in the Bill.

The nucleus of the Bill rests upon the following core and essential concepts:

- Data Subject
- Personal Data
- Data Controller
- Data Processor
- Processing

The Bill has three interrelated spheres, as follows:

Obligations of the Data Controller/ Data Processor

Rights of the Data Subject

Functions and Powers of the Personal Data Protection Authority of Pakistan (the Authority)

When Personal Data can be processed?

The Bill requires that personal data of a data subject can only be processed for:

- A lawful purpose directly related to an activity of the data controller;
- The processing is necessary for or is directly related to that lawful purpose; and
- The personal data is adequate but not excessive in relation to that lawful purpose.

Rights of the Data Subject

- a. Access to personal data,
- b. Correction of personal data,
- c. Erasure of personal data,
- d. Withdrawal of consent,
- e. Prevent processing that is likely to cause damage or distress

The Bill do also recognize rights of the foreign data subjects as being same available under laws of respective foreign country but not inconsistent with the provisions of the bill.

Functions and Powers of the Personal Data Protection Authority of Pakistan (the Authority)

The Federal Government, within six months of coming into force of the Bill (when Bill becomes the law), is to establish the Authority. The Authority shall be responsible to protect the interest of the data subject and enforce protection of personal data, prevent misuse of personal data, promote awareness of data protection and shall entertain complaints.



Significant powers of the Authority include framing of rules/framework in connection with the following:

- Security Safeguards
- Personal Data Breach
- Data Protection Impact Assessment
- Data Audits
- Responsibilities of Data Protection Officer
- Grievance Redressal mechanism
- Registration & Licensing of the data controller/data processor
- Set up or accredit bodies to audit the security measures of the data controllers and data processors

Comparative Analysis: Pakistan and European Unions' General Data Protection Regulation

Requirement	Pakistan	European Union
Scope of application	Applies to natural persons who are in Pakistan, regardless of place of processing and regardless of nationality of the natural person [Section 1, 3(a) and 26]	Applies to natural persons who are in the European Union, regardless of place of processing and regardless of nationality of the natural person [Article 3]
Authority responsible for monitoring and application	Personal Data Protection Authority of Pakistan [Section 32]	Supervisory Authority for each member state [Article 51]
Registration requirements [for data controllers/data processors]	The Authority is to devise the compliance framework for data protection impact assessment [Section 34(2)(e) & (f)]	None
Data security requirements	Personal Data Protection Authority of Pakistan (the Authority) is to prescribe the standards [Section 8, 34, 48] in place to protect personal data from any loss, misuse, modification, unauthorized or accidental access or disclosure, alteration or destruction	The respective authorities are to draw up the codes of conduct. Associations and other bodies (representing categories or controllers or processors) may prepare codes of conduct subject to approval of the respective authorities [Article 24, 40]
Principles to process personal data	Lawfulness, purpose limitation, data adequacy, security requirements, data retention, integrity, consent [Sections 5, 8, 9 & 10]	Lawfulness, fairness, transparency, purpose limitation, data minimization, accuracy, storage limitation, integrity and confidentiality, consent [Article 5 & 6]]
Cross-border transfer of data	Personal data (other than critical personal data) can be transferred cross-border as per prescribed conditions and framework [Section 14, 15]	Personal data can be transferred cross-border as is prescribed at Chapter V [Article 44 to 50]
Rights of data subjects	Withdrawal of consent, information and access, correction, erasure, prevention of processing [Sections 23, 6, 10, 16, 19, 27, 25]	Withdrawal of consent, information and access to personal data, rectification and erasure, restriction of processing, data portability, objection, not to subject to a decision based solely on automated processing [Articles 7, 13, 14, 15, 16, 17, 18, 20, 21, 22]
Appointment of data protection officer	The Authority is to devise the compliance framework for responsibilities data protection officer [Section 34(2)(c)(viii)]	At specified instances, the controller and processor are required to designate a data protection officer [Article 37]

Data breach notification	Manner and time limit to report a personal data breach with the public authority [Section 13]. There is no definition of personal data breach	Manner and time limit to report a personal data breach with the public authority [Article 33]. Also, to notify the breach to the data subject [Article 34]. Personal data breach has been defined [Article 4(12)]
Fines/penalties	Ranging from upto Rs. 5,000,000 to upto Rs. 25,000,000. Corporate liability is not exceeding 1% of its annual gross revenue in Pakistan or Rs. 30,000,000, whichever is higher. In case of processing after withdrawal of consent fine not exceeding Rs. 5,000,000 or imprisonment not exceeding 1 year, or both [Section 41, 42, 43, 44, 23]	Upto EUR 20,000,000 or in the case of an undertaking upto 4% of its total worldwide annual turnover, whichever is higher [Article 83]

Data Protection Compliance Check List

What you need to know?

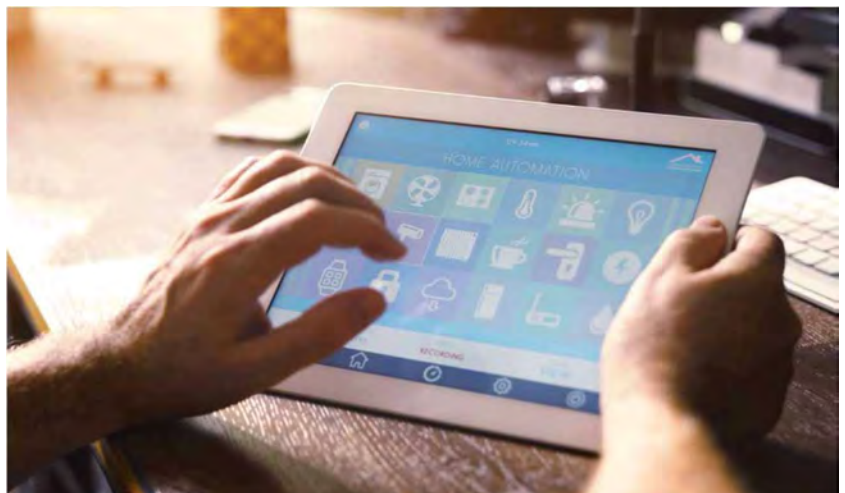
- Legal basis to process personal data
- Be aware of the rights of the data subject that you are obliged to provide
- Know and meet your registration/licensing requirements with Authority
- Know and meet your requirements with respect to appointment of Data Protection Officer
- Know and meet your obligations with respect to cross-border transfer of personal data
- Classification of personal data as to sensitive and critical.

What you need to do?

- Perform initial impact assessment and its periodic review
- Consent management (recording, managing & retrieval)
- Adequately deploy transparency while processing personal data
- Be ready to be accountable for your actions
- Put in place sufficient security/safeguard measures to protect the personal data
- Devise due mechanism for timely detection of data breaches and their reporting with the Authority

Global Perspective

Given the e-Commerce growth rate and cross-border e-Commerce, in particular, the governments across the globe are framing the laws and regulations for personal data protection. Making of law on this subject, in Pakistan, is not out of place for various reasons including the far most reason to become compatible with global best practices which enable our entrepreneurs to compete globally and to fetch sizeable share in global trade. Privacy is among the fundamental rights conferred on citizens of Pakistan under the Constitution, and the Bill will serve to provide the means to protect the privacy.



Our Services

Situational Analysis & Compliance Framework

- Initial Assessment
- Development of Compliance Framework
- Gap identification between Initial Assessment and Compliance Framework
- Advisory on filling the Gaps
- Implementation of Compliance Framework

Advisory & Representation before various Forums

- Application & Scope of Core Principles
- Compliance Management
- Documentation
- Representation before the Authority / Tribunal / Court

Awareness & Orientation

- Advocacy
- Capacity Building
- Specific Training Sessions

Health Check – Data Protection Processes, Policies & Compliance

- Health Check – Data Protection Processes, Policies & Compliance
- Risk Assessment
- Compliance Profiling

Please share your feedback on 'Draft Bill'

As stated, hereinabove, the Bill is released by the IT Ministry for consultation purposes. It is appropriate time to provide, the IT Ministry, positive and constructive feed-back catering the genuine concerns of the persons or class of persons directly or indirectly impacted by the Bill. Secondly, it's time to embrace change with full preparedness as with newest emerging technologies/fields like Artificial Intelligence, Machine Learning, Internet of Things, Cloud Computing etc. such privacy/data protection legislation has been implemented in a number of jurisdictions and is likely to be implemented in Pakistan soon.

FOR FEEDBACK, PLEASE CONTACT



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