

PERSONAL DATA PROTECTION BILL, 2018 | A SNAPSHOT

Applicability	Covers both governmental entities and private players. Does not apply to anonymised / non-personal data.
Extra-territorial applicability	Extends not only to processing of personal data by Indian entities but also to foreign entities, where personal data is processed for offering goods or services or for profiling individuals within India.
Exemptions	Certain exemptions such as processing for research, archiving or statistical purposes, domestic purposes, journalistic purposes, to small entities, etc., have been proposed.
Purpose Limitation	Processing of personal data has to be, *inter alia*, fair, reasonable and restricted to the purposes of processing.
Notice	Clear notice to be provided while collecting personal data, specifying purpose of processing, categories of personal data being collected, rights of individuals over their personal data, duration of retention, cross-border transfer of data, etc. The information needs to be provided such that it is easily comprehensible and in multiple languages, where necessary and practicable.
Individual rights	Individuals have been given wide rights pertaining to their personal data including, the right to access, correct, be forgotten and data portability.
Grounds for processing	Limited grounds for processing of personal data have been prescribed. Such grounds include taking consent from individuals, complying with law, in relation to employment, etc. Consent must be free, informed, specific, clear and capable of being withdrawn.
Wider definition of sensitive personal data	The definition of sensitive personal data has been broadened to include categories of personal data such as genetic data, official identifiers (such as Aadhaar number), transgender status, intersex status, caste or tribe, sexual orientation, sex life, religious or political belief or affiliation, etc.

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Personal data of children	Enhanced safeguards have been included for the processing of personal data and sensitive personal data of children (persons below 18 years of age).
Enhanced security principles	Principles such as privacy by design, transparency and adoption of cyber-security and technological safeguards have been incorporated to increase security of personal data and accountability.
Dedicated Data Protection Authority	The Data Protection Authority of India (Authority) to be constituted by the Central Government, will be responsible for implementation of the provisions of the Bill (when enacted) as well as imposing penalties thereunder.
Personal Data Breach Notification	Any breach of personal data which is likely to harm individuals is required to be notified to the Authority as soon as possible and not exceeding the time period which may be specified by the Authority. The Authority may also require a notification to be made to the individuals affected by such personal data breach.
Localisation of personal data / mirroring	At least one copy of personal data to be stored on a server or data center located in India. Personal data which may be deemed as critical by the Central Government will have to be mandatorily processed in a server or data center located in India.
Compliances	For certain categories of data fiduciaries (akin to controllers) additional compliances have been mandated, such as annual audits by an independent data auditor, appointment of data protection officer and conducting of data protection impact assessments in certain cases.
Conditions for cross-border transfer of personal data	Personal data other than critical personal data may be transferred outside India on the basis of standard contractual clauses or intra-group schemes approved by the Authority, to countries or to sectors within a country or to international organisations who have been approved by the Central Government, etc.
Heavy penalties and compensation	Heavy penalties, which may extend upto the higher of INR 15 crores or 4% of total worldwide turnover of the preceding financial year, have been prescribed for the contravention of certain obligations such as those pertaining to the processing or transfer of personal data, etc. Individuals have the right to compensation if they have suffered harm on account of any violation of any provision of the Bill (when enacted).

Please note that this snapshot only covers certain contents of the Bill and is not an in-depth analysis, which will follow separately. In the meantime, if you require any specific legal advice/assistance in this regard, please feel free to get in touch with our data privacy team (data.privacy@khaitanco.com) or alternatively you may reach out to your Khaitan & Co contact for the same.

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