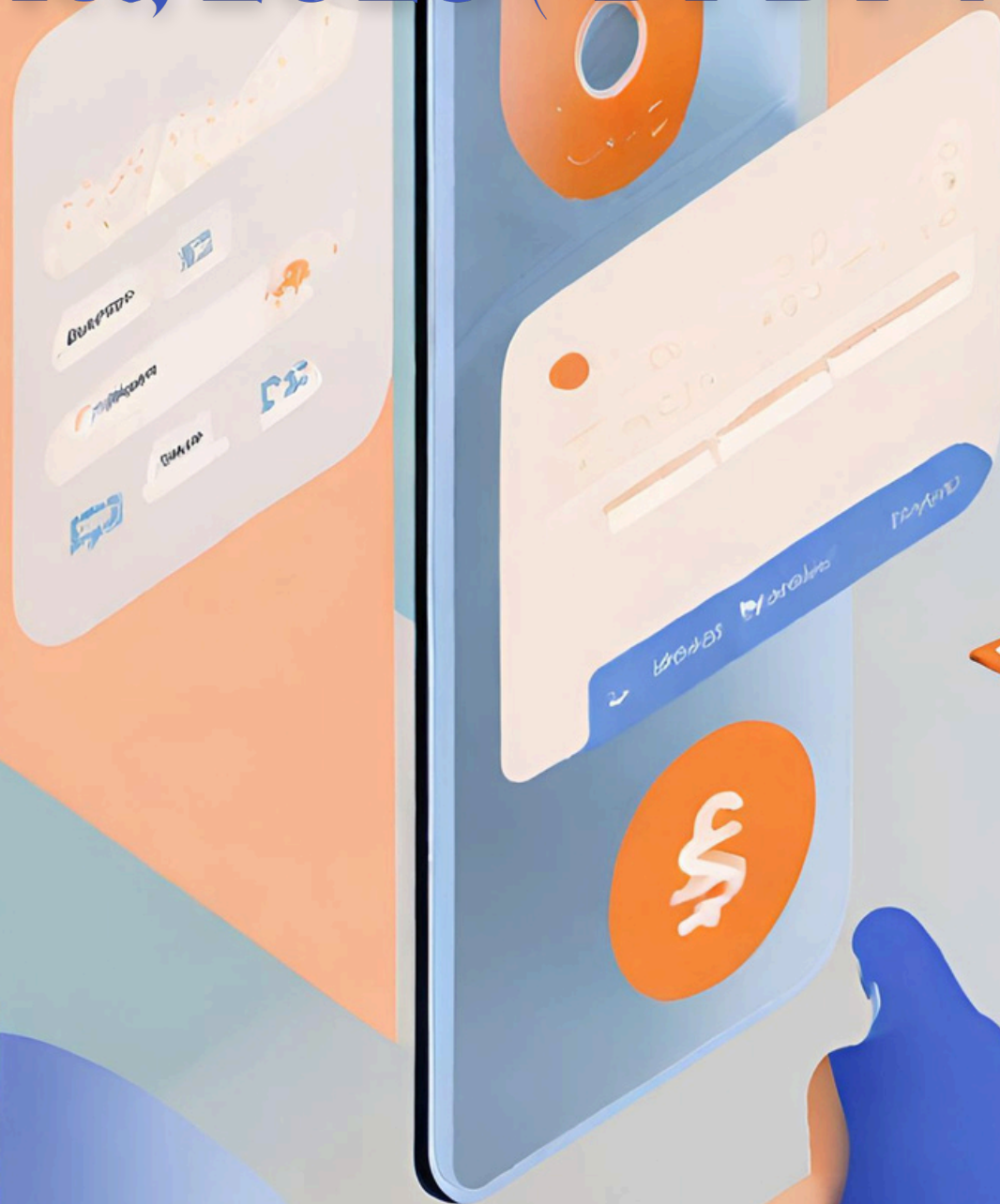


Fintech sector and Digital Personal Data Protection Act, 2023 (“DPDP Act”)



When it will be applicable?

The DPDP Act has received the Presidential assent and it will become applicable upon notification in official gazette by the Central Government. Different portions of DPDP Act may be enforced at different points of time.

WHAT ARE THE IMMEDIATE PLANS & ACTIONS?

The enactment for DPDP Act requires following immediate actions on part of data fiduciaries:

- Internal due diligence of data collection and data flow
- Evaluate the portions where direct consent from Data Principal is received
- Reviewing all privacy notices
- Review whether all data collected are required for purpose
- Formulate a plan to collect updated consent
- Re-design systems - Privacy First Model/ Privacy by Design Model
- Selection & training of Grievance Officers
- Mechanism for revocation of consent

What would be the Impact on Fintech?

- No carve out for regulated entities: DPDP Act does not yet provide a carve-out, except in case of loan repayment default for regulated financial sector participants including banks, primary co-operative banks, non-banking financial companies, fintech, credit information companies etc. As a result, the financial sector, which, per regulatory requirements is required to collect a lot of personal information (for KYC etc.), will have to act in compliance with the provisions of DPDP Act including consent and security mechanism requirements.
- Analysis of DPDP with sectoral regulators requirements: The DPDP Act provides that it should be read in addition to and not in derogation of any other law in India but in the event of any conflict between a provision of DPDP Act and a provision of any other law, the provision of DPDP Act will prevail to the extent of conflict or in most cases the more stringent obligations will prevail.

For example, DPDP Act will have to be read with Digital Lending Guidelines, SEBI's Framework to address the 'technical glitches' in Stock Brokers' Electronic Trading Systems, SEBI framework on Cyber Security and Cyber Resilience for stock exchanges, clearing corporations, and depositories, Digital Payment Security Controls issued by RBI etc to ensure regulatory compliances and DPDP Act will prevail in case of any conflict.

What would be the Impact on Fintech? Cont....

- Significant Data Fiduciary obligations: Banks and financial institutions may be designated as significant data fiduciaries based on the volume and sensitivity of personal data that is being processed, risks to consumers and its impact on the sovereignty, integrity and security of the nation. If so designated, they will then have to undertake additional compliances and obligations such as appointing a resident data protection officer, appointing an independent data auditor, data localization requirements, conducting periodic data protection impact assessments, and conducting periodic audits.
- Data transfer and Data retention: While the DPDP Act requires specific consent for transfer of personal information, certain business model such as that of Account Aggregators is based on automated transfer of information. The Account Aggregator also has a consent mechanism, the same will now need to be aligned with the DPDP Act too. Further, DPDP Act may also have certain data localization requirements, which will need to be complied with over and above the requirements similar to KYC Master Directions of 2016, which requires banks and other financial entities to maintain records of transactions with their customers within India.

General Impact?

- Employee and Vendor data: Employee data includes personal details including, ID numbers, health data, financial details, payroll, and health insurance collected for payroll processing, for checking the performance of the person, for hiring, workforce planning, performance management, training, and development, workplace safety, employee communications, compliance with laws, leave and time off management, emergency contact, security purposes, retirement planning, workplace diversity and inclusion, human resources management and taxation, etc. It is necessary to procure general consent from candidates during the hiring process and later data collection and processing clauses should be added to the employment contract. Further, specific consent should be sought from the employees for employee surveys, and marketing/ non-essential communications, when processing their sensitive personal data. Vendor consent will be required as any other data principal.
- Past data compliance: The DPDP Act does not have a retrospective application but in cases of data collected in the past, where consent for the processing of data has been obtained from the data principal before the enactment of the DPDP Act, the requirement for giving notice under DPDP Act must be fulfilled and consent is required to be sought again. Data fiduciaries are required to provide an itemized notice in accordance with the DPDP Act to the Data Principal and describe what personal data has been collected and the purpose of processing. The data collected before the notification of the DPDP Act will be subjected to the provisions of the DPDP Act from the date of commencement of the DPDP Act.
- Data Processor and Data Fiduciary agreements: Fiduciary and processor obligations under data processing agreements will include obligations implementing appropriate measures to protect the security of data, including encryption and pseudonymization of data if appropriate, ensuring data confidentiality, integrity, and resilience and process for regularly testing, assessing, and evaluating security.

How can we help?

We can assist the Fintech entities with the following:

- Conducting Gap Analysis with the current format of the organization
- Providing guidance on Sectoral Regulators (SEBI, RBI, etc) requirement vis-à-vis DPDP Act
- Advisory and assisting in implementation by organizations
- Providing documentation assistance in relation to Data Processor and Data Fiduciary agreements, consent mechanisms

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We are here to help you understand the scope of data protection laws and answer any questions you may have regarding the processing of personal data.

You can ask me any questions. e.g:

1. What are the rights of a data principal under the data protection laws?
2. How can I make a complaint to the Data Protection Board?
3. What are the obligations of a

Type your message...



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For Queries reach out to us:
Clients: Create query on LawKNIT platform

Non-Clients: write to us
arunabh@lawknit.co

The Digital Personal Data Protection Bill, 2023 was passed in Parliament and received presidential assent on August 12, 2023. The Digital Personal Data Protection Act, 2023 (“DPDP Act”) is applicable to the processing of all kinds of digital personal data within India irrespective of data being collected online or offline. It is also applicable to the processing of personal data outside India if it is for offering goods or services in India. The Act also grants certain rights to individuals which includes the right to seek correction and erasure, obtain information and grievance redressal mechanism. Some of the details of DPDP Act is as follows for further feel free to access our DPDP AI- KNIT KNOW-DP

