

October 26, 2023

To

Shri Ashwini Vaishnaw

Minister of Railways, Communication and Electronics and Information Technology

Ministry of Electronics and Information Technology

(Government of India)

Electronics Niketan, 6, CGO Complex,

Lodhi Road, New Delhi – 110003

Shri Rajeev Chandrasekhar

Minister of State in the Ministry of Electronics and Information Technology

Ministry of Electronics and Information Technology

(Government of India)

Electronics Niketan, 6, CGO Complex,

Lodhi Road, New Delhi – 110003

Subject: Asia Internet Coalition (AIC) Recommendations for an increased timeline for implementing certain provisions under the Digital Data Protection Act, 2023 and the rules and regulations thereunder

Respected Sirs,

The [Asia Internet Coalition](#) (“AIC”) is an industry association which promotes the understanding and resolution of internet policy issues in the Asia Pacific region. Comprising of leading technology and internet companies, AIC represents internet industry of the region and promote stakeholder dialogue between public and private sector, facilitating internet economy. We are committed to open and safe internet for all, by participating in various dialogues and policy advocacy on issues relating to technology and internet, including the data protection.

We sincerely appreciate the Ministry of Electronics and Information Technology (“MEITY”) for enacting the Digital Personal Data Protection Act, 2023 (“DPDP Act”). We acknowledge the core values of the DPDP Act, to protect individuals’ personal data online and increase the standards of data protection for the businesses. Towards achieving the same objectives enshrined in the DPDP Act, we have some recommendations for timelines for implementing provisions of the DPDP Act in the listed below:

1. We recommend a 12-month timeline for implementation for the following:

a. Obtaining notice and consent:

The DPDP Act introduces consent based processing in the Indian data protection framework. Under Section 5, every Data Fiduciary is required to provide notice at the time of or before collecting consent for processing of personal data, unless a particular purpose is falling within

the exemptions. Further, these notices are also to be provided in 22 Indian languages of the Eighth Schedule of the Indian Constitution.

Since implementing these provisions would require structural changes in organizations and businesses, they are likely to face significant amount of challenges during the course of such transition.

Businesses would be required to conduct time-intensive data mapping exercises across all the data sets of the Data Principals in order to comply with Section 5 notice requirements for existing data sets. Consent notices would be required to be stored in an accessible manner for Data Fiduciaries to modify or erase Data Principal's personal data. This would require significant software and hardware upgrade in the infrastructure of the country which is time and financial resource consuming.

b. Consent Managers:

Section 6(7), 6(8) and 6(9) of the DPDP Act introduce a novel concept of the Consent Managers. This is not a tested model under Indian law.

Consent Manager framework would have to be developed, tested and finally deployed in the ecosystem. It would also be required to integrate the Consent Manager framework with the Data Fiduciary's consent architecture. Hence, for the consent management ecosystem to function seamlessly, we recommend enforcing rules in a particular order: First, Consent Manager framework be deployed, next, Data Fiduciary consent mechanism. This will to a large extent ease the efforts of the businesses in integrating consent manager framework and consent mechanism of Data Fiduciaries in the ecosystem.

c. Data Principal's right to correction, completion, updating and erasure of her personal data:

The DPDP Act provides certain additional rights to the Data Principals such as the right to correct, delete, update and erase data under Section 12. Section 14 of the DPDP Act provides a right to nominate another individual in case of death or incapacity of the Data Principal.

Data Fiduciaries will be required to implement tools that allow Data Principals to enjoy their rights on a real time basis. Many businesses may not have the ability to build internal tools and may need to rely on third parties to develop such processes. Such activities are likely to take significant time.

d. Right to access information:

Section 11 provides Data Principals a right through which they can access information pertaining to their personal data. The language of the law suggests that Data Fiduciaries will need to provide this data on a real time basis. Therefore, this will require data mapping on a rolling basis for which Data Fiduciaries need to train personnel and implement technological tools.

e. Obligations of significant data fiduciaries:

There are concerns at two levels with respect to Section 10: (1) Factors on determining SDFs, and (2) Implementing a non-exhaustive list of compliances.

While we understand that upcoming rules would clarify some of the concerns, we request timeline for implementation be adjusted from the date of notification of rules since Data Fiduciaries would only be able to act on it after such notifications are released.

2. We recommend an 18-month timeline for implementation for the following:

a. Data Principal's right to withdraw consent:

The DPDP Act provides a right to withdraw consent to a Data Principal under section 6. A Data Fiduciary must cease processing data and erase Data Principal's data once a request for withdrawal of consent is received. It should also ensure that Data Processor also ceases the processing and erases the personal data of such a Data Principal.

Since this is a novel concept where a Data Fiduciary has to ensure erasure of Data Principal's personal data, Data Fiduciaries would not be possessing such technical requirements for implementing it. This exercise will be fairly new to domestic and international business entities alike, since compliance with data laws of other jurisdictions like GDPR do not have such provisions. Hence, businesses would require fundamental changes in the technology architecture of their platform.

b. Data Fiduciary's obligations with respect to data processors:

Before this provision can be enforced, the Data Fiduciaries and Data Processors would be required to re-negotiate the agreements for amending provisions concerning the obligations relating to personal data. We speculate these negotiations would take significant amount of time since this exercise will involve reviewing of existing agreements, negotiations, redrafting of agreements and finally enforcing of such agreements. If the Data Processor is a foreign party, then the agreement has to be in consonance with such foreign data regulations if applicable. This will be further aggravated if a Data Fiduciary has contracted with multiple Data Processors.

Once an agreement is reached to meet the standards prescribed in the DPDP Act and the rules thereunder, Data Processors and Data Fiduciaries will go under an extensive overhaul of hardware and software infrastructure to accommodate the compliance requirements.

In the end, we would like to point out concerns regarding implementation of all the above mentioned timelines. We request MEITY to coordinate harmonization of all the above timelines to provide seamless transition experience to Data Principals, Data Fiduciaries and Data Processors alike. This synchronization becomes even more significant when there are provisions for relaxed timelines for certain classes of Data Fiduciaries such as startups etc. For example, if a Data Processor startup claims extended timeline for implementation, it might not be in sync with its other Data Fiduciary clients (regular timelines) who are roped in with such startup. There would arise a situation where Data Fiduciary would be expected to follow the prescribed Rules while its Data Processor would be enjoying the relaxed timeline for enforcement. We request that unsynchronized implementation or duplication of

efforts be avoided while providing different timelines for different entities with necessary provisions for uninterrupted transition.

We extend our gratitude to the MEITY for providing this opportunity share our concerns and recommendations.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact us directly at Secretariat@aicasia.org or +65 8739 1490. Thank you for your time and consideration. Importantly, we would also be happy to offer our inputs and insights on industry best practices directly through stakeholder meetings and discussions.

Sincerely,



Jeff Paine
Managing Director
Asia Internet Coalition (AIC)