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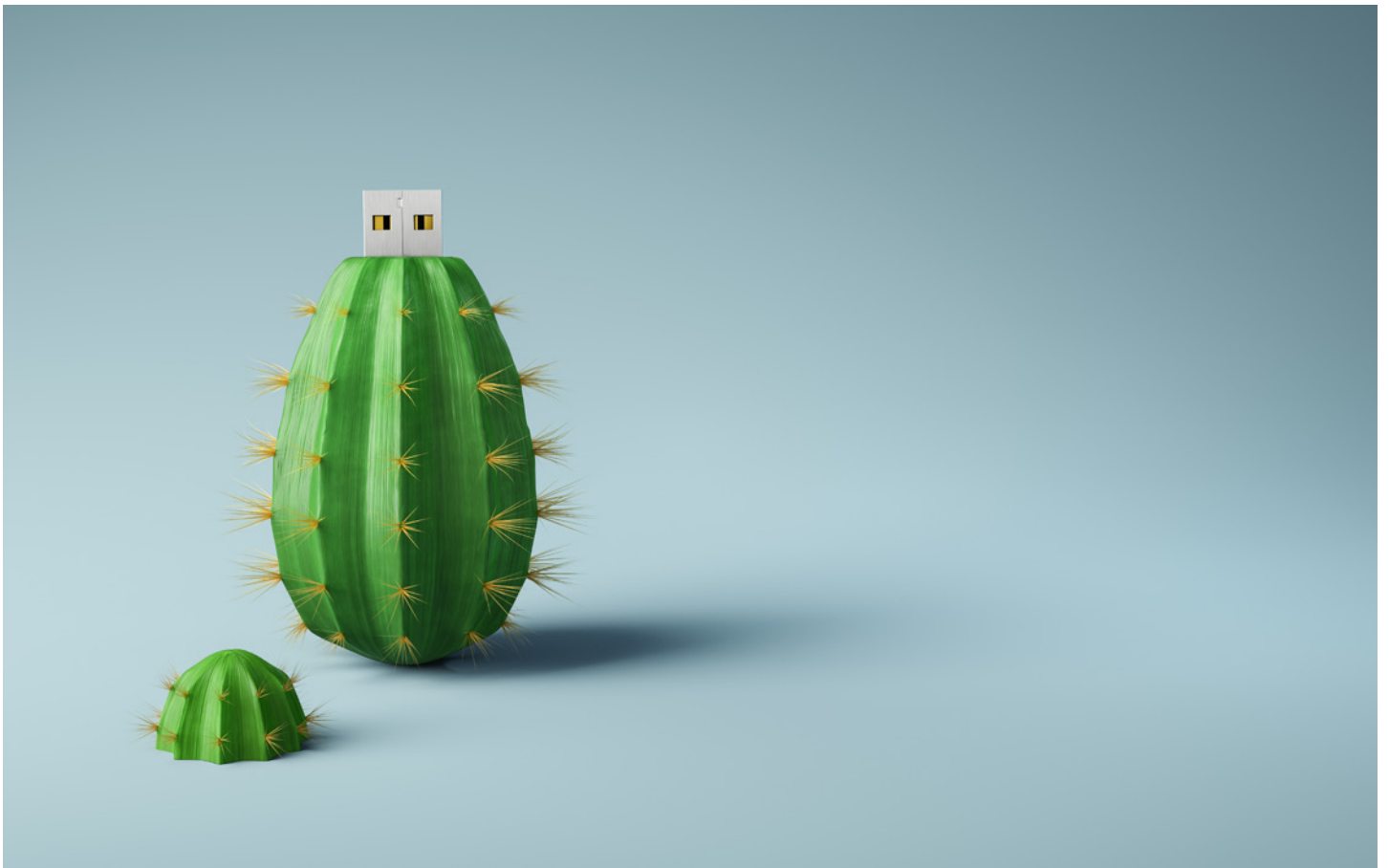
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# DATA PROTECTION & PRIVACY LAWS

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Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in data protection & privacy laws.

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# PAKISTAN

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Saifullah Khan is an international trade, IT and policy lawyer, with 20 years' experience in international trade policy and law advisory, serving a large client base in the domestic and international market. He is a well renowned anti-dumping lawyer due to his rich experience and expertise in the trade defence laws of the World Trade Organisation. He has been engaged in more than 85 percent of the anti-dumping investigations initiated by the Pakistani Antidumping Authority to date and has provided trade remedial consultancy services to the domestic industry in Pakistan as well as many foreign producers and exporters.



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Saeed Hasan Khan has vast experience of advising clients on various issues such as taxation, corporate, regulatory compliance and contractual obligations, and representing them before the authorities. He has practiced in direct and indirect taxes, which encompasses all three practice tiers: advisory, execution and litigation. He advises on cross-border transactions, international tax treaties and matters related to tax due diligence, corporate structures, shareholder agreements and contractual stipulations between companies. He has a keen professional interest in emerging laws about personal data protection and has gained a deep understanding of underlying concepts and principles governing global data protection laws.

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**Q. Based on your experience, do companies in Pakistan properly understand their data protection duties? To what extent are you seeing rising awareness?**

**A.** Pakistan is currently developing a law on personal data protection. A draft of the proposed law issued by the Ministry of Information Technology & Telecommunication (MoITT) has passed the consultation stage and will now be presented before the legislature. There is currently no law governing personal data protection in the country; as such, the only companies that properly understand their data protection duties are those that have been exposed to or are subject to any foreign laws governing data protection, such as multinational companies which have offices in Pakistan and which are subject to the European Union's (EU's) General Data Protection Regulation (GDPR), or Pakistani companies that deal with overseas stakeholders and so must comply with the personal data protection laws of other jurisdictions. Awareness of data protection duties is also not at a particularly advanced stage.

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**Q. When companies undertake data processing activities – including handling, storage and transfer – what regulatory, financial and reputational risks do they need to manage?**

**A.** The draft data protection bill provides intensive rights to data subjects, and at the same time confers powers to the Personal Data Protection Authority of Pakistan to hear the complaints of data subjects and to impose penalties. The draft bill also imposes certain obligations on companies, known as data controllers or data processors, with respect to taking measures to ensure the security of the personal data they are processing. Therefore, companies that process personal data might deliberately or inadvertently fail to meet their compliance obligations under the draft bill. Any such non-compliance would result in penalties which can put companies at regulatory, financial and reputational risk. For these reasons, companies need to put in place effective and efficient business processes to ensure compliance to minimise these risks. Also, companies need to have action plans to mitigate the level of risk.

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**Q. What penalties might arise for a company that breaches or violates data or privacy laws in Pakistan?**

**A.** The draft bill provides for a number of penalties. A data controller that does not cease to process personal data after a data subject has withdrawn consent could face a fine of up to PKR5m – approximately US\$31,500 – or imprisonment for a term not exceeding three years, or both. Anyone who processes, disseminates or discloses personal data in violation of the draft bill could face a fine of up to PKR15M, approximately US\$95,000, and in the case of subsequent unlawful processing, the fine may be raised up to PKR25m, around US\$158,000. With respect to sensitive data, the fine may be raised to PKR25m. Failure to adopt the necessary security measures required to ensure data security can result in a fine of up to PKR5m. Failure to comply with the orders of the Personal Data Protection Authority of Pakistan or the court will result in a fine of up to PKR2.5m, about US\$15,800.

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**Q. What insights can we draw from recent data breach cases? What impact have these events had on the data protection landscape?**

**A.** A constitutional petition has recently been presented before the Sindh High Court seeking an investigation into reports regarding a data breach of 115 million mobile phone users in Pakistan and the sale of that data on the ‘darknet’. As there is no specific law on this subject matter in Pakistan, the petitioner has resorted to public interest litigation to invoke the constitutional jurisdiction of the High Court. The proceedings are underway in the High Court; however, the Court has directed the MoITT to expedite the process regarding the draft bill. Although the MoITT is already processing the draft bill, directions from the High Court will further accelerate the process. The public interest litigation would also compel companies, most notably cellular services providers, to take extra precautionary measures to protect their subscribers’ data.

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**Q. In your experience, what steps should a company take to prepare for a potential data breach, such as developing response**



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### **plans and understanding notification requirements?**

**A.** While processing personal data, breaches cannot be ruled out. During the initial period of enforcement of the proposed law, companies would likely not be aware of a breach. To cope with this situation, companies would need to adopt a ‘prevention and detection’ mode. That is to say, utmost efforts would be required to avoid any potential breach, however, should a breach occur it must be detected as quickly as possible. Contingency and business continuity plans should be readily available so that any potential breach is remedied, and the Personal Data Protection Authority of Pakistan should be notified. The draft bill does not require companies to notify the data subjects of any breach.

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### **Q. What can companies do to manage internal risks and threats, such as rogue employees?**

**A.** A robust and continually improving training programme for employees, coupled with evaluation and monitoring systems, will enable companies to manage



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internal risks and threats. Companies may adopt workable ethical models to be followed at all levels. Drafting and implementing a code of conduct will also help in this regard. Guidance from in-house counsel would also be greatly beneficial. Rewarding employees for following the company's code of conduct and punishing wrongdoers is also a useful tool to manage internal risks and threats.

focus their attention on their particular data landscape, from the collection of personal data to its ultimate destruction. Many companies cannot afford to suffer a business interruption due to a data breach, so they must have a continuous self-monitoring and evaluation mechanism to prevent and detect any non-compliance. A monitoring mechanism helps companies to manage their risks and to enhance their controls over data protection. □

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**Q. Going forward, how important will it be for companies to remain focused on data protection efforts, continually enhancing their controls and risk management processes?**

**A.** The importance of personal data protection has grown significantly in recent years, as demonstrated by the proliferation of laws governing personal data protection in many parts of the world. Cross-border business has also given rise to personal data protection considerations. Today, overseas customers, vendors and other relevant stakeholders are cautious about the safety of their personal data when it is transferred outside their home country. Due to domestic and global compliance frameworks, companies must



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**S.U.KHAN ASSOCIATES CORPORATE & LEGAL CONSULTANTS** is a leading firm practising trade remedy law in Pakistan, with local and international clients. The firm's major service areas include international trade laws, data protection, ecommerce and IT laws, taxation, regulatory compliance, competition law, foreign investment advisory services, and international trade agreements advisory. The firm is a great contributor to the dissemination of professional knowledge in various journals as well as international institutions, such as the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Commission on International Trade Law (UNCITRAL).

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