

# DATA PROTECTION & PRIVACY

## Pakistan



# Data Protection & Privacy

Consulting editors

**Aaron P Simpson, Lisa J Sotto**

*Hunton Andrews Kurth LLP*

---

Quick reference guide enabling side-by-side comparison of local insights into the legislative framework; relevant authorities; treatment of breaches; legitimate processing; data handling responsibilities of PII owners; security obligations; internal controls, including the data protection officer; registration formalities transfer and disclosure of PII; rights of individuals; judicial supervision; specific data processing use cases such as cookies, electronic communications marketing, and cloud services; and recent trends.

---

Generated 17 July 2023

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2023 Law Business Research

## Table of contents

### LAW AND THE REGULATORY AUTHORITY

Legislative framework

Data protection authority

Cooperation with other data protection authorities

Breaches of data protection law

Judicial review of data protection authority orders

### SCOPE

Exempt sectors and institutions

Interception of communications and surveillance laws

Other laws

PI formats

Extraterritoriality

Covered uses of PI

### LEGITIMATE PROCESSING OF PI

Legitimate processing – grounds

Legitimate processing – types of PI

### DATA HANDLING RESPONSIBILITIES OF OWNERS OF PI

Transparency

Exemptions from transparency obligations

Data accuracy

Data minimisation

Data retention

Purpose limitation

Automated decision-making

### SECURITY

Security obligations

Notification of data breach

### INTERNAL CONTROLS

Accountability

Data protection officer

**Record-keeping**  
**Risk assessment**  
**Design of PI processing systems**

## **REGISTRATION AND NOTIFICATION**

**Registration**  
**Other transparency duties**

## **SHARING AND CROSS-BORDER TRANSFERS OF PI**

**Sharing of PI with processors and service providers**  
**Restrictions on third-party disclosure**  
**Cross-border transfer**  
**Further transfer**  
**Localisation**

## **RIGHTS OF INDIVIDUALS**

**Access**  
**Other rights**  
**Compensation**  
**Enforcement**

## **EXEMPTIONS, DEROGATIONS AND RESTRICTIONS**

**Further exemptions and restrictions**

## **SPECIFIC DATA PROCESSING**

**Cookies and similar technology**  
**Electronic communications marketing**  
**Targeted advertising**  
**Sensitive personal information**  
**Profiling**  
**Cloud services**

## **UPDATE AND TRENDS**

**Key developments of the past year**

## Contributors

### Pakistan



**Saifullah Khan**

saifullah.khan@sukhan.com.pk

*S.U.Khan Associates Corporate & Legal Consultants*



**Saeed Hasan Khan**

saeed.hasan@sukhan.com.pk

*S.U.Khan Associates Corporate & Legal Consultants*

## LAW AND THE REGULATORY AUTHORITY

### Legislative framework

Summarise the legislative framework for the protection of personal information (PI). Does your jurisdiction have a dedicated data protection law? Is the data protection law in your jurisdiction based on any international instruments or laws of other jurisdictions on privacy or data protection?

Pakistan is in the process of developing a dedicated law on personal data protection. The Ministry of Information Technology and Telecommunication has developed a draft of the law, the Personal Data Protection Bill 2021 (the draft Bill). The draft Bill has passed the consultation stage, and the Federal Cabinet has also approved it. The draft Bill will now be tabled before the legislature, the National Assembly and the Senate, for promulgating the law. PI is called 'personal data' in the draft Bill to mean any information that relates directly or indirectly to a data subject, who is identified or identifiable from that information or from that and other information in the possession of a data controller, including any sensitive personal data, provided that anonymised, encrypted or pseudonymised data that is incapable of identifying an individual is not personal data. The answers to the following questions are based upon the draft Bill. The draft Bill largely follows the General Data Protection Regulation of the European Union.

*Law stated - 09 May 2023*

### Data protection authority

Which authority is responsible for overseeing the data protection law? What is the extent of its investigative powers?

The federal government, under the draft Bill, is to establish a commission to be known as the National Commission for Personal Data Protection of Pakistan (the Commission). On promulgation of the law (the draft Bill becoming an Act), the federal government will establish the Commission.

The Commission shall be responsible for carrying out the purposes of the draft legislation. It shall be competent to decide complaints and pass any order and shall be deemed to be a civil court and have the same powers as vested in a civil court. The Commission shall be empowered to formulate a compliance framework concerning data audits. It may require a data controller or a data processor to provide such information to it as may reasonably be required for effectively discharging its functions.

*Law stated - 09 May 2023*

### Cooperation with other data protection authorities

Are there legal obligations on the data protection authority to cooperate with other data protection authorities, or is there a mechanism to resolve different approaches?

The draft Bill provides that the Commission may, subject to prior approval of the federal government, cooperate with any foreign authority or international organisation in the field of data protection, data security, data theft or unlawful data transfer. The cooperation is to be based on the terms and conditions of any programme or agreement for cooperation to which such foreign authority or international organisation is a party or pursuant to any other international agreement made after the commencement of the draft Bill.

*Law stated - 09 May 2023*

**Breaches of data protection law**

Can breaches of data protection law lead to administrative sanctions or orders, or criminal penalties? How would such breaches be handled?

The draft Bill provides for the following penalties concerning contravention of the provisions of the draft Bill:

Offence	Fine/imprisonment
A data controller not ceasing the processing of personal data after withdrawal of consent by the data subject	A fine of up to 5 million Pakistani rupees
Anyone who processes or causes to be processed, disseminates or discloses personal data in violation of the draft Bill	A fine of up to 15 million Pakistani rupees, and in the case of subsequent unlawful processing, the fine may be raised to 25 million Pakistani rupees. In the case of sensitive data, the fine may be raised to 25 million Pakistani rupees
Failure to adopt the security measures that are necessary to ensure data security	A fine of up to 5 million Pakistani rupees
Failure to comply with the orders of the Commission or the direction of the Commission	A fine of up to 2.5 million Pakistani rupees, or a fine of up to 250 million Pakistani rupees or suspension or termination of the registration and the imposition of additional conditions
Corporate liability on a legal person	A fine not exceeding 1 per cent of its annual gross revenue in Pakistan or 30 million Pakistani rupees, whichever is greater

The Commission will be empowered to formulate a compliance framework concerning personal data breach and grievance redressal mechanism. Once this compliance framework is formulated then it will be clear as to how to deal with such breaches.

*Law stated - 09 May 2023*

**Judicial review of data protection authority orders**

Can PI owners appeal to the courts against orders of the data protection authority?

Any decision of the Commission is appealable before the High Court or to any tribunal established by the federal government in the manner prescribed by the High Court.

*Law stated - 09 May 2023*

**SCOPE****Exempt sectors and institutions**

Does the data protection law cover all sectors and types of organisation or are some areas of activity outside its scope?

The Personal Data Protection Bill 2021 (the draft Bill) applies to all sectors and types of organisations. However, it provides an exemption to specific processing from a few specified requirements, as follows:

- the prevention or detection of crime or for investigations;
- the apprehension or prosecution of offenders;
- the assessment or collection of tax or duty or any other imposition of a similar nature;
- preparing statistics or carrying out research (provided that resulting statistics or results of the research are not made available in a form that identifies the data subject);
- the connection with any order or judgment of a court;
- the discharging of regulatory functions (if the application whereof would be likely to prejudice the proper discharge of those functions); and
- journalistic, literary or artistic (subject to certain conditions).

The above-stated are exempted from the following requirements:

- the general requirements (of lawful purpose, purpose limitation, data minimisation and consent);
- notice to the data subject;
- non-disclosure; and
- adherence to the security standards prescribed by the National Commission for Personal Data Protection of Pakistan (the Commission).

Also, the processing concerning the physical or mental health of data subject is exempted from the applicability of security standards prescribed by the Commission if application whereof would be likely to cause serious harm to the physical or mental health of the data subject or any other individual.

The draft Bill is not applicable to personal data processed by an individual only for the purposes of that individual's personal, family or household affairs, including recreational purposes.

*Law stated - 09 May 2023*

### **Interception of communications and surveillance laws**

Does the data protection law cover interception of communications, electronic marketing or monitoring and surveillance of individuals?

The draft Bill does not cover interception of communication and surveillance of individuals.

The Investigation for Fair Trial Act 2013 provides for investigation for collection of evidence through modern techniques and devices to prevent and effectively deal with certain specified offences.

The Monitoring and Reconciliation of Telephony Traffic Regulations 2010 deals with controlling grey traffic. These Regulations are applicable to licences issued by the Pakistan Telecommunication Authority for:

- long-distance and international;
- infrastructure or landing station;
- local loop (fixed and wireless); and
- cellular mobile.



As regards electronic marketing or monitoring, the draft Bill provides a right for the data subject not to be subjected to a decision solely based on automated processing, including profiling.

*Law stated - 09 May 2023*

## Other laws

Are there any further laws or regulations that provide specific data protection rules for related areas?

- Banking:
  - the Payment Systems and Electronic Fund Transfers Act 2007;
  - the State Bank of Pakistan (SBP) Regulations for Payment Card Security; and
  - the SBP Regulations for Security of Internet Banking; and
- telecommunications:
  - the Telecom Consumer Protection Regulations 2009;
  - the Regulations for Technical Implementation of Mobile Banking 2016; and
  - the Critical Telecom Data and Infrastructure Security Regulations 2020.

*Law stated - 09 May 2023*

## PI formats

What categories and types of PI are covered by the law?

The draft Bill covers personal data in an all-inclusive way (any information that relates directly or indirectly to a data subject, who is identified or identifiable from that information or from that and other information in the possession of a data controller, including any sensitive personal data, provided that anonymised, encrypted or pseudonymised data that is incapable of identifying an individual is not personal data). The draft Bill covers all processing of personal data whether or not by automated means.

*Law stated - 09 May 2023*

## Extraterritoriality

Is the reach of the law limited to PI owners and processors physically established or operating in your jurisdiction, or does the law have extraterritorial effect?

The draft Bill has extraterritorial applicability. It is applicable to a data controller or data processor who is digitally or non-digitally operational in Pakistan but is incorporated outside Pakistan and is involved in commercial or non-commercial activity in Pakistan. The draft Bill is also applicable to the processing of personal data by a data controller or data processor not established in Pakistan but in a place where the law of Pakistan applies owing to private and public international law.

*Law stated - 09 May 2023*

## Covered uses of PI

Is all processing or use of PI covered? Is a distinction made between those who control or own PI and those who provide PI processing services to owners? Do owners', controllers' and processors' duties differ?

The draft Bill applies to the processing of personal data either by a data controller or by a data processor.

'Data controller' means a natural or legal person or the government, who either alone or jointly has the authority to decide on the collection, obtaining, usage or disclosure of personal data.

'Data processor' means a natural or legal person or the government who alone or in conjunction with others processes data on behalf of the data controller.

The draft Bill places significant obligations on the data controllers and there are lesser obligations on the data processors as compared to data controllers. The data processors, however, are responsible for ensuring compliance with security standards prescribed by the Commission. The Commission is empowered to formulate a compliance framework for data processors. A complaint can also be filed against both the data controllers and data processors.

*Law stated - 09 May 2023*

## LEGITIMATE PROCESSING OF PI

### Legitimate processing – grounds

Does the law require that the processing of PI be legitimised on specific grounds, for example to meet the owner's legal obligations or if the individual has provided consent?

Section 5 of the Personal Data Protection Bill 2021 (the draft Bill) lays down the general requirements for personal data collection and processing. Personal data shall not be processed unless:

- the personal data is processed for a lawful purpose directly related to an activity of the data controller;
- the processing of the personal data is necessary for, or directly related to, that purpose; and
- the personal data is adequate but not excessive concerning that purpose.

A data controller, under the draft Bill, shall not process personal data unless the data subject has given his or her consent. However, consent is not required:

- for the performance of a contract to which the data subject is a party;
- for taking steps at the request of the data subject to enter into a contract;
- for compliance with any legal obligation to which the data controller is the subject, other than an obligation imposed by a contract;
- to protect the vital interests of the data subject;
- for the administration of justice pursuant to an order of the court of competent jurisdiction;
- for legitimate interests pursued by the data controller; or
- for the exercise of any functions conferred on any person by or under any law.

*Law stated - 09 May 2023*

## Legitimate processing – types of PI

Does the law impose more stringent rules for processing specific categories and types of PI?

Sensitive personal data may be processed based upon explicit consent of the data subject.

Sensitive personal data may also be processed on the basis of 'necessity'. The draft Bill provides that sensitive personal data can only be processed if the processing is necessary:

- to exercise or perform any right or obligation that is conferred or imposed by law on the data controller in connection with employment;
- to protect the vital interests of the data subject or another person, in a case where:
  - consent cannot be given by or on behalf of the data subject; or
  - the data controller cannot reasonably be expected to obtain the consent of the data subject;
- to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld;
- for medical purposes and is undertaken by:
  - a healthcare professional; or
  - a person who in the circumstances owes a duty of confidentiality that is equivalent to that which would arise if that person were a healthcare professional;
- for, or in connection with, any legal proceedings;
- to obtain legal advice while ensuring its integrity and secrecy;
- to establish, exercise or defend legal rights;
- for the administration of justice pursuant to orders of a court of competent jurisdiction; or
- for the exercise of any functions conferred on any person by or under any written law.

Sensitive personal data can also be processed if the information contained in the data has been made public as a result of steps deliberately taken by the data subject.

*Law stated - 09 May 2023*

## DATA HANDLING RESPONSIBILITIES OF OWNERS OF PI

### Transparency

Does the law require owners of PI to provide information to individuals about how they process PI? What must the notice contain and when must it be provided?

A data controller shall, by written notice, inform a data subject:

- that personal data of the data subject is being collected and a description of the personal data;
- on the legal basis for the processing of personal data;
- on the duration for which personal data is likely to be processed and retained thereafter;
- on the purpose for which the personal data is being collected or is to be collected and further processed;
- on the information of the source of the personal data (if available with the data controller);
- on the data subjects' right to request access and correction of personal data and how to contact the data controller concerning any inquiries or complaints;
- on the class of third parties to whom the data controller discloses or may disclose the personal data;

- on the choices and means the data controller offers to the data subject for limiting the processing of personal data;
- whether it is obligatory or voluntary for the data subject to supply personal data; and
- where it is obligatory to supply personal data, the consequences on the data subject for failure to do so.

Notice is required to be given:

- when the data subject is first asked by the data controller to provide his or her personal data;
- when the data controller first collects the personal data of data subject;
- before the data controller uses the data subject's personal data for a purpose other than the purpose for which it was collected;
- before the data controller discloses the personal data to a third party; and
- in the national and English languages, and the individual (data subject) must be provided with a clear and readily accessible means to exercise his or her choice.

*Law stated - 09 May 2023*

## Exemptions from transparency obligations

### When is notice not required?

Notice is not required to be given in the case the personal data is processed for:

- the prevention or detection of crime or for investigations;
- the apprehension or prosecution of offenders;
- the assessment or collection of tax or duty or any other imposition of a similar nature;
- preparing statistics or carrying out research (provided that resulting statistics or results of the research are not made available in a form which identifies the data subject);
- the connection with any order or judgment of a court;
- the discharging of regulatory functions (if the application whereof would be likely to prejudice the proper discharge of those functions); and
- journalistic, literary or artistic (subject to certain conditions).

*Law stated - 09 May 2023*

## Data accuracy

### Does the law impose standards in relation to the quality, currency and accuracy of PI?

The Personal Data Protection Bill 2021 (the draft Bill) requires that a data controller takes reasonable steps to ensure that personal data is accurate, complete, not misleading and kept up to date by having regard to the purpose (including any directly related purpose for which personal data was collected and further processed).

*Law stated - 09 May 2023*

## Data minimisation

## Does the law restrict the types or volume of PI that may be collected?

The draft Bill requires that processed personal data must be adequate and not excessive in relation to the lawful purpose for which it is collected.

*Law stated - 09 May 2023*

## Data retention

Does the law restrict the amount of PI that may be held or the length of time for which PI may be held?

The draft Bill requires that personal data processed for any purpose must not be kept longer than is necessary for the fulfilment of that purpose. The data controller is required to take all reasonable steps to ensure that all personal data is destroyed or permanently deleted if it is no longer required for the purpose for which it was to be processed.

*Law stated - 09 May 2023*

## Purpose limitation

Are there any restrictions on the purposes for which PI can be used by owners? If there are purpose limitations built into the law, how do they apply?

The draft Bill (while discussing the general requirements for collection and processing of personal data) requires that personal data shall not be processed unless the processing is necessary for, or is directly related to, a lawful purpose directly related to an activity of the data controller (purpose limitation principle).

The purpose limitation principle is envisaged in the draft Bill. Presence of a lawful purpose directly related to the activity of the data controller is one of the underlying general principles governing the processing of personal data. In the case of use of the personal data for any other purpose, the data controller must give fresh notice to the data subject.

*Law stated - 09 May 2023*

## Automated decision-making

Does the law restrict the use of PI for making automated decisions without human intervention that affect individuals, including profiling?

The draft Bill provides a right to the data subject not to be subjected to a decision solely based on automated processing, including profiling.

*Law stated - 09 May 2023*

## SECURITY

### Security obligations

## What security obligations are imposed on PI owners and service providers that process PI on their behalf?

The Personal Data Protection Bill 2021 requires that a data controller or a data processor take practical steps to protect the personal data while processing it and follow the security standards prescribed by the National Commission for Personal Data Protection of Pakistan (the Commission). The Commission, taking into consideration the national interest, shall prescribe the best international standards to protect personal data from any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction.

*Law stated - 09 May 2023*

### Notification of data breach

Does the law include (general or sector-specific) obligations to notify the supervisory authority or individuals of data breaches? If breach notification is not required by law, is it recommended by the supervisory authority?

In the event of a personal data breach, the data controller must:

- notify the Commission and the data subject in respect of the breach;
- notify without any delay and not beyond 72 hours; and
- give reasons for the delay in the case the notification is made beyond 72 hours.

An exception to the above is where the breach is unlikely to result in a risk to the rights and freedoms of the data subject.

Information to be provided in the personal data breach notification includes:

- the description and nature of the personal data, including (where possible) the categories and approximate number of concerned data subjects, and the categories and approximate number of concerned personal data records;
- the name and contact details of the data protection officer or another contact from where more information can be obtained;
- the likely consequences of the breach; and
- the measures adopted or proposed to be adopted by the data controller to address the breach.

*Law stated - 09 May 2023*

## INTERNAL CONTROLS

### Accountability

Are owners or processors of PI required to implement internal controls to ensure that they are responsible and accountable for the PI that they collect and use, and to demonstrate compliance with the law?

Data controllers and data processors must take practical measures to protect personal data in accordance with the

security standards prescribed by the National Commission for Personal Data Protection of Pakistan (the Commission).

*Law stated - 09 May 2023*

### **Data protection officer**

Is the appointment of a data protection officer mandatory? What are the data protection officer's legal responsibilities? Are there any criteria that a person must satisfy to act as a data protection officer?

There is no expressed requirement in the Personal Data Protection Bill 2021 (the draft Bill); however, while discussing the power of the Commission, the draft Bill confers upon it the power to formulate responsibilities of the data protection officer. Therefore, the Commission, when established, will devise the appointment requirements.

*Law stated - 09 May 2023*

### **Record-keeping**

Are owners or processors of PI required to maintain any internal records relating to the PI they hold?

The draft Bill requires that a data controller must keep and maintain a record of any application, notice, request or any other information relating to personal data that has been or is being processed. The Commission may determine the manner and form in which such record is to be kept.

*Law stated - 09 May 2023*

### **Risk assessment**

Are owners or processors of PI required to carry out a risk assessment in relation to certain uses of PI?

The draft Bill does not specifically provide for any risk assessment. However, while discussing the powers of the Commission, the draft Bill empowers the Commission to formulate a compliance framework concerning a data protection impact assessment. It follows that on establishment of the Commission, the Commission may frame rules as to when and to whom a data protection impact assessment applies.

*Law stated - 09 May 2023*

### **Design of PI processing systems**

Are there any obligations in relation to how PI processing systems must be designed?

The draft Bill has no provisions regarding the design of processing systems.

*Law stated - 09 May 2023*

## **REGISTRATION AND NOTIFICATION**

## Registration

Are PI owners or processors of PI required to register with the supervisory authority? Are there any exemptions? What are the formalities for registration and penalties for failure to do so?

There is no expressed requirement in the Personal Data Protection Bill 2021 (the draft Bill); however, while discussing the powers of the National Commission for Personal Data Protection of Pakistan (the Commission), the draft Bill confers upon it the power to devise a registration mechanism for data controllers and data processors. Therefore, the Commission, when established, will devise the registration requirements.

*Law stated - 09 May 2023*

## Other transparency duties

Are there any other public transparency duties?

There are no such duties under the draft Bill.

*Law stated - 09 May 2023*

## SHARING AND CROSS-BORDER TRANSFERS OF PI

### Sharing of PI with processors and service providers

How does the law regulate the sharing of PI with entities that provide outsourced processing services?

In such cases, the data controller must ensure that the data processor undertakes to adopt applicable technical and organisational security standards governing the processing of personal data as prescribed by the National Commission for Personal Data Protection of Pakistan (the Commission). In addition, the processor itself is responsible for ensuring compliance with the security standards prescribed by the Commission.

*Law stated - 09 May 2023*

### Restrictions on third-party disclosure

Are there any specific restrictions on the sharing of PI with recipients that are not processors or service providers?

The Personal Data Protection Bill 2021 (the draft Bill) requires that personal data, without the consent of the data subject, must not be disclosed for any purpose other than the purpose for which the same was to be disclosed at the time of collection. The personal data shall not be disclosed to any party other than a third party already notified to the data subject.

The draft Bill further provides that personal data may be disclosed for any purpose other than the purpose for which it was to be disclosed at the time of its collection in following circumstances:

- when the disclosure is necessary for the purpose of preventing or detecting a crime or for the purpose of investigation;
- when the disclosure is required or authorised by law or by order of a court;



- when the data collector acted in reasonable belief that he or she had in law the right to disclose;
- when data collector acted in reasonable belief that he would have had the consent if the data subject had known the circumstances of disclosure; or
- when disclosure was justified as being in the public interest in circumstances as determined by the Commission in advance of disclosure.

*Law stated - 09 May 2023*

## **Cross-border transfer**

Is the transfer of PI outside the jurisdiction restricted?

The draft Bill states that personal data may be transferred outside Pakistan in the following cases:

- there is equal protection for the data in the foreign jurisdiction;
- the transferor has the consent of the data subject; and
- it is transferred under a framework to be devised by the Commission.

The draft Bill further provides that:

- critical personal data is not be transferred outside Pakistan; and
- the Commission must devise a mechanism to keep some components of sensitive personal data in Pakistan (data localisation of sensitive personal data).

*Law stated - 09 May 2023*

## **Further transfer**

If transfers outside the jurisdiction are subject to restriction or authorisation, do these apply equally to transfers to service providers and onwards transfers?

The Commission is empowered to devise a framework under which personal data may be transferred outside Pakistan. Once the Commission is established, the framework related to the transfer of personal data outside Pakistan will be devised.

*Law stated - 09 May 2023*

## **Localisation**

Does the law require PI or a copy of PI to be retained in your jurisdiction, notwithstanding that it is transferred or accessed from outside the jurisdiction?

The draft Bill requires that some components of the sensitive data (that is transferred outside Pakistan) be kept locally in Pakistan (data localisation) based upon a mechanism to be devised by the Commission.

*Law stated - 09 May 2023*

## RIGHTS OF INDIVIDUALS

### Access

Do individuals have the right to access their personal information held by PI owners? Describe how this right can be exercised as well as any limitations to this right.

The Personal Data Protection Bill 2021 (the draft Bill) confers the right on the data subject to have access or a copy of his or her personal data held by the data controller. The data subject on payment of a prescribed fee makes a request in writing to the data controller. A data controller may refuse to comply with the request on the following grounds:

- the data controller is not supplied with such information as the data controller may reasonably require;
- the data controller cannot comply with the request without disclosing personal data relating to another individual who can be identified from that information;
- any other data controller controls the processing of personal data to which request relates in such a way as to prohibit the first-mentioned data controller from complying;
- providing access may constitute a violation of an order of a court;
- providing access may disclose confidential information relating to the business of the data controller; and
- access to personal data is regulated by another law.

*Law stated - 09 May 2023*

### Other rights

Do individuals have other substantive rights?

The draft Bill confers the following rights on the data subjects:

- the right to correct personal data;
- the right to withdrawal of consent;
- the right to prevent processing likely to cause damage or distress;
- the right to erasure;
- the right to data portability; and
- the right not to be subjected to a decision solely based on automated processing, including profiling.

*Law stated - 09 May 2023*

### Compensation

Are individuals entitled to monetary damages or compensation if they are affected by breaches of the law? Is actual damage required or is injury to feelings sufficient?

The draft Bill does not provide for any damages or compensation to data subjects.

*Law stated - 09 May 2023*

### Enforcement

Are these rights exercisable through the judicial system or enforced by the supervisory authority or both?

Data subjects' rights are to be enforced by the National Commission for Personal Data Protection of Pakistan (the Commission). Any decision or order of the Commission is appealable before the High Court or before a tribunal established by the federal government in the manner prescribed by the High Court.

*Law stated - 09 May 2023*

## EXEMPTIONS, DEROGATIONS AND RESTRICTIONS

### Further exemptions and restrictions

Does the law include any derogations, exclusions or limitations other than those already described?

The Personal Data Protection Bill 2021 (the draft Bill) applies to all sectors and types of organisations. However, it provides an exemption to specific processing from a few specified requirements, as follows:

- the prevention or detection of crime or for investigations;
- the apprehension or prosecution of offenders;
- the assessment or collection of tax or duty or any other imposition of a similar nature;
- preparing statistics or carrying out research (provided that resulting statistics or results of the research are not made available in a form that identifies the data subject);
- the connection with any order or judgment of a court;
- the discharging of regulatory functions (if the application whereof would be likely to prejudice the proper discharge of those functions); and
- journalistic, literary or artistic (subject to certain conditions).

The above-stated are exempted from the following requirements:

- the general requirements (of lawful purpose, purpose limitation, data minimisation and consent);
- notice to the data subject;
- non-disclosure; and
- adherence to the security standards prescribed by the Personal Data Protection Authority of Pakistan (the Commission).

Also, the processing concerning the physical or mental health of data subject is exempted from the applicability of security standards prescribed by the Commission if application whereof would be likely to cause serious harm to the physical or mental health of the data subject or any other individual.

The draft Bill is not applicable to personal data processed by an individual only for the purposes of that individual's personal, family or household affairs, including recreational purposes.

*Law stated - 09 May 2023*

## SPECIFIC DATA PROCESSING

### Cookies and similar technology

Are there any rules on the use of 'cookies' or equivalent technology?

The Personal Data Protection Bill 2021 (the draft Bill) does not have any rules regarding the use of cookies. However, the data subject is given a right to not to be subjected to a decision solely based on automated processing, including profiling.

*Law stated - 09 May 2023*

### Electronic communications marketing

Are there any rules on marketing by email, fax, telephone or other electronic channels?

The Pakistan Telecommunication Authority (PTA) issued the Protection from Spam, Unsolicited, Fraudulent and Obnoxious Communication Regulations 2009 (the Regulations). The Regulations apply to all telecoms operators licensed by the PTA to ensure and protect the interests of telecom consumers by preventing them from sending spam and fraudulent, unsolicited and obnoxious communication.

The Regulations require all operators to establish standard operating procedures to control spamming, fraudulent communication, unsolicited calls and obnoxious calls. The operators are also required to establish a Do Not Call Register in connection with controlling unsolicited calls. The operators are also required to ensure registration of telemarketers.

*Law stated - 09 May 2023*

### Targeted advertising

Are there any rules on targeted online advertising?

There are no rules in this regard. The draft Bill only provides a right for the data subject not to be subjected to a decision solely based on automated processing, including profiling.

*Law stated - 09 May 2023*

### Sensitive personal information

Are there any rules on the processing of 'sensitive' categories of personal information?

Sensitive personal data may be processed based upon explicit consent of the data subject.

Sensitive personal data may also be processed on the basis of 'necessity'. The draft Bill provides that sensitive personal data can only be processed if the processing is necessary:

- to exercise or perform any right or obligation that is conferred or imposed by law on the data controller in connection with employment;
- to protect the vital interests of the data subject or another person, in a case where:
  - consent cannot be given by or on behalf of the data subject; or
  - the data controller cannot reasonably be expected to obtain the consent of the data subject;

- to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld;
- for medical purposes and is undertaken by:
  - a healthcare professional; or
  - a person who in the circumstances owes a duty of confidentiality that is equivalent to that which would arise if that person were a healthcare professional;
- for, or in connection with, any legal proceedings;
- to obtain legal advice while ensuring its integrity and secrecy;
- to establish, exercise or defend legal rights;
- for the administration of justice pursuant to orders of a court of competent jurisdiction; or
- for the exercise of any functions conferred on any person by or under any written law.

Sensitive personal data can also be processed if the information contained in the data has been made public as a result of steps deliberately taken by the data subject.

*Law stated - 09 May 2023*

## Profiling

Are there any rules regarding individual profiling?

There are no rules in this regard. The draft Bill only provides a right to a data subject to not be subject to a decision solely based on automated processing, including profiling.

*Law stated - 09 May 2023*

## Cloud services

Are there any rules or regulator guidance on the use of cloud computing services?

The government's Digital Pakistan Policy sets the goals and directions for the Internet of Things, fintech, artificial intelligence and robotics, cloud computing and big data. However, there is no law or regulation at present. The Securities and Exchange Commission of Pakistan has issued the draft Cloud Adoption Guidelines for Incorporated Companies/Business Entities (the draft Guidelines). The draft Guidelines treat 'personally identifiable information' (PII) as sensitive official data. As per the draft Guidelines, the PII is any data that could potentially be used to identify a particular person. The draft Guidelines require that, in the case of PII, only the most secure cloud service providers should be relied upon. The draft Guidelines further require that business entities must encrypt PII and ensure that the key and encrypted PII is not stored on same cloud.

*Law stated - 09 May 2023*

## UPDATE AND TRENDS

### Key developments of the past year

Are there any emerging trends or hot topics in international data protection in your jurisdiction?

The Ministry of Information Technology and Telecommunication (government of Pakistan) set out plans in the National Cyber Security Policy 2021. One of the significant aspects of the policy is to create the Cyber Security Act and develop rules and regulations for the national cybersecurity framework. The Ministry is expected to commence the drafting of

the Cyber Security Act.

*Law stated - 09 May 2023*

## Jurisdictions

	<b>Australia</b>	Piper Alderman
	<b>Austria</b>	Knyrim Trieb Rechtsanwälte
	<b>Belgium</b>	Hunton Andrews Kurth LLP
	<b>Brazil</b>	Mattos Filho Veiga Filho Marrey Jr e Quiroga Advogados
	<b>Canada</b>	.
	<b>Chile</b>	Magliona Abogados
	<b>China</b>	Mayer Brown
	<b>France</b>	Aramis Law Firm
	<b>Germany</b>	Hoffmann Liebs Fritsch & Partner
	<b>Greece</b>	GKP Law Firm
	<b>Hong Kong</b>	Mayer Brown
	<b>Hungary</b>	VJT & Partners
	<b>India</b>	AP & Partners
	<b>Indonesia</b>	SSEK Law Firm
	<b>Ireland</b>	Walkers
	<b>Italy</b>	ICT Legal Consulting
	<b>Japan</b>	Nagashima Ohno & Tsunematsu
	<b>Jordan</b>	Nsair & Partners - Lawyers
	<b>Malaysia</b>	SKRINE
	<b>Malta</b>	Fenech & Fenech Advocates
	<b>New Zealand</b>	Anderson Lloyd
	<b>Pakistan</b>	S.U.Khan Associates Corporate & Legal Consultants
	<b>Poland</b>	Kobylanska Lewoszewski Mednis
	<b>Portugal</b>	Morais Leitao Galvao Teles Soares da Silva and Associados
	<b>Serbia</b>	BDK Advokati

	<b>South Africa</b>	Covington & Burling LLP
	<b>South Korea</b>	Bae, Kim & Lee LLC
	<b>Switzerland</b>	Lenz & Staehelin
	<b>Taiwan</b>	Formosa Transnational Attorneys at Law
	<b>Thailand</b>	Formichella & Sritawat Attorneys at Law
	<b>Turkey</b>	Turunç
	<b>United Arab Emirates</b>	Bizilance Legal Consultants
	<b>United Kingdom</b>	Hunton Andrews Kurth LLP
	<b>USA</b>	Hunton Andrews Kurth LLP