



Digital Personal Data Protection Act, 2023: Advisory Services with regard to Impact Assessment & Implementation Assistance

Prepared for Financial Sector Entities



Vinod Kothari Consultants
Consultants to Financial Intermediaries



About Us

- ❖ Vinod Kothari Consultants Private Limited (‘VKCPL’) is a company focused on providing consultancy services in diverse financial fields including non-banking financial services, housing finance, housing microfinance, mortgage lending, securitisation, green financing, asset backed financing, corporate finance etc.
- ❖ VKCPL has been in existence for more than 35 years, and is currently operating out of offices in Kolkata, Mumbai, Bengaluru, and Delhi, with a specialized team consisting of CMAs, CAs and company secretaries.
- ❖ In the specialized fields of financial services such as securitization, housing finance, asset-backed financing, etc., VKCPL has had some of India’s top banks and NBFCs as its clients. It has also been associated with multilateral organisations like the World Bank, International Finance Corporation and Asian Development Bank.
- ❖ Apart from consulting, it has also been quite active in the field of financial training; imparting specialized training workshops all over the world.
- ❖ Among the unique strengths of VKCPL, is the ability to put together a multi-faceted team of corporate professionals, to handle an assignment from a range of relevant and diverse perspectives - taxation, accounting, legal and financial.
- ❖ Academic research is an integral part of the culture at VKCPL. The official website hosts several write-ups, report, audio and video presentations on various topics of finance and compliance. Moreover, the team members have also authored books, some of which have gone on to become canonical works in their respective subject areas.

We have had the opportunity to cater to some of the leading names in the Indian financial services sector



We have also had the privilege of working with reputed global organisations



Government of Jordan



WORLD BANK GROUP



CENTRAL BANK OF NIGERIA



Cognizant



Profile of our Team & our Websites

- ❖ Profile of our team members can be viewed at:

<https://vinodkothari.com/2021/09/vkcpl-team-profile/>

- ❖ Our brochure for consultancy and advisory services on Financial Sector Entities is available here:

<https://vinodkothari.com/wp-content/uploads/2022/03/Regulatory-advisory-brochure-1.pdf>

- ❖ We maintain a website, which contains detailed resources on various topics of finance and corporate laws: www.vinodkothari.com

Background

1. The introduction of Digital Personal Data Protection Act, 2023 ('DPDP Act' or 'Act') holds significant importance as it impacts the operations, customer relationships, and regulatory and reporting obligations of financial sector entities ('FSE').
2. FSEs provide service to a wide array of customers including individuals, corporates, MSMEs, start-ups and the Government and has numerous client touchpoints across the country. The overall client base also forms a significant proportion of the country's population.
3. It is pertinent to note that FSEs are entrusted with huge quantum of personal and financial data of its clients/ borrowers. Thus, putting an additional onus on such entity to ensure safeguarding of the data and ensuring privacy.
4. With increasing digitization in the entire financial services (including lending) ecosystem, the risk of breach of information systems also has to be contended with in order to ensure in the data privacy of the customers.
5. With more than 35 years of experience in the financial services sector, Vinod Kothari Consultants Pvt. Ltd. ('VKCPL') is uniquely placed to provide advisory and consultancy services to FSEs for firming up their information systems and processes and to align such systems and processes with requirements as outlined in the DPDP Act.



Key Tenets of the Act

Area

Key Highlight



Applicability

The DPDP Act, 2023 ('Act'), is a comprehensive act on data protection and financial services industry, including lenders like Banks and NBFCs, will get covered under the ambit of the proposed Act, as information shared by customers/ borrowers of such entities will involve "Personal Data". Actions of lenders amounting to "processing" will come under this law.



Consent

The Act mandates an explicit and informed consent from the Data Principal, subject to a carve-out for "legitimate uses", which is regarded as 'deemed consent'.



Notice

Data Fiduciaries are required to provide prior notice to Data Principals for all cases where data processing requires consent of the Principal.
In case notice has been provided/ content taken before the commencement of the proposed Act, the Fiduciary is required to reissue the notice in conformity of the Act, where the same is lacking.



Grievance Redressal Mechanism

Data Fiduciaries to have grievance redressal mechanism for any complaints from Principals under the law. Significant Data Fiduciaries to also appoint a DPO; unaddressed grievance may be escalated to the Data Protection Board established under the Act.

Area

Key Highlight



Data Protection Measures

The Act provides for periodic Data Protection Impact Assessment/ Audit, for "significant data fiduciary", however, it is light in prescribing any specific cybersecurity measures. Personal data protection breaches are, however, subject to heavy penalty.



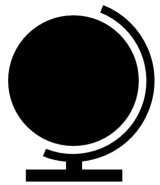
Reporting Data Breach

The Act requires Data Fiduciaries to provide notice of data breaches to the Data Protection Board that will be established under the Act and also to every Data Principal whose personal data is affected by such breach.



Personal Data Retention

The Act allows personal data to be retained by the Data Fiduciary or its authorised Data Processor, till a "reasonable period" post completion of the specified purpose or from withdrawal of consent by the Data Principal to store/ process such data, whichever is earlier. The Act, however, allows the Data Fiduciary to retain personal data for a longer period if any law so requires.



Data Localisation

The Act does not impose any data localisation requirement on the Data Fiduciaries, however, it confers on the Central Government the authority to restrict, by notification, transfer of personal data by a Data Fiduciary for processing to such country/ territory outside India as notified.



Scope of Work

Gap Assessment

1. Analyse the FSE's information infrastructure
 - i. List the information assets of the FSE w.r.t. processing personal data of its customers, clients and other individual stakeholders
 - ii. Analyse the FSE's current practices w.r.t. data collection, mining, sharing and retention
 - iii. Analyse the FSE's utilization of third party service providers for processing customer/ stakeholder data
 - iv. Assess the FSE's current policies and practices w.r.t. information security, integrity and privacy and customer consent
2. Analyse the FSE's existing grievance redressal mechanism (GRM)
3. Prepare a customized checklist of requirements for the FSE arising out of the DPDP Act.
4. Perform a gap assessment of the FSE's current information systems and GRM framework vis-à-vis the DPDP Act and provide recommendations .
5. Present the gap assessment report along with any recommendations to the FSE's senior management and answering any queries that may arise.

Significant Data Fiduciary Requirements

In case the FSE is notified as a “Significant Data Fiduciary” (SDF), the following tasks shall be undertaken:

1. Assist the FSE in performing its first Data Protection Impact Assessment;
2. Review the FSE’s existing internal audit framework, including its policy on internal audit, and provide recommendations on changes needed;
3. Provide updates along with summary actionables to the FSE as and when notifications under the Act relevant for SDFs are issued by the GoI/ Data Protection Board over a mutually agreed period.*

** Note: In case any notifications issued by the GoI/ Board post date of confirmation of the assignment requires substantial change to any particular task or overall scope of the work, it will be taken up as a separate assignment.*

Implementation Assistance

1. Customise the information system policies, privacy policies and relevant client communications documents of the FSE in line with the DPDP Act.
2. Customise master agreements, such as data processing agreements with third parties, third party service providers and vendors, etc, in line with the Act.
3. Assist the FSE in preparing an awareness and communications plan.
4. Prepare training material for the purposes of sensitizing the FSE's senior management and conduct the training.
5. Provide updates along with summary actionables to the FSE as and when relevant notifications under the Act are issued by the GoI/ Board over a mutually agreed period.*

** Note: In case any notifications issued by the GoI/ Board post date of confirmation of the assignment requires substantial change to any particular task or overall scope of the work, it will be taken up as a separate assignment.*

Significant Terms

1. The aforesaid services will be provided on a consultation basis and should not be construed as an assurance/ audit service;
2. We expect to perform any interaction with the senior management/ other personnel of the FSE remotely and do not expect any physical visits to your offices;
3. The quoted scope of work does not include representation to any external authority, however, if needed we shall be happy to provide such service as a separate assignment;
4. For the purposes performing the gap assessment we will need access to various documents/ information from the FSE including but not limited to current information systems and privacy policies, agreements, audit reports, etc. We will provide a list of such documents/ information once the assignment is confirmed. Do note that the timelines will be affected according to the urgency with which the FSE responds to such requests;
5. Meeting with the FSE's senior management and training shall be conducted virtually.

Our Resources on the Topic

Write-up on the DPDP Act -

<https://vinodkothari.com/2023/08/digital-personal-data-protection-bill-2023-analysing-the-impact-on-digital-lenders/>

YouTube Video -

<https://www.youtube.com/watch?v=sECelzrmn-U>

Get in Touch



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