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Victoriam Legalis - Advocates & Solicitors | Newsletter



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We here, at Victoriam Legalis, believe in continuous learning and growth, and agree that one way to do the same is to keep up with the developments and changes taking place around us.

We live in an Information Age, and while there is no dearth of knowledge and information, we, through this newsletter, hope to give you a consolidated account of relevant updates and developments.

In light of the same, we present to you the first issue of our newsletter, which we hope, you find beneficial!

Happy Reading!



Media and Entertainment

1. Tata Motors agrees to drop the ‘T-Series’ mark in the matter of Super Cassettes

Super Cassettes took Tata Motors to Delhi High Court in the matter where it is using their registered mark ‘T-Series’ for marketing of commercial vehicles. In settling the matter, Tata Motors acknowledge the Super Cassettes mark of ‘T- series or T.Series’. On the other hand, Super Cassettes also acknowledged the ‘T’ logo in Tata Motors mark as well as in ‘Tata’ logo. So, it was directed that Tata Motors will take down all the content which is related to the ‘T- Series’ mark.

2. Gujarat High Court held that “Certificate of Registration” is equal to “License from Registrar.”

Copyright registration is not compulsory in India. But the question arose before the Gujarat High Court that if a registered copyright is alleged to copyright infringement, can Voluntary registration come to its rescue? The HC answered this question by highlighting Section 51 of the Copyright Act, 1957 which states that “any person uses without the permission of the license owner or from the registrar, any product would amount to infringement of copyright.” However, in the current case the applicant is the holder of the certificate issued by the Registrar. So, applicant is not liable for infringement.

3. Delhi High Court has blocked the sale of the Rajni Paan stating that “Rajnigandha is a well known brand and so it is entitled to higher protection.”

The company in 2018, while researching came across the brand who was selling “Rajni Paan” holding similar trademark as that of “Rajnigandha.” So, in order to restrain the company from infringing the trademark, the plaintiff approached the Delhi High Court who granted the relief in 2018. While delivering the final order, the court held that the packaging of the defendants was similar to that of the plaintiff and Rajnigandha is the well known brand and defendants deliberately choose this brand and so the defendants had intentionally committed “trade off the significant goodwill and reputation of the plaintiffs.”

4. Amitabh Bachchan personality rights case: Delhi High Court grants ex-parte omnibus order restraining infringement of Amitabh Bachchan’s personality rights

The Delhi High Court on November 25, 2022 passed an interim order restraining persons at large from infringing the personality and publicity rights of Mr. Amitabh Bachchan. Justice Navin Chawla noted: “By this application, the plaintiff alleges violation of his ‘publicity rights as a celebrity’ as has also been recognised by this Court in its judgment in Titan Industries Ltd. v. M/s. Ramkumar Jewellers, 2012 SCC OnLine Del 2382. It cannot seriously be disputed that the plaintiff is a well-known personality and is also represented in various advertisements. The plaintiff is aggrieved by the defendants’ unauthorized use of his celebrity status to promote their own goods and services, without his permission or authorization. the order was sought against four of the defendants from transferring, alienating or creating any third party rights in respect of the domain names amitabhbachchan.com and amitabhbachchan.in. He has also sought a restraining order against book publishers, T-shirt vendors and various other businesses. The suit stated that Bachchan’s name, image and voice were being used by mobile application developers to conduct lotteries by illegally associating with Kaun Banega Crorepati (KBC), a show hosted by the veteran actor. Mr. Bachchan has stated that only he has control over the commercial utilisation of his personality, name, voice, image, likeness and other characteristics that are uniquely identifiable and associated with him, and no one can do the same without his consent or express authorisation.



5. Delhi High Court rejects amazon's plea against telecast of India Vs New Zealand matches by private cable and DTH operators

The Delhi High Court on November 25 rejected a petition by Amazon challenging an order of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) which effectively allowed broadcast of India-New Zealand cricket matches by all private cable and Direct To Home (DTH) operators through DD Sports channel thereby diluting the exclusive media rights held by Amazon. It was Amazon's case that the rights granted to Prasar Bharti are restricted for retransmission only on Prasar Bharti's DTH platform – DD Free Dish – and not others like Dish TV. TDSAT had earlier passed an order on Dish TV's plea ordering Prasar Bharti to supply DD Sports channel in an unencrypted mode.





Technology and E-Commerce Updates

1. Karnataka court seeks DGCI reply on Gameskraft plea

On 26th September, a show cause notice was issued by the DGCI despite an stay order by the court on notice. The notice was issued in order to inform the company about the outstanding dues whereas it is followed by the show cause notice. DGCI misclassified the service done by them instead of actionable claims which comes down to 28%. The court is now demanding the money from the company.

2. WhatsApp rolls out forward media with caption feature for iOS: How to enable it

The Meta-owned company keeps bringing new features to improve the app experience for its users. The instant messaging platform is now rolling out its Forward Media with caption feature in iOS. This feature would let users share videos, images, GIFs and documents with a caption. Moreover, they can remove the caption as well. WhatsApp's new feature will allow users to share a caption along with images, videos, GIFs to their family, friends and other contacts. As of now, it will be helpful for iOS users to search old files by simply typing on related keywords from the caption. At the bottom of the screen, a new view will emerge when users will share captions with the media. This will inform them whether the feature is enabled or not. Moreover, a dismiss button is available to remove the captions from the media before forwarding in case the users wants to delete it.

3. Meta, Ficci, NeGD announce fellowship for developers to build metaverse use cases

The Federation of Indian Chambers of Commerce and Industry (Ficci), in association with National e-Governance Division (NeGD) and Meta Platforms, the parent company of Facebook and WhatsApp, on Tuesday announced an 'extended reality open source' (XROS) fellowship. The latter, which will include a sum of \$1 million to be offered as stipends to about 100 developers, is now open for applications from developers. The fellowship is a part of Meta's global 'extended reality programs and research fund', from which the internet services firm has already offered a \$2 million grant in India for an 'extended reality startup fund'. The latter is operated by the 'startup hub' of the ministry of electronics and information technology (Meity). At the announcement, Nick Clegg, president of global affairs at Meta, said that the future of the metaverse "won't be built by Meta alone." This, in turn, necessitates the need for having independent developers build applications and use cases of the metaverse in an open source model.

4. Amazon India extends four-hour delivery to 50 cities and towns

Amazon India is expanding its 4-hour delivery offering for Prime members to more than 50 cities and towns across the country, up from 14 places. The firm will deliver products across categories such as wireless, consumer electronics, books, toys, media, kitchen, luxury, sports, video games, and personal care equipment, among others. Same-day delivery, which was introduced in India in 2017, is now available in more pin codes, coming to places in Surat, Mysuru, Mangalore, Bhopal, Nashik, Nellore, Anantapur, Warangal, Ghaziabad, Faridabad and Patna. Amazon said more than 97 per cent pin codes now receive deliveries within two days of placing an order. It has witnessed a two-fold year-on-year increase in its same-day delivery services.





Fashion & Sports Law Updates

1. A trademark case over the shape of chocolate bunnies means for brands

A Swiss court in its judgment has ordered Lidl- a discount supermarket to destroy its stocks of chocolate bunnies. The court issued this direction because Lidl's bunny was much similar to Lindt's iconic chocolate rabbit. The Swiss federal Supreme Court ruled that Lindt Gold bunny was a registered "shape" trademark, so other companies are restricted from launching the chocolate of the same shape when selling chocolates products in Switzerland.

2. Uffizi Wages Legal Battle Against Jean Paul Gaultier Over "Illicit" Use of Botticelli Art

Italy's Uffizi galleries is suing Jean Paul Gaultier after the French style home used photographs of Botticelli's The Start of Venus on a range of T-shirts, trousers and wraps, allegedly without asking permission. In addition to The Start of Venus, painted by Sandro Botticelli in 1485, which hangs within the Uffizi, the clothes assortment additionally options The Three Graces (1635) by Peter Paul Rubens, which is held by the Prado Museum in Madrid. The Uffizi first launched a protest in April, when the clothes line appeared. It stated the garments ought to be instantly withdrawn from sale, or the French firm ought to come to a industrial association to pay to make use of photographs from the artworks.

3. The SEC is Reportedly Probing Yuga Labs Over Bored Ape Yacht Club NFTs

The US Securities and Exchange Commission has reportedly set its sights on the company behind the Bored Ape Yacht Club NFT's, probing Miami based Yuga Labs determining whether its transaction amounts to unregulated securities. The SEC is examining whether certain NFT's from Yuga Labs are skin to stocks and should be subject to the same disclosure rules.

4. Balenciaga Wages \$25 Million Lawsuit Over Controversial Ad Campaign

Luxury fashion house Balenciaga has apologised for two controversial ad campaigns while suing the production company behind one of them. Balenciaga is seeking at least \$25 million in damages from production company North Six, Inc., set designer Nicholas Des Jardins and his company, reports CNN. North Six and Des Jardins were hired to develop and produce the label's Spring 2023 campaign. In one of the pictures showcasing a Balenciaga handbag, eagle-eyed internet users noticed a 2008 US Supreme Court ruling on child pornography in the background. The pictures drew massive backlash for sexualising young children as thousands of people accused Balenciaga of condoning child abuse and child exploitation. The label removed the campaign and issued an apology saying "our plush bear bags should not have been featured with children in this campaign."

5. Chanel Settles Upcycling Suit Over Jewelry Made From Logo-Bearing Buttons

Chanel has reached a settlement in the trademark infringement and dilution lawsuit that it waged against a company in the business of upcycling and selling jewelry constructed from allegedly authentic Chanel buttons. In a filing on November 14, Chanel and defendant Shiver + Duke ("S+D") alerted a New York federal judge that they have "reached a settlement in principle," and requested that the case be "discontinued without costs to any party and without prejudice to restoring the action to this Court's calendar if the parties are unable to memorialize their settlement in writing by December 14." The settlement comes after Chanel first filed suit against S+D in February 2021, alleging that by upcycling and selling jewelry featuring Chanel's interlocking "C" logo, Atlanta-



based S+D – and its founder Edith Hunt – were engaging in federal and state law trademark infringement, unfair competition, and trademark dilution. The court ultimately sided with Chanel, holding in September that S+D had not only transacted enough business in New York state to face litigation there but had failed to sufficiently show that the case should be transferred. While it is not clear what the terms of the parties' settlement include, it is almost certainly not a coincidence that all Chanel logo-bearing jewelry has been removed from S+D's website. (Other jewelry that was made from Louis Vuitton and Gucci hardware, buttons, and canvas that was previously available for sale on the S+D website has similarly been removed.)





Corporate & Commercial Law Updates

1. Cyril Amarchand Mangaldas advises on the debt availed by Piramal Critical Care Inc from SBI, Axis Bank and HSBC

Cyril Amarchand Mangaldas advised State Bank of India, London Branch, Axis Bank Limited, IFSC Banking Unit (IBU) GIFT City Branch and HSBC, USA N.A., for debt aggregating up to USD 225 million, availed by Piramal Critical Care Inc. for the purposes of repayment of existing debt availed by the Piramal Critical Care Inc, being supported by a guarantee from its Indian parent, Piramal Pharma Limited. The Project & Project Finance Practices of Cyril Amarchand Mangaldas advised for State Bank of India, London Branch, Axis Bank Limited, IFSC Banking Unit (IBU) GIFT City Branch and HSBC, USA N.A. for the transaction. The transaction team was led by Subhojit Sadhu, Partner; with support from Nishtha Gupta, Principal Associate; and Antariksh Karnik, Associate .

2. International Financial Services Centres Authority, India backs Voluntary Carbon Market and Global Climate Alliance

A panel of the International Financial Services Centres Authority has recommended development of a voluntary carbon market and the creation of a global climate alliance. This is amongst the other measures to grow the sustainable financing ecosystem through India's offshore financial services center, GIFT-IFSC. Committee has also recommended devising a framework for transition bonds, promoting regulatory sandbox for green fintech, and setting up of a platform for sustainable lending for small and medium enterprises, Government said in a statement. Main focus of the final report submitted by the panel was to explore ways in which capital flows can be channelized to meet the nation's net-zero commitments and also support development of innovative financial products in green and sustainable finance, the statement said. The committee also backed the use of instruments such as catastrophe bonds, municipal bonds and green securitization, it said.

3. NCLT declares real Estate Giant Supertech as Bankrupt

Real estate firm Supertech was declared bankrupt by the National Company Law Tribunal, the news agency reported. The decision was taken on a petition filed by the Union Bank of India for non-payment of dues against Supertech. The NCLT has directed the bank to initiate insolvency proceedings against the company. Once under insolvency, a blanket moratorium is imposed on a company which bans any routine or new expenditure by the firm, according to the news agency. All pending cases against the company are put on hold till a resolution is achieved. The move is likely to impact more than 25,000 homebuyers who are awaiting possession of their homes from Supertech, the news agency reported. The company has several ongoing projects in Noida, Greater Noida, Gurugram & Ghaziabad cities of the National Capital Region.

4. SC: The approval of a Resolution in respect of one borrower cannot certainly discharge a co-borrower

The Financial Creditor disbursed loan to the tune of Rs.6 Crores to M/s Premier Limited, hereinafter referred to as "Premier" under three separate Loan-cum-Pledge Agreements. According to the Appellant, Doshi Holdings pledged shares held by it in Premier, in favour of the Financial Creditor, by way of security for the loan. The Financial Creditor filed a petition under Section 7 of the IBC for initiation of CIRP against Premier for default in repayment of Rs. 8,35,25,398/-. On the same day, the Financial Creditor also filed a petition against Doshi Holdings, under Section 7 of the IBC, for initiation of CIRP in respect of the same claim of Rs. 8,35,25,398/-,



based on the same loan documents. The Apex Court observed that, the Appellate Authority arrived at a factual finding that Disha Holdings was a borrower. Relying upon *Lalit Kumar Jain v. Union of India*, this Court held that the approval of a resolution plan in relation to a Corporate Debtor does not discharge the guarantor of the Corporate Debtor. On a parity of reasoning, the approval of a resolution in respect of one borrower cannot certainly discharge a co-borrower. It was held that if there are two borrowers or if two corporate bodies fall within the ambit of corporate debtors, there is no reason why proceedings under Section 7 of the IBC cannot be initiated against both the Corporate Debtors. Needless to mention, the same amount cannot be realised from both the Corporate Debtors. If the dues are realised in part from one Corporate Debtor, the balance may be realised from the other Corporate Debtor being the co-borrower. However, once the claim of the Financial Creditor is discharged, there can be no question of recovery of the claim twice over.





Hospitality & Real Estate

1. 1.15 crore houses sanctioned under PMAY-Urban, 56.20 lakh units already built: Govt to Lok Sabha

Over 1.15 crore houses have been sanctioned for construction under the Pradhan Mantri Awas Yojana-Urban (PMAY-U) across the country, Lok Sabha was informed on Thursday. Union minister for housing and urban affairs Hardeep Singh Puri also said that out of the total sanctioned houses, 94.79 lakh have been grounded for construction and 56.20 lakh units have already been completed or delivered to beneficiaries. "Based on the project proposals submitted by states and UTs (Union Territories), more than 115 lakh houses have been sanctioned across the country," he said. Puri said states and UTs have been advised to expedite the construction of sanctioned houses so that all of them are completed within the stipulated timeline according to detailed project reports.

2. Adani Group clinches Dharavi redevelopment project with Rs 5,069-crore bid

Adani Group has won the bid for the redevelopment of Mumbai's Dharavi area, one of the largest slum clusters in Asia. The Maharashtra government authorities, on November 29, opened the financial bids for the Dharavi redevelopment project. SVR Srinivas, Chief Executive Office of Dharavi Redevelopment Project said, "We got three bids of which we opened two financial bids of Adani and DLF as Naman Group did not qualify in the technical bidding. The bid by Adani Group was for Rs 5,069 crore and DLF was Rs 2,025 crore. We will now further go with the approval from the state government and also form a special purpose vehicle (SPV) for the redevelopment of Dharavi." Three companies namely Adani Realty, DLF and Naman Group had submitted bids for the redevelopment of Dharavi and rehabilitation of slum dwellers. With the selection of the successful bidder, the redevelopment of Dharavi will finally take off now, after multiple failed attempts in the last 15 years.

3. Marriott International hosts the Marriott Bonvoy Golf Tournament 2022

Marriott International hotels in Hyderabad recently hosted The Marriott Bonvoy Golf Tournament 2022 to the city of the Nizams. Elevating the sporting experience for guests and patrons with his presence and participation was the Arjuna Award winner and ace Golfer Shiv Kapur, as a Marriott Bonvoy ambassador. Teeing off the end of 2022 on a green note, Shiv sported the Marriott Bonvoy cap and got off to a good start of chip and putt with the golfers, who were head honchos and CEOs of leading business conglomerates within the city. The Westin Hyderabad Mindspace, Le Meridien Hyderabad and Marriott Executive Apartments Hyderabad from Gachibowli were joined by Hyderabad Marriott Hotel & Convention Centre, Courtyard by Marriott at Tank Bund Road, and Sheraton Hyderabad at the Boulder Hills Golf Course. The tournament had over 92 players play an 18-hole game.

4. Hyatt Announces the opening of Hyatt Regency Trivandrum

Hyatt Hotels Corporation announced the opening of Hyatt Regency Trivandrum in Kerala. The hotel is the third Hyatt property in the state of Kerala following the opening of Grand Hyatt Kochi and Hyatt Regency Thrissur, and the sixteenth Hyatt Regency hotel in the country – a significant milestone in Hyatt's brand growth in the Indian market. Hyatt Regency Trivandrum is designed for business and leisure travelers to enjoy seamless and energizing experiences, borrowing inspiration from the rainforest, beaches and low coastal hills that are distinctive to the state of Kerala.





Litigation & Dispute Resolution

1. US Court rejects Infosys' motion to dismiss 'cultural bias in hiring process' complaint

A US Court has rejected a motion by Infosys to dismiss claims by a former executive, who in a complaint last year had accused the Bengaluru-based IT services provider and some of its senior staff members of discriminatory bias in hiring based on age, gender and caregiver status. While rejecting the grounds for dismissal of the suit by Infosys and others, the judge of the United States District Court for the Southern District of New York asked the defendants to file their answer within 21 days from the date of the order, which came on September 30, according to court documents accessed by ET.

2. Supreme Court on Insider Trading: Test is whether the act of the insider in dealing with the securities, was an attempt to encash the benefit of information in his possession

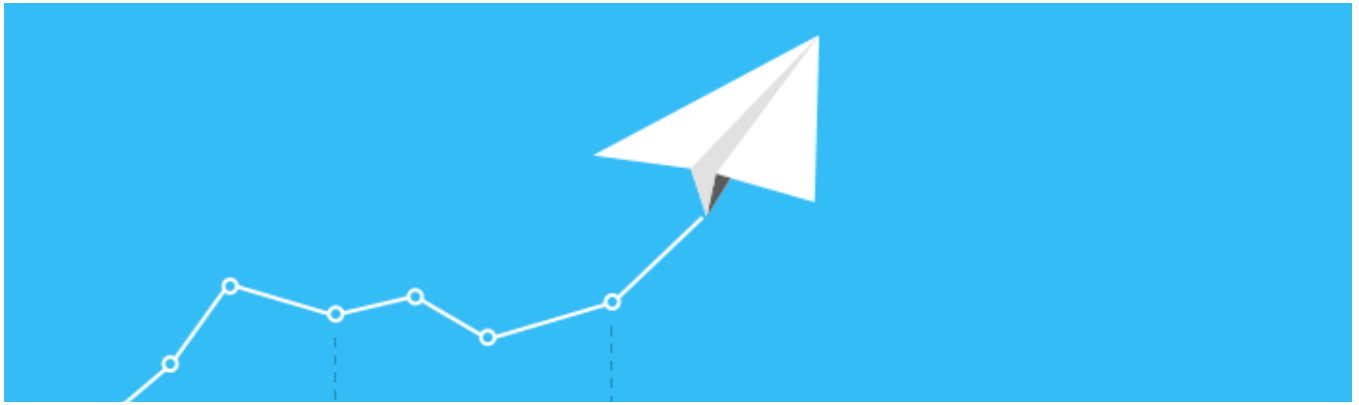
Supreme Court recently held that, "An attempt by the insider to encash the benefit of the information is not exactly the same as mens rea. Therefore, the Court can always test whether the act of the insider in dealing with the securities, was an attempt to take advantage of or encash the benefit of the information in his possession". The Court distinguished between profit motive and mens rea and held that under the Prohibition of Fraudulent and Unfair Trade Practiced Regulations ("PFUTP Regulations"), mens rea is not an indispensable requirement in respect of matters under the Prevention of Insider Trading Regulations ("PIT Regulations"), the test to be applied is that of profit motive i.e., whether the insider's actions in dealing in securities represented an effort to gain from or exploit the asymmetrical / unpublished information in his possession. On application of the abovementioned test, the Court held that since shares were not sold with an intent to encash the benefit of the unpublished information. Thus, the same is not covered under the mischief of insider trading.

3. HC says, Economic Offenders are Serious Threat to Nation, denies Bail to Rs.869 Crore GST evader

Refusing relief to Director of a Company facing charges for allegedly evading ₹869 crore GST, the Rajasthan High Court remarked that Economic Offenders are serious threat to Nation. The single-judge bench of Justice Narendra Singh Dhadha while denying bail to the petitioner relied on various SC precedents to note that an economic offender should not be dealt with as a general offender because economic offenders run a parallel economy which pose a serious threat to the national economy. The Court upon after considering the submission put-forth by learned counsel for the parties and in the facts and circumstances of the present case and also looking to the seriousness of the offence(s) alleged against the petitioner without expressing any opinion on the merits of the case, didn't deem it fit to grant bail under Section 439 Cr.P.C

4. Centre revises jurisdiction of Debt Recovery Tribunal, forms 'Exclusive Bench' for default of ₹100 crore and more

In its Notification dated 04.10.2022, the Ministry of Finance has revised the jurisdiction of Debt Recovery Tribunal and introduced Exclusive Bench for cases pertaining to default of ₹100 crore and more. The notification released under Section 3 of the Recovery of Debts and Bankruptcy Act, 1993 and in supersession of the notifications of the Government of India, vide numbers G.S.R. 395 (E) dated the 29.05.2007 and S.O.3065 (E) dated the 26.09.2016, and all subsequent notifications relating to change of location of the existing Debts Recovery Tribunals has ascertained that DRTs at Mumbai, New Delhi and Chennai shall have the new and exclusive jurisdiction.



Start-Up Advisory & Consultancy

1. Fintech unicorn CRED to acquire SaaS startup CreditVidya

Fintech unicorn CRED has agreed to buy CreditVidya, which operates a lending-as-a-service platform, for an undisclosed sum in a cash-and-stock deal that will help expand its customer base. Through its full-stack platform, CreditVidya aims to enable businesses to embed customised credit products through easy-to-integrate APIs. It provides AI-powered credit underwriting APIs to NBFCs and other financial institutions and companies. While CRED and CreditVidya will continue to operate independently, CreditVidya's 200+ team members will get all the benefits extended to CRED team members, including its ESOP programme.

2. How Syook enables companies to track assets in real time

Bengaluru-based Syook offers a SaaS platform that helps enterprises track their assets and schedule work orders. It also provides AI-enabled insights that can help enhance safety, productivity, and compliance at the workplace. Syook's SaaS platform uses real-time location systems technology to help businesses track all their mobile assets from one place. Users receive real-time location-specific data, alarms, and analytics on a dashboard. This data and analytics help enterprises make informed decisions that ultimately enhance safety, productivity, and compliance at the workplace. Assets that can be monitored include heavy vehicles, manufacturing equipment (such as pallets and trolleys), finished goods in sales yards, medical equipment (ventilators, ECG, oxygen cylinders), construction equipment (power tools, water jets) and people (contractors, visitors, employees). Apart from InSite, Syook's platform also offers a computerised maintenance management system that helps users plan work orders and schedule roles for different types of assets.

3. Content to community-based learning: Tracking upskilling startup Scaler's evolution

Scaler claims to be adding 2,500 learners monthly, and since April 2019, it has onboarded and helped 25,000 learners cumulatively. The company also shared that the course completion rate stands at 90%, and the placement rate is 94%, claiming an average salary hike of 2.3X post its programmes. In the last two years, it also recorded a 2,500% two-year growth of its annual run rate which crossed \$100 million ARR (Annual Recurring Revenue) in August 2022—up from \$25 million a year ago and \$4 million in October 2020. The total capital raised by Scaler stands at about \$76.5 million, of which the company says they spent about 20% towards acquisitions while 70% is still in the bank. Apart from this, the company is also planning to launch a product focused on honing skills during college to match the market demands as soon as a student graduates.

4. SaaS startup Prismforce raises \$13.6M in Series A led by Sequoia Capital India

Prismforce, a vertical SaaS (software-as-a-solution) firm that helps IT companies build an agile talent supply chain, on Wednesday said it has raised Series A funding of \$13.6 million led by Sequoia Capital India and a select set of global angel investors. Prismforce said it will use the funds to enhance its product suite, strengthen go-to-market capabilities and grow its talent base. Prismforce is operational in the US and India, according to a statement. Prior to this, the startup raised \$1.8 million in seed funding from select industry thought leaders, serial entrepreneurs, and SaaS founders as angels. The current round brings its total funding raised so far to \$15.4 million.





An Analysis – The Digital Data Protection Bill, 2022

- Moxy Shah

INTRODUCTION

The Ministry of Electronics and Information Technology (“MEITY”) has published a draft of the Digital Personal Data Protection Bill, 2022 (The DPDP Bill), along with an explanation for each provision and the underlying principles guiding the draft. The purpose of this law is to provide for the processing of digital personal data in a manner that recognizes both the right of individuals to the protection of their personal data and the need to process personal data for lawful purposes and for related or related matters. The law not only contains provisions for the protection of data, but also provisions for the detection and punishment of misuse and/or damage to such data. In addition, the law also allows the use and disclosure of personal data in certain cases that fall within the area of public interest.

The Act defines “data” as a representation of information, facts, concepts, opinions or instructions in a manner suitable for communication, interpretation or processing by humans or by automated means.

SCOPE, EXTENT AND APPLICATION

The DPDP Bill applies to personal data (meaning any data about an individual who is identifiable by or in relation to such data) that is processed digitally, including personal data collected online as well as such personal data collected offline that is digitized for processing will. However, it does not cover manually processed personal data, unlike the previous PDP law, which brought manual processing of data by small businesses into its scope. The DPDP Bill extends its scope to the processing of digital personal data outside the sovereign territory of India where such processing is related to profiling or activities of offering goods or services to individuals within the sovereign territory of India. While the PDP Law had categorized personal data into sensitive and critical personal data, the DPDP Law does not contain such a classification and this may oversimplify the criticality of protecting sensitive personal data. The Bill seeks to exclude the following:

- (i) non-automated processing of personal data;
- (ii) offline personal data;



- (iii) personal data processed by an individual for any personal or domestic purpose; and
- (iv) personal data about an individual that is contained in a record that has been in existence for at least 100 years.

OBLIGATIONS OF THE DATA FIDUCIARY

Within the meaning of the DPDP Bill, Data Fiduciary is a person who alone or together with other persons determines the purposes and means of the processing of personal data and is subject to several obligations, including the following:

- (i) Each Data Fiduciary is required to only use personal data for lawful purposes and with the consent of the data controller, i.e. H. of the person whose personal data is being processed. The Data Fiduciary is required to provide the Data Controller with a notice describing each type of Personal Data to be collected and the purposes of the Processing of that Personal Data. Communication to users should be in simple and clear language.
- (ii) The processing of children's personal information, or that of users under the age of 18, requires the data trustees to secure verifiable parental consent. The DPDP Bill stipulates that the Data Trustee may be subject to fines of up to 200,000,000,000/- (Two Hundred Rupees Crore) if additional requirements relating to the processing of children's personal data are not met.
- (iii) The Data Protection Board ("Board") proposed under the DPDP Bill, as well as each affected data principal, must be notified in the case of a personal data breach by both the data fiduciary and the data processor, i.e., any person who processes personal data on behalf of a data fiduciary. However, there is currently no deadline for submitting this notification. Notably, the Joint Parliamentary Committee's ("JPC Report") report on the PDP Bill had recommended that businesses notify customers of data breaches within 72 (seventy-two) hours.
- (iv) Additionally, a fine of up to 250,00,00,000/- (Indian Rupees Two Hundred and Fifty Crore) may be imposed on any data fiduciary or data processor who fails to maintain reasonable security safeguards to prevent personal data breaches, as opposed to the earlier PDP Bill's proposed fine of up to 15,00,00,000 (Rupees Fifteen Crores) or 4% (four percent) of the company's total worldwide annual turnover. It is clear that harsh fines are being applied in order to achieve rigorous compliance.

DATA PRINCIPAL RIGHTS

- (i) Retention: The Bill mandates that Data Fiduciaries stop keeping personal data after it is reasonably obvious that its original purpose of collecting is no longer served by retention and when keeping the data is not necessary for any legitimate commercial or legal purpose.
- (ii) Correction: The Bill weakens the requirement that Data Fiduciaries ensure the accuracy of personal data, making this mandatory only in cases where data is likely to be used to make decisions that will affect the concerned individual or is likely to be disclosed to another Data Fiduciary on a reasonable efforts basis.



- (iii) Portability and Erasure: The right of the data principal to request copies of their personal information in portable form, which might allow them to switch platforms, has been curtailed. Data principals still have the right to request broad heads of information, such as confirmation of processing, summaries of the data being processed, and other data fiduciaries with whom data is shared. Additional heads of information could be included in the rules created by the Bill. Additionally, the right to be forgotten under the earlier drafts has been incorporated into rights to erasure, restriction on processing following consent withdrawal, and restriction on data keeping. The distinct adjudicatory procedure for RTBF disputes has also been eliminated, and now, if the resolution by the data protection officer or any other authorised person is unsuccessful, disputes relating to existing regulations will be handled by the Board.
- (iv) Nominees: The Bill has expanded the right to nominate a representative to instances of incapacity in addition to the event of death.
- (v) Grievance Redressal: In case the Data Fiduciary does not respond satisfactorily within seven days, the Bill grants Data Principals an improved ability to submit a complaint with the Board. Furthermore, unlike the Previous Drafts, the Bill forbids Data Fiduciaries from rejecting a request from a Data Principal on the basis that doing so could violate the rights of another Data Principal.
- (vi) Data principal obligations include not filing a fictitious or baseless complaint with a data fiduciary or the Board, not providing false information when applying for a document, service, unique identifier, proof of identity, or proof of address, and not impersonating another person. They also have an obligation to provide information that is verifiably authentic when exercising their right to correction or erasure. For failure to adhere to its prescribed requirements, the DPDP Bill has placed a penalty of up to Rs. 10,000/- (Rupees Ten Thousand) on the data principal.

CROSS BORDER DATA TRANSFERS

The Bill aims to allow for the transfer of personal data outside of India, but only to countries that the government would notify and only under specified conditions. Additionally, the Government has been given broad authority to inform certain Data Fiduciaries that the provisions relating to notice, obligations relating to the processing of accurate information, and data retention will not apply to them (based on the volume and nature of personal data processed by the Data Fiduciaries). Additionally, the State and its instrumentalities benefit from relaxations on data minimization and data retention, meaning that states are allowed to keep personal data longer than is necessary. While the creation of exemptions for the processing of personal data required for research, archiving, or statistical reasons falls under the purview of the Central Government, the Bill does not include exemptions for journalistic purposes, as was the case with the Earlier Bill.

ENFORCEMENT

A Data Protection Board ("Board") with largely adjudicative duties is proposed by the Bill. There are several unanswered questions regarding this body, including its constitution and the qualifications of the members who will be required to carry out quasi-judicial duties. The way the Board will work with the current legal system is particularly unclear. While appeals against the Board's orders are to be made to the High Court, it will be necessary to clarify this clause to determine whether the Board will have branches in each state (and whether appeals against its orders will be admissible before those High Courts) or whether appeal will be made to a



different court. The Board also has the authority to impose alternative dispute resolution procedures and accept voluntary compliance commitments. If there is a breach of personal data, the Board has the authority to order the data fiduciary to take immediate action to fix the problem or lessen any damage to the data principals.

CONCLUSION

In contrast to the preceding PDP Bill, which businesses and start-ups criticised for being compliance-intensive, the DPDP Bill is an effort by the government to create a straightforward and understandable law on data protection in the nation. However, the DPDP Bill fails to adequately clarify a number of sections in an effort to condense the earlier text. For instance, the DPDP Bill introduced the concept of "deemed consent" in general and ambiguous terms, allowing the processing of personal data without the individual's consent based on a variety of factors and the use of words such as "as it may deem fit" or "as may be prescribed" may lead to abuse of power or arbitrary action on part of the administrative authorities.



Get in Touch

We hope you enjoyed reading the newsletter, and we would love to hear your thoughts on what you want to be covered in our next edition!

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