ACTO Response to The Digital Personal Data Protection Bill, 2022

Chapter/Section	Original Text	ACTO Suggestions
Chapter 1: Preliminary- Short Title and Commencement	(1) This Act may be called the Digital Personal Data Protection Act, 2022. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Different dates may be appointed for different provisions of this Act. Any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the commencement of that provision.	We request that there should be adequate transition timeline for implementation. As currently stated in the bill there is no implementation timeline, creating uncertainty for the industry. The previous version had provision for 24-month transitional period. Thus, we request a phased implementation period of 36 months in order to provide clarity for businesses, organizations, and individuals to change processes and systems, recognizing the time needed to allocate investments and systems upgrades. It will also enable the Government of India to provide further clarifications. As compliance is dependent on the rules, the transition period should also start once the Board is formed and rules are framed.
Chapter 2: OBLIGATIONS OF DATA FIDUCIARY		
Grounds for processing digital personal data	A person may process the personal data of a Data Principal only in accordance with the provisions of this Act and Rules made thereunder, for a lawful purpose for which the Data Principal has given or is deemed to have given her consent in accordance with the provisions of this Act. For the purpose of this Act, "lawful purpose" means any purpose which is not expressly forbidden by law.	We request that the grounds for processing digital personal data alongside Section 17 should consider adding generally recognized international frameworks for data processing such as SCCs, BCRs, and other grounds embedded into GDPR and widely utilized in current contracts for data processing, outsourcing and information technology (IT) enabled services.
Chapter 4: Special Provisions		
Transfer of personal data outside India	The Central Government may, after an assessment of such factors as it may consider necessary, notify such countries or territories outside India to which a Data Fiduciary may transfer personal data, in accordance with such terms and	We would like to highlight that a country-by-country adequacy assessment will be very time-consuming exercise, therefore India needs to consider global best practices in this regard and notify the countries already deemed adequate for example the European Union (EU) under the basis of General Data Protection Regulation (GDPR), as

	conditions as may be specified.	well as other countries adhering to or having received adequacy under the rules. Furthermore, rules should allow for transfer mechanisms such as private agreements, e.g., Standard Contractual Clauses (SCC), Binding Corporate Rules (BCR) already approved in other global markets as suitable exemptions recognized by other leading privacy frameworks to account for commonplace business and commercial needs. The rules should provide the necessary flexibility for businesses to follow the transfer mechanism already approved in other leading data privacy jurisdictions to avoid country specific reviews and adequacy assessment by incorporating recognition of additional global transfer mechanisms.
Alignment with the sector specific requirements		Additionally, ACTO would like to request that the existing sector specific data privacy requirements need to be aligned with the horizontal data protection requirements to the extent possible to avoid inconsistency and alignment with the requirements as well as provide much needed clarity and respite from the redundant compliance obligations.
General		
	Timelines for Compliance and Other Existing Laws	Unlike its previous drafts, there are no specific timelines for compliance prescribed for the implementation of the proposed law. This should be defined clearly, so that businesses can plan their compliances accordingly. It should also be clarified that the Proposed Law will only apply prospectively not retrospectively. The Proposed Law does not prescribe or recommend the standards that should be implemented. There are some other laws where there may be provisions contrary to this Proposed Law. For E.g., RBI has mandated payments data localization but under Section 17 of the Proposed Law cross border data transfer may be permissible.

		This may create confusion in terms of compliance. Hence, clarity is required in this regard.
	Data Breaches and Reporting Obligations	(i) The broad definition of the term "personal data breach" as "*any unauthorised processing of personal data or accidental disclosure, acquisition, sharing, use, alteration, destruction of or loss of access to personal data, that compromises the confidentiality, integrity or availability of personal data*" coupled with the absence of any condition or threshold applicable to the reporting requirement will place a heavy burden on organisations that will have to notify immediately any security and processing incident regardless of its nature, severity and impact, to both the Data Protection Board and the individuals. Further, considering that failure to notify a personal data breach can be sanctioned by a fine of up to USD 25 million, will significantly increase the financial risk organisations will be exposed to. ACTO recommends to consider framing the notification obligation, in particular, by introducing criteria related to the severity of the incident and its consequences for individuals in a way similar to the GDPR. (ii) Notably, under the DPDP, data breaches would need to be reported to the relevant authorities (CERT-In) within a mere 6 hours (as defined by Indian Computer Emergency Response Team (CERT-In) in their 28 April 2022 notification). By way of comparison, the GDPR specifies a time period of 72 hours, and Australia works on a guidance timeframe of 30 days. Hence, it is requested to

		provide reasonable timeframe and benchmark this internationally.