



Comments of the Global Data Alliance on the Digital Personal Data Protection Bill, 2022

December 16, 2022

The Global Data Alliance¹ (“Alliance” or “GDA”) welcomes this opportunity to provide our comments to the Ministry of Electronics and Information Technology (**MEITY**) on the draft Digital Personal Data Protection Bill, 2022 (**Bill**).² The GDA respectfully offers the following submission focused on cross-border data policy issues.³ This submission provides information on: (I) the Global Data Alliance; (II) Summary Recommendations; and (III) a Detailed Discussion of our recommendations, the importance of data transfers, and the risks of data transfer restrictions and localization mandates.

I. About the Global Data Alliance

The Global Data Alliance is a cross-industry coalition of companies, operating around the world, that are committed to high standards of data privacy and security and that rely on the ability to transfer data responsibly across borders to create jobs and make local industries more competitive. The GDA develops studies and on the cross-border aspects of data privacy, cybersecurity, and other legislative or regulatory proposals. For the present time, we identify several recent GDA publications, including: the GDA Cross-Border Data Policy Principles,⁴ the GDA Report on Data Transfers and Sustainable Economic Development,⁵ and the GDA Position Paper on Data Transfers and Data Localization Measures.⁶

GDA members, which include enterprises with operations and personnel in India, work to advance policies that promote the responsible handling of data without imposing unnecessary data localization mandates or restrictions on data transfers. Alliance members are active across many sectors including the agriculture,⁷ automotive,⁸ clean energy,⁹ finance,¹⁰ healthcare and medical technology,¹¹ logistics,¹² media,¹³ pharmaceutical,¹⁴ software, semiconductor, and telecommunications sectors.¹⁵ Enterprises of all sizes and across sectors thrive in an environment of digital trust, involving both robust standards of data privacy and security, as well as the ability to responsibly transfer data across borders, allowing them to create economic opportunity and thousands of well-paid jobs.

II. Brief Summary of Recommendations

GDA respectfully recommends that the Bill be revised to support cross-border data transfers while ensuring organizations remain accountable for protecting the privacy and security of personal data after transfer. We recommend revising Section 17 to adopt the accountability model, by virtue of which entities that collect personal data remain responsible for its protection, regardless of where the data is processed. Specifically, the bill should be revised to state that international transfers are permitted when a Data Fiduciary or Data Processor uses a data transfer mechanism that is able to provide a comparable level of protection, regardless of where the data is processed.

More broadly, if the Bill retains the white-list approach, we strongly recommend that India recognize other transfer mechanisms, in addition to any white-list. The Bill should permit transfers made with consent of the data principal and transfers based on interoperable mechanisms such as model contracts, intra-group schemes, and certifications like the APEC-CBPR & PRP systems. If the ‘white-list’ is retained, the list should be notified well before the Bill’s effective date.

III. Discussion

The following discussion elaborates on: (1) the summary recommendations above; (2) the importance of data transfers; and (3) risks created by data transfer restrictions.

A. Detailed Recommendations

GDA welcomes the removal of data localization requirements from the Bill. Unfortunately, Section 17 may inadvertently lead to local storage requirements, data transfers restrictions, and regulatory uncertainty by permitting overseas data transfers only after the Central Government 'white-lists' a country or territory.

The white-list approach undermines the intent of the Bill — captured in the explanatory note — which acknowledges the importance of cross-border data transfers. The white-list approach also creates considerable work for the Central Government to approve and operationalize the list, as the Justice Srikrishna Committee report noted that adequacy requirements have proven cumbersome. Moreover, relying solely on a white-list leaves companies without back-up mechanisms for transferring personal data across borders, meaning any disruption to the white-list could shut down the flow of data and India's ability to participate in the global digital economy.

Furthermore, the white-list approach does not represent the most effective way to achieve India's data protection goals. In practice, data protection goals are better served by focusing on how personal data is secured — rather than restricting where it may be transferred. To ensure the proper level of protection even after a data transfer, organisations that transfer data globally should implement procedures to ensure that the data is protected even when transferred outside of the country.

Accordingly, Section 17 should instead be revised to adopt the accountability model,¹⁶ which was established by the Organisation for Economic Co-operation and Development (OECD) and later integrated into legal systems and privacy principles including the APEC Cross-Border Privacy Rules System (CBPR). The accountability principle was first developed by the OECD,¹⁷ and was subsequently endorsed and has been integrated in many legal systems including the EU,¹⁸ Japan,¹⁹ New Zealand,²⁰ Singapore,²¹ and Canada.²² This principle is also a significant feature of the APEC Privacy Framework,²³ the APEC Privacy Recognition for Processors (PRP) system,²⁴ the APEC Cross Border Privacy Rules (CBPR) system,²⁵ and the ASEAN Model Contractual Clauses.²⁶ By revising Section 17 in line with the accountability model, India can ensure the interoperability with other global frameworks.

Alternatively, if the accountability model is not adopted and Section 17 instead requires companies to adopt specific mechanisms to transfer data, we strongly recommend implementing the full suite of transfer mechanisms found in prevailing privacy frameworks. These should include model contracts, as recognized in other jurisdictions. Model contracts are a set of template contract clauses pre-approved by a regulator to ensure a comparable level of data protection by a data recipient. The Government may also consider adopting a set of clauses similar to the ASEAN Model Contractual Clauses for Cross Border Data Flows (**ASEAN MCCs**), which have recently been endorsed by ASEAN Member States. The ASEAN MCCs provide guidance on the obligations in respect of cross-border data transfers for controllers and processors, yet ensuring adequate safeguards for the transferred data held by the recipient party.

We also recommend making available other transfer mechanisms and appropriate legal exemptions as a valid basis for transfers. These include intra-group transfer schemes and certifications, which can ensure a comparable level of safeguards across jurisdictions. In addition, the Government may consider including performance of a contract, consent, appropriate safeguards, certification mechanisms (to accommodate frameworks like the Global Cross Border Privacy Rules), fraud or crime prevention, the establishment or defence of legal claims and the broader public interest, as being valid grounds for cross-border transfer of personal data. To be clear, transfer mechanisms and exemptions should offer a valid basis for personal data transfers even to a country that has not yet been white-listed. By adopting multiple transfer mechanisms and appropriate legal exemptions, India will avoid unintended harms that would isolate and disconnect it from the legal frameworks of regional and global partners.

B. The Importance of Data Transfers

The ability to transfer data securely across transnational digital networks is of central importance to the national policy objectives of many countries, including India. Data transfers support COVID-19 recovery, digital connectivity, cybersecurity, fraud prevention, anti-money laundering, and other activities relating to the protection of health, privacy, security, and regulatory compliance. This ability also supports innovation and transnational research and development (R&D), as well as intellectual property protection and enforcement. Scientific and technological progress require the exchange of information and ideas across borders.

International organizations and think tanks have underscored that data transfers support [global supply chains](#),²⁷ [innovation](#),²⁸ [productivity](#),²⁹ and [economic development](#)³⁰ in [every sector of the economy](#),³¹ for companies of all sizes, including MSMEs. For example:

- The World Bank's [2020 World Development Report](#) finds that "restrictions on data flows have large negative consequences on the productivity of local companies using digital technologies... Countries would gain on average about 4.5 percent in productivity if they removed their restrictive data policies, whereas the benefits of reducing data restrictions on trade in services would on average be about 5 percent."³² The World Bank's [2021 World Development Report](#) concludes that measures that "restrict cross-border data flows ... [may] materially affect a country's competitive edge in the burgeoning trade of data-enabled services."³³
- The OECD's 2020 Report on [Mapping Approaches to Data and Data Flows](#) concludes that, "cross-border data flows are especially important for micro, small and medium-sized enterprises (MSMEs)... Better and faster access to critical knowledge and information also helps MSMEs overcome informational disadvantages, notably with respect to larger firms, reducing barriers to engaging in international trade and allowing them more readily to compete with larger firms."³⁴
- The [Indian Council For Research On International Economic Relations](#) (ICRIER) issued a 2019 Report on the [Regulatory Burden on Micro- Small- and Medium Businesses Due to Data Localisation Policies](#). The report notes that, "MSMEs have been drivers of growth in the Indian economy. There are approximately 64 million MSMEs in India. The sector is the second largest creator of jobs in the country [contributing] ... 29 percent of India's GDP and over 30 percent of Gross Value added (GVA) [, and] over 120 million [jobs]." The ICRIER Report includes findings that "for a micro enterprise... additional costs from data localisation could render the business unviable..."³⁵
- A [2020 World Economic Forum study](#) finds that, "approximately half of cross-border [services] trade is enabled by digital connectivity[, which]... has allowed developing countries and ... MSMEs to export through greater visibility, easier market access and less costly distribution. ... Developing countries ... accounted for 29.7% of services exports in 2019."³⁶ Another study estimates that digital tools, often accessed across transnational IT networks, helped MSMEs reduce export costs by 82 percent and transaction times by 29 percent.³⁷

C. Risks Created by Data Transfer Restrictions

The Bill proposes a "White List" approach that would restrict data transfers to those countries specifically authorized by the government. However, as highlighted in the earlier section, such a restrictive approach to data transfers would bring significant risks to a large group of Indian stakeholders - Indian consumers, Indian workers, and Indian enterprises across all industry sectors. Indeed, Indian MSMEs would likely face the greatest disruptions, for some of whom the "additional costs from data localisation could render the business unviable."³⁸

The Bill's restrictive approach to cross-border data transfers could effectively limit cross-border opportunities for Indian enterprises that exchange personal information with foreign enterprises to

engage in mutually beneficial international transactions. For example, many Indian-based ICT service providers and call centre personnel depend upon the ability to communicate and exchange personal data with foreign customers via transnational IT networks. The Bill's proposed cross-border data restrictions would likely create operational challenges for these businesses. As a result of the Bill's proposed cross-border data restrictions, ICT service providers and call centre employers could find advantage in shifting operations to other less operationally challenging jurisdictions in Southeast Asia, the European Union, or North and Central America.³⁹

The ability to transfer personal data securely across transnational IT networks also supports innovation and transnational research and development (R&D) at Indian universities, laboratories, and other scientific research organizations. As the WTO has stated, "for data to flourish as an input to innovation, it benefits from flowing as freely as possible, given necessary privacy protection policies."⁴⁰ The Bill's proposed cross-border data restrictions could undermine India's access to, and integration within, the global innovation ecosystem.

IV. Conclusion

We appreciate the opportunity to share these views and recommendations. GDA remains committed to working with the Government of India to create a robust data governance environment that allows for responsible stewardship of data that benefits the citizens of India and helps achieve Prime Minister Modi's vision of a USD \$1 trillion digital economy by 2025.

To that end, we urge India to develop data transfer rules that are flexible and built on the Accountability Model. Even if the Accountability Model is not fully adopted, we urge India to allow for multiple transfer mechanisms and suitable exemptions recognized by other leading privacy frameworks. Recognizing and aligning such mechanisms and exemptions with those already approved by other international bodies or jurisdictions without any further country specific assessments/adequacy decisions would promote interoperability and permit Indian and other organizations to transfer personal data across borders in a seamless and secure manner without any artificial barriers that is vital to a global economy where technological and financial systems depend on the cross-border movement of information.

Yours sincerely,

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Appendix: Electronic Comments as Filed

Transfer of Personal Data Outside India, Section 17

Recommendation: The Bill should be revised to further support cross-border data transfers while ensuring organizations remain accountable for protecting the privacy and security of personal data after transfer. We recommend revising Section 17 to adopt the accountability model, under which entities that collect personal data remain responsible for its protection, regardless of where the data is processed. Specifically, the bill should be revised to state that international transfers are permitted when a Data Fiduciary or Data Processor uses appropriate contractual or other accountable mechanisms to provide a comparable level of protection, regardless of where the data is processed.

More broadly, if the Bill retains the white-list approach, we strongly recommend it recognize other transfer mechanisms, in addition to any white-list. The Bill should permit transfers made with consent of the data principal and transfers based on interoperable mechanisms such as model contracts, intra-group schemes, and certifications like the APEC-CBPR & PRP systems. If the 'white-list' is retained, the list should be notified well before the Bill's effective date.

Justification: GDA welcomes the removal of data localization requirements from the Bill. However, Section 17 may inadvertently lead to local storage requirements by permitting overseas data transfers only after the Central Government 'white-lists' a country or territory. This undermines the intent of the Bill — captured in the explanatory note — which acknowledges the importance of cross-border data transfers. The white-list approach also creates considerable work for the Central Government to approve and operationalize the list, as the Justice Srikrishna Committee report noted that adequacy requirements have proven cumbersome. Moreover, relying solely on a white-list leaves companies without back-up mechanisms for transferring personal data across borders, meaning any disruption to the white-list could shut down the flow of data and India's ability to participate in the global digital economy.

Section 17 should instead be revised to adopt the accountability model, which was established by the Organisation for Economic Co-operation and Development (OECD) and later integrated into legal systems and privacy principles including the APEC Cross-Border Privacy Rules System (CBPR).

If the accountability model is not adopted and Section 17 instead requires companies to adopt specific mechanisms to transfer data, we strongly recommend it recognize multiple transfer mechanisms, in addition to any white-list. At minimum, companies should be permitted to transfer data on the basis of consent, pre-approved model contracts, intra-group schemes and international certifications.

Any "white-list" should be publicly consulted upon and published well before the Bill's effective date.

¹ The Global Data Alliance is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. *Alliance members are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, energy, financial services, health, media and entertainment, natural resources, supply chain, and telecommunications sectors, among others.* For more information on the Global Data Alliance, please see: <https://www.globaldataalliance.org/downloads/aboutgda.pdf>

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See: <https://www.meity.gov.in/writereaddata/files/The%20Digital%20Personal%20Data%20Protection%20Bill%2C%202022.pdf>

³ Consistent with the GDA's cross-border data policy focus, the GDA's submission focuses on the cross-border data aspects of the Bill. GDA members hold a variety of views on other aspects of the Bill, which they have addressed through submissions via other organizations. We commend those other submissions to your attention.

⁴ Global Data Alliance, *Cross-Border Data Policy Principles* (2021), <https://globaldataalliance.org/wp-content/uploads/2021/07/03022021gdacrossborderdatapolicyprinciples.pdf>

⁵ Global Data Alliance, *Cross-Border Data Transfers & Sustainable Economic Development* (2020), <https://globaldataalliance.org/wp-content/uploads/2021/07/05062021econdesvelopments1.pdf>

⁶ Global Data Alliance, *Cross-Border Data Transfers & Data Localization Measures* (2020), <https://globaldataalliance.org/wp-content/uploads/2021/07/02112020GDACrossborderdata.pdf>

⁷ Global Data Alliance, *GDA Website – Agriculture* (2022), at: <https://globaldataalliance.org/sectors/agriculture/>

⁸ Global Data Alliance, *GDA Website – Automotive* (2022), at: <https://globaldataalliance.org/sectors/automotive/>

⁹ Global Data Alliance, *GDA Website – Energy* (2022), at: <https://globaldataalliance.org/sectors/energy/>

¹⁰ Global Data Alliance, *GDA Website – Finance* (2022), <https://globaldataalliance.org/sectors/finance/>

¹¹ Global Data Alliance, *GDA Website – Healthcare* (2022), <https://globaldataalliance.org/sectors/healthcare/>

¹² Global Data Alliance, *GDA Website – Supply Chain Logistics* (2022), <https://globaldataalliance.org/sectors/supply-chain-logistics/>

¹³ Global Data Alliance, *GDA Website – Media and Publishing* (2022), <https://globaldataalliance.org/sectors/media-publishing/>

¹⁴ Global Data Alliance, *GDA Website – Biopharmaceutical R&D* (2022), <https://globaldataalliance.org/sectors/biopharmaceutical-rd/>

¹⁵ Global Data Alliance, *GDA Website – Telecommunications* (2022), <https://globaldataalliance.org/sectors/telecommunications/>

¹⁶ The GDA strongly supports the accountability model for international data transfers. This model was, first established by the OECD and subsequently endorsed and integrated in many legal systems and privacy principles. The accountability model provides an approach to cross-border data governance that effectively protects the privacy and consumer rights of individuals and fosters streamlined, robust data flows by requiring entities that collect personal information (often defined as personal data controllers) to be responsible for its protection no matter where or by whom it is processed.

While governments are rightfully concerned with risks to privacy and data security, these risks are not dependent on the physical location of where data is stored or processed, or the location of the infrastructure supporting it. In fact, the effectiveness of data security and personal information protection is a function of the technologies, systems, and procedures put in place by the companies handling the personal information to protect the data.

To benefit from cross-border data transfers while simultaneously ensuring the responsible processing and protection of data, the focus of privacy policy and regulation needs to be on the quality and effectiveness of the mechanisms and the controls maintained to protect the data in question. The accountability model, therefore, continues to be an important tool in increasing privacy and security by requiring entities to ensure that data will continue to be properly protected, regardless of where the data is located.

Personal data protection and privacy frameworks that are based on a common set of international consensus-based principles facilitate cross border data transfers and drive innovation and business investment in local markets by promoting international interoperable legal frameworks upon which businesses of all sizes can rely. These coordination mechanisms also help to bridge current gaps in international privacy norms while facilitating the safe and secure international transfer of personal information. Such mechanisms may include private codes of conduct, contractual arrangements such as standard contractual clauses, certifications such as the APEC Cross Border Privacy Rules (CBPR), seals or marks, and mutual recognition arrangements such as the adequacy with the European Union General Data Protection Regulation (GDPR).

¹⁷ OECD Privacy Framework 2013 (p15), http://www.oecd.org/sti/economy/oecd_privacy_framework.pdf

¹⁸ Directive 95/46/EC (General Data Protection Regulation), <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

¹⁹ Act on the Protection of Personal Information, <https://www.ppc.go.jp/en/legal/>

²⁰ Privacy Act 2020, <https://www.legislation.govt.nz/act/public/2020/0031/latest/LMS23223.html>

²¹ Personal Data Protection Act 2012, <https://www.pdpc.gov.sg/Overview-of-PDPA/The-Legislation/Personal-Data->

Protection-Act

- ²² Personal Information Protection and Electronic Documents Act fair information principles, https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/p_principle/
- ²³ APEC Privacy Framework, [https://www.apec.org/Publications/2017/08/APEC-Privacy-Framework-\(2015\)](https://www.apec.org/Publications/2017/08/APEC-Privacy-Framework-(2015))
- ²⁴ APEC Privacy Recognition for Processors, reference needed
- ²⁵ APEC Cross Border Privacy Rules system, <https://www.apec.org/About-Us/About-APEC/Fact-Sheets/What-is-the-Cross-Border-Privacy-Rules-System>
- ²⁶ ASEAN Model Contractual Clauses (2021), at: https://asean.org/wp-content/uploads/3-ASEAN-Model-Contractual-Clauses-for-Cross-Border-Data-Flows_Final.pdf; See also, Singapore Personal Data Protection Commission, Guidance for Use of ASEAN Model Contractual Clauses for Cross-Border Data Flows in Singapore (2022), at: <https://www.pdpc.gov.sg/-/media/Files/PDPC/PDF-Files/Other-Guides/Singapore-Guidance-for-Use-of-ASEAN-MCCs.pdf?la=en#:~:text=The%20ASEAN%20Model%20Contractual%20Clauses%20%28ASEAN%20MCCs%29%20are,parties%20that%20protects%20the%20data%20of%20data%20subjects.>
- ²⁷ GDA *Cross-Border Data Transfers & Supply Chain Management* at <https://globaldataalliance.org/wp-content/uploads/2021/07/02252020IndiaGDACmtsPDP2019.pdf>
- ²⁸ GDA *Cross-Border Data Transfers & Innovation* at <https://globaldataalliance.org/wp-content/uploads/2021/07/04012021cbdtinnovation.pdf>
- ²⁹ GDA *Cross-Border Data Transfers & Remote Work* at <https://globaldataalliance.org/wp-content/uploads/2021/07/10052020cbdtremotework.pdf>
- ³⁰ GDA *Cross-Border Data Transfers & Economic Development* at <https://globaldataalliance.org/wp-content/uploads/2021/07/05062021econdesvelopments1.pdf>
- ³¹ GDA *The Cross-Border Movement of Data: Creating Jobs and Trust Across Borders in Every Sector* at <https://globaldataalliance.org/wp-content/uploads/2021/07/GDAeverysector.pdf>
- ³² World Bank, *World Development Report* (2020), at <https://www.worldbank.org/en/publication/wdr2020>
- ³³ World Bank, *World Development Report – Data For Better Lives* (2021), at <https://openknowledge.worldbank.org/bitstream/handle/10986/35218/9781464816000.pdf>
- ³⁴ OECD, *Mapping Approaches to Data and Data Flows* (2020), at <http://www.oecd.org/trade/documents/mapping-approaches-to-data-and-data-flows.pdf>
- ³⁵ Indian Council For Research On International Economic Relations (ICRIER), *Regulatory Burden on Micro- Small- and Medium Businesses Due to Data Localisation Policies* (2019), at <http://icrier.org/pdf/Regulatory-Burden.pdf>
- ³⁶ World Economic Forum, *Paths Towards Free and Trusted Data Flows* (2020), at [https://www.jmfri.gr.jp/content/files/Open/Related Information /WEF_May2020.pdf](https://www.jmfri.gr.jp/content/files/Open/Related%20Information/WEF_May2020.pdf)
- ³⁷ Micro-Revolution: The New Stakeholders of Trade in APAC, Alphabet, 2019. Likewise, the Asia Development Bank Institute estimates that electronic commerce platforms, which operate on the basis of cross-border data transfers, have helped some local firms reduce the cost of distance in trade by 60%. Asia Development Bank Institute, *The Development Dimension of E-Commerce in Asia: Opportunities and Challenges* (2016), at <https://www.adb.org/sites/default/files/publication/185050/adbi-pb2016-2.pdf>
- ³⁸ ICRIER, *op. cit.*
- ³⁹ Site Selection Group, *Top 20 Countries for Foreign Direct Investment by Call Center and Back Office Operations* (2021), at <https://info.siteselectiongroup.com/blog/top-20-countries-for-foreign-direct-investment-by-call-center-and-back-office-operations>
- ⁴⁰ WTO, *Government Policies to Promote Innovation in the Digital Age*, 2020 World Trade Report (2020), at: https://www.wto.org/english/res_e/booksp_e/wtr20_e/wtr20-0_e.pdf