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INDIA'S NEW PRIVACY REGULATIONS

FOUR NEW IT RULES

The Information Technology laws of India have undergone changes with effect from 11 April 2011, by the introduction of the following rules:

- (1) Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 (**Sensitive Data Rules**);
- (2) Information Technology (Electronic Service Delivery) Rules, 2011 (**Electronic Service Rules**);
- (3) Information Technology (Intermediaries Guidelines) Rules, 2011 (**Intermediaries Rules**); and
- (4) Information Technology (Guidelines for Cyber Cafe) Rules, 2011 (**Cyber Cafe Rules**).

(1) Sensitive Data Rules

Every entity/ firm/ association that engages in commercial or professional activities (**body corporate**) is henceforth required to obtain prior written consent for collecting any "sensitive personal data or information" (defined below) of the person concerned regarding its usage. This does not apply to information already in the public domain or accessible under the Right to Information Act, 2005.

"Sensitive personal data or information" means information relating to:

- password, financial information;
 - health condition, sexual orientation, medical history, biometric information;
 - any of the above details provided to the body corporate for providing service; and
 - any of the above information received by the body corporate for processing, stored or processed under a contract or otherwise;
- (collectively, the **personal information**).

A body corporate is required to adhere to (amongst others) the following regulations:

- Personal information cannot be collected unless:
 - it is for a lawful purpose and connected with the function or activity of the body corporate; and
 - it is considered necessary for that purpose.
- While collecting personal information directly from the concerned person, steps should be taken to ensure that the person has reasonable knowledge of the following facts:
 - the information is being collected;
 - purpose for which the information is being collected;
 - the intended recipients of the information; and
 - the name and address of the agency that is collecting the information and the agency that will retain the information.
- The personal information cannot be retained longer than is required for the purpose for which it may lawfully be used or is otherwise required under law.
- The provider of personal information must be allowed to review the information and ensure that if found to be inaccurate or deficient, it shall be corrected or amended.

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- Disclosure of personal information to a third party will require prior written permission, unless agreed in the contract between the body corporate and the provider of the information, or the disclosure is necessary for compliance of a legal obligation.
- The body corporate is required to provide a privacy policy for handling or dealing in personal information which must be available to the provider under a lawful contract. The policy will need to be published on the website of the body corporate.

(2) Electronic Service Rules

The Electronic Service Rules deal with services to be rendered by the appropriate government and public authorities through electronic modes. These are applicable to all government agencies and public authorities and provide for maintaining privacy of information obtained by them while dealing in their day to day activities.

(3) Intermediaries Rules

Intermediaries Rules have been brought in effect for regulating intermediaries when they deal with information of third parties. "Intermediaries" are persons who receive, store, transmit or provide any service with respect to an electronic record, such as telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online auction sites, online market places and cyber cafes. The Intermediaries are required to adhere to various duties and obligations and observe proper due diligence while dealing with information of third parties.

(4) Cyber Café Rules

Cyber cafés are required to obtain registration with a unique registration number with an agency to be notified by the government. The cyber café will need to establish the identity of each user and keep a record of the same in a log register for one year. Further, it is required to maintain for one year back ups of the log records for each access or login by its users (including history of websites accessed)..



ALMT RECOMMENDS:

Going forward, companies may need to consider/ implement the following:

- (a) To include in the employment contracts, offer letter, employee handbooks, specific consent of the employee with respect to the employer collecting, accessing and using personal information and sharing such information with third parties in accordance with the privacy regulations;
- (b) To review any online terms and conditions/ privacy policies available on the company's website to ensure compliance of the privacy regulations;
- (c) To ensure that the prior written consent is obtained for sharing the personal information **of any person whosever**, with any third party such as agencies carrying out background

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checks. The services of such agencies are quite common prior to employing any person or entering into a consultancy contract; and

(d) To generally ensure that the privacy regulations are complied with, at all times.

For further clarification and details on the above amendment, you may write to the employment law team comprising of:

Aliff Fazelbhoy at afazelbhoy@almtlegal.com

Kruti Desai at kdesai@almtlegal.com

Deblina Gooptu at dgooptu@almtlegal.com

Apeksha Mattoo at amattoo@almtlegal.com

Disclaimer

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ALMT Offices

Mumbai

4th Floor, Express Towers
Nariman Point,
Mumbai 400 021
India
Tel +91 22 4001 0000
Email: mumbai@almtlegal.com

Bangalore

2 Lavelle Road
Bangalore 560 001
India
Tel +91 80 4016 0000
Email: bangalore@almtlegal.com