



APAC NEWSLETTER

Legal, Compliance and ESG

9th January 2023

Dear Readers, we bring to your reading and attention following topics:

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APACFIN

A. The Digital Personal Data Protection Bill- 2022

~ K Selvaraj- Group General Counsel & Head Compliance, Legal

A) The Digital Personal Data Protection Bill, 2022 – Key Highlights

Digital India has caused digitization of the Indian economy and transformed the lives of Indian citizens in particular and governance in general. It has become clear over the last few years that while the internet and technology is a force for good and connectivity, it is also a place where user harm and misuse can exist if these rules and laws are not prescribed. It has become very clear over the last few years whilst this data is used by platforms and intermediaries, the data and personal data must be subject to a framework of rules and dos and don'ts.

The Digital Personal Data Protection Bill -2022 ("Bill") released by the Ministry of Electronics and Information Technology ("MEITY") for public consultation, is a legislation that frames out the rights and duties of the citizen on one hand and the obligations to use collected data lawfully of the Data Fiduciary on the other hand. Some of key features of the Bill are as below:

- ❖ The Internet and digitalization of data offer great opportunities but also lead to greater challenges. Recognizing this and to maintain focus on increasingly digital nature of interactions, **the Bill applies to digital personal data.**
- ❖ The term "Data Principal" has been used to identify the individual to whom personal data is related. Considering the utility and usage of personal data of children, it has been provided that in case of children their parents or lawful guardians of children would be considered Data Principal.
- ❖ The definition of "personal data" has been worded in a direct and simple manner to mean any data by which or in relation to which an individual can be identified.
- ❖ The entity (whether it be an individual, company, firm, state etc.) which decides the purpose and means of processing of an individual's personal data has been termed the "Data Fiduciary". The deliberate choice of "Fiduciary" underlines that the relationship between the Data Principal and Data Fiduciary is expected to be one based on mutual trust.
- ❖ The definition of "processing" has been used to cover the entire cycle of operations that can be carried out in respect of personal data. Thus, several operations right from collection to storage are, as per the definition in the Bill, examples of processing.

Grounds (in the nature of requirements) on which personal data can be processed have been clearly specified as below:

- i) Personal data of an individual is processed only in accordance with the provisions of this Bill.

ii) such processing is done only for a purpose which is not forbidden by law.

iii) before the personal data of an individual can be processed, the individual should have either given consent to the processing for stated purposes or deemed to have given consent in certain limited circumstances.

B. “Will” & “Power of Attorney” and its Difference

*~ J.P. Trivedi- Senior Manager Legal
& Vivek Ugale, Senior Officer, Legal*

What is Power of Attorney?

A power of attorney is a legal document giving one person (the agent or attorney-in-fact) the power to act for another person (the principal). The agent can have broad legal authority or limited authority to make legal decisions about the principal's property, finances, or medical care. The power of attorney is frequently used in the event of a principal's illness or disability, or when the principal can't be present to sign necessary legal documents for financial transactions. A power of attorney can end for a number of reasons, such as when the principal dies, the principal revokes it.

The Power of Attorney is defined u/s 1 (A) of The Power of Attorney act, 1882: “Power-of-Attorney” includes any instruments empowering a specified person to act for and in the name of the person executing it.

What is Will?

A Will is a legal document that sets forth your wishes regarding the distribution of your property and the care of any minor children. If you die without a will, those wishes may not be carried out. Further, your heirs may end up spending additional time, money, and emotional energy to settle your affairs after you're gone.

Will is defined u/s 2 (h) of The Indian Succession Act, 1925: “Will” means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

Difference between Will and Power of Attorney:

Both the will and power of attorney are legal documents that gives power to certain person. A Will may not necessarily always give power to another person. Will can be executed even when the name of one specific executor is not mentioned by the Testator. In such cases, any one of the legal heirs of the Testator can file the necessary proceedings to give effect to the Will after the death of Testator. The main purpose of Will is to lay down how the Testator would want his estate to be distributed in the event of his death. Whereas, the main purpose of POA is always giving the power to another person(agent) to do some act on behalf of the Principal.

Main difference is the time span in which the will and power of attorney takes effect. Will executed by the testator takes effect only after the death of the testator.

. All the powers conferred on the executor cannot be exercised upon the estate during the lifetime of the testator.

But the power of attorney can exercise the powers only during the lifetime of the Principal. The power of an Executor under the will is not limited, and he has an authority to manage all the matters relating to the estate. But the powers of the Agent with respect to the power of attorney are limited only to those matters that are required to be carried out with respect to the agreement.

Conclusion:

Both Will and Power of Attorney are legal instruments which confer power to some other person. The time period in which the documents take effect varies.

The logo for APACFIN features a stylized white figure of a person with arms raised in a 'V' shape, set against a light blue background. Below the figure, the word "APACFIN" is written in a large, white, serif font.

C. Effect of Non-payment of Stamp Duty and Non-Registration of documents

~ Yogesh Babar- Manager Legal

EFFECT OF NON-PAYMENT OF STAMP DUTY AND NON-REGISTRATION OF DOCUMENTS:

Payment of applicable stamp duty is necessary as non-payment of stamp duty or insufficient payment of stamp duty may prove harmful/detrimental to the interests of parties to the agreements or transaction, due to the penal provisions contained in Section 33 and 35 of the Indian Stamp Act, 1899. The Sub Section (1) of Section 33 of the Indian Stamp Act, 1899 states:

“Examination and impounding of instruments: (1) Every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.” and the relevant extract of Section 35 of the Act, states.

“Section 33 of the Indian Stamp Act, 1899 states: Instruments not duly stamped inadmissible in evidence, etc. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties, authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped. Provided that: (a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;”

Basis the above provisions, it can be observed that in the event of non-payment of stamp duty or shortfall in the payment of stamp duty, following consequences may follow:

1. the said document (agreement in question) can be seized by the lawful public office including courts except police officers in terms of Section 33 of the Indian Stamp Act, 1899;
2. the said document shall be inadmissible as evidence for any purpose; and
3. such document shall be admissible as evidence after payment of appropriate stamp duty along with a penalty equivalent to 10 (Ten) times of shortfall or deficient stamp duty.

Therefore, in order to prevent the abovementioned consequences, it is advisable to pay proper stamp duty under appropriate head of Schedule attached to Act.

Further, it is seen that people are not aware of the difference between payment of stamp duty and registration of document at hand. It is stated that these are two different transactions governed by two different statutes. Payment of Stamp Duty is governed by Indian Stamp Act, 1899 or the respective Stamp Acts of states of India and the registration of document is governed by Registration Act, 1908. It is possible that a certain document is subject to levy of a stamp duty but may not be required to be registered. For instance, a rent agreement / lease agreement of immovable property for term less than one year is not required to be registered but it is leviable to stamp duty.

Now, Section 17 of the Registration Act, 1908 prescribes the list of the instruments that are mandatory to be registered failing which the consequences shall follow as per Section 49 of the Registration Act, 1908.

Section 49 of Registration Act, 1908 states,

Effect of non-registration of documents required to be registered. – No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall: (a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract/agreement in a suit for specific performance under or as evidence of any collateral transaction not required to be effected by registered instrument.

The effect of non-registration is that such a document shall not affect any immovable property covered by it or confer any power to adopt and it cannot be received as evidence of any transaction affecting such property or conferring such power. But there is no prohibition under Section 49 to receive such a document which requires registration to be used for a collateral purpose.

Therefore, it is very important for a document to be stamped properly and registered as per the act, to avoid unwarranted consequences.