

India – Data Privacy

The Constitution of India, 1950 does not provide express recognition of a right to privacy, but successive Supreme Court rulings have identified an implicit right under Article 21 (right to life) of the Constitution. Currently, there is no general data protection legislation; however the confidentiality of personal data furnished by an employee to an employer is governed by the general principles of Indian law. The Information Technology Act, 2000 deals with certain aspects of the Data Privacy. Other Indian statutes such as Indian Contract Act, 1872, Indian Penal Code, 1860, Consumer Protection Act, 1986, Specific Relief Act, 1963, Copyright Act, 1972 also indirectly protect the breach of confidentiality of personal data.

On October 27, 2009, the Indian Parliament made certain amendments to Indian Information Technology Act, 2000, in order to curb leaking of sensitive personal data.

Collection and Processing of Personal Data	
<i>Compliance Alternatives</i>	<p>Employee consent for data processing is not expressly required by any legislation. However the rights of the employee are normally protected through provisions of the contract between the employer and the employee</p> <p>In light of the anticipated enactment of data protection legislation and several Supreme Court rulings on the issue of 'right to life', it is recommended that an employer disclose its data processing activities to employees.</p> <p>Pursuant to the recent amendments notified to the Information Technology Act, 2000, any body corporate possessing, dealing or handling any sensitive personal data or information is found to have been negligent in implementing and maintaining reasonable security practices and procedures, it could be liable to pay damages by way of compensation to the person so affected. <i>"Reasonable security practices and procedures"</i> have been defined to mean security practices and procedures designed to protect such information from unauthorised access, damage, use, modification, disclosure or impairment, as may be specified either (i) in an agreement between the parties; or (b) in any law for the time being in force; and in the absence of such agreement or any law, such reasonable security practices and procedures that the Central Government may prescribe in consultation with such professional bodies / associations as it may deem fit.</p> <p>Also, with regard to computer related offenses, if any person, dishonestly or fraudulently, without permission of the owner or of any other person who is in charge of a computer resource <i>inter-alia</i>: (i) accesses or secures access to such computer resource; or (ii) downloads, copies or extracts any data, computer data base or information from such computer resource including information or data held or stored in any removable storage medium; or (iii) denies or causes the denial of access to any person authorized to access any computer resource; then such person shall be liable to pay damages by way of compensation not exceeding ten million rupees to the person so affected.</p>
<i>Disclosure/ Registration</i>	None applicable.
<i>Other Requirements</i>	None applicable.
Transfer of Personal Data	
<i>Compliance Alternatives</i>	<p>Employee consent for cross-border data transfer is not expressly required by any legislation.</p> <p>In light of the anticipated enactment of data protection legislation, it is recommended that an employer obtain an employee's consent prior to transferring his or her personal data outside of India.</p>
<i>Other Requirements</i>	None applicable.

This summary is intended to reflect local law and practice as at 1 May 2013. Please note, however, that recent amendments and legal interpretations of the local law may not be included in these summaries. In addition, corporate governance, administration, and option plan design facts that are specific to your company may impact how the local laws affect the company's equity based compensation plans. With these matters in mind, companies should not rely on the information provided in this summary when implementing their stock plans.