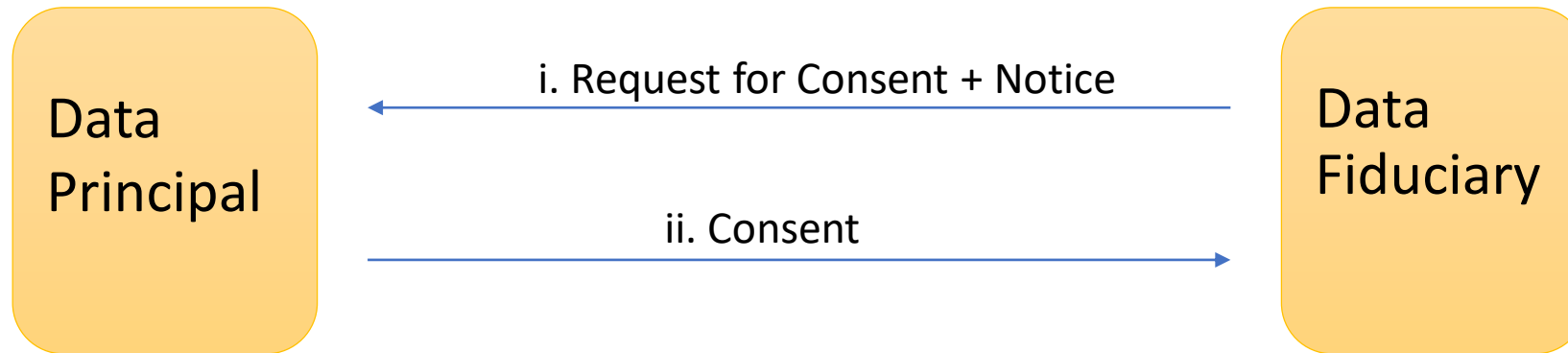




Digital Personal Data Protection Bill (DPDP) PART - II

OZA PATEL & DOSHI
CHARTERED ACCOUNTANTS

Request for Consent, Notice and Consent



Request for Consent, Notice and Consent (Continues)

The DPDP Bill mandates that prior to processing digital data, the Data Principal shall provide consent to the Data Fiduciary. Additionally, it outlines the specific information that must be included in the notice when requesting processing consent from the Data Principal. Moreover, the bill delineates the essential elements of the Consent.

The bill mandates that **consent** given by the Data Principal **shall be**,

- Free
- Specific
- Informed
- Unconditional
- Unambiguous
- Signifying an agreement to process personal data for specified purpose and limited to personal data necessary for such purpose.

Request for Consent, Notice and Consent (Continues)

- **Example**

MR.A downloads Practo (Telemedicine app), the app requests Mr.A for 1) personal data such as Name, Address, Email Id, Mobile No, etc, for providing the services and 2) accessing Mr.A's mobile phone's contact list, Mr.A give consent to both. Since, mobile phone's contact list is not necessary for providing telemedicine services, Mr.A's consent shall be limited to the processing of his personal data for making available such services.

- If the **consent violates** any provision of this bill or its rules or any other law, shall be **invalid** to the extent of such violation.

Request for Consent, Notice and Consent (Continues)

- **Example**

Mr.B buys an insurance policy from say Digit insurance, through mobile app of Digit insurance. He gives consent to Digit insurance for (i) processing personal data and (ii) waiving his right to file complaint to the Data Protection Borad of India. Here, part (ii) of the consent, regarding the waiver of his right, shall be considered invalid.

- **Request for consent** shall be presented to Data Principal in **clear and plain language** and in **English or language** specified in the **Eighth Schedule to the Constitution**. It should also include contact **details** for a **Data Protection Officer** (appointed by Data Fiduciary) or authorized personnel to address the Data Principal's rights under this Bill.

Request for Consent, Notice and Consent (Continues)

- **Example**

Mr. K is booking flight tickets from Ahmedabad to Ho Chi Minh (Vietnam) via the VietJet portal, where he must provide consent for processing his personal data. Presently, the consent request is in Vietnamese, a language not specified in the Eighth Schedule to the Constitution or English. However, once this Bill transitions into law, VietJet will be required to seek consent in either English or a language specified in the Eighth Schedule. This legislation extends to scenarios where data is processed outside India but pertains to services offered within the country.

- The **Data Principal** retains the **right to revoke their consent** at any time, with any resulting consequences falling upon them. Such withdrawal will not impact the legality of data processed prior to the withdrawal.

Request for Consent, Notice and Consent (Continues)

- After Data Principal **withdraws consents**, Data Fiduciary shall within reasonable time cease or cause its Data processor* to cease processing unless processing without his/her consent is required or authorized under any law in India.

- **Example**

Airtel enters into a contract with ABC limited, a data processor, for Emailing telephone bills to customer Ms.A, who had given her consent to Airtel earlier. Now, Ms.A downloads app of Airtel and opts to receive bills on the app. Airtel shall itself cease and shall cause ABC limited to cease the processing for Emailing bills.

- Data principal can **give/manage/review/withdraw** his/her **consent** to Data Fiduciary through Consent Manager*.

Request for Consent, Notice and Consent (Continues)

- **Request** made to a Data Principal for consent shall be **accompanied or preceded** by a **notice** given by Data Fiduciary to Data Principal informing him/her;
 - 1) Personal Data and purpose for which it is to be used
 - 2) Manner in which he/she can exercise his/her rights to withdraw the consent and his/her right of grievance redressal
 - 3) Manner in which he/she can make complain to the Board.

And where a Data Principal has given consent for processing the personal data prior to commencement of the Act the Data fiduciary shall give notice to Data Principal in the above stated manner.

Request for Consent, Notice and Consent (Continues)

- **Example**

Mr.J applied for a credit card to IDFC First bank, on receiving it, he had to perform Video KYC process. IDFC First bank shall accompany or precede the request for processing the personal data with Notice to Mr.J, describing the personal data and the purpose of its processing.

- Where question arises with respect to consent given by Data Principal, the Data Fiduciary shall be obliged prove that a notice given and to him/her and consent was given by him/her.


Definitions


- “**Data Processor**” means any person who processes personal data on behalf of a Data Fiduciary.
- “**Consent Manager**” means a person registered with the Board, who acts as a single point of contact to enable a Data Principal to give, manage, review and withdraw her consent through an accessible, transparent and interoperable platform.



THANK YOU!

OZA PATEL & DOSHI
CHARTERED ACCOUNTANTS

 545, Yash Arian, Nr Swami
Vivekananda Chowk, Memnagar
Ahmedabad, Gujarat – 380052

 office@ozapateldoshi.com

 +91-94093 87125