

Data Protection Tech Zone

A Suggestion from Naavi, Founder www.naavi.org and Chairman, Foundation of Data Protection professionals in India (www.fdppi.in)

I would like to place a suggestion to the Karnataka Government to create a special Tech Zone for data processing called “Global Data Protection Tech Zone” (GDPTZ) on the model of the Dubai International Financial Center (DIFC) with its own administration system under a “Commissioner” with exclusive powers to operate as a special economic zone for being a global data processing activities, to attract international companies to set up units in compliance with different data protection laws.

The Data Protection Tech Zone (DPTZ) may be created with an “Administrator” or “Commissioner” with some exclusive powers to provide assurance that DPTZ will

The opportunity has arisen for such a project from multiple developments such as

- 1) Over 100 countries in the world having enacted independent data protection laws
- 2) Schrems II judgement of EU CJ
- 3) Recent amendment to Singapore PDPA increasing the Risk of operation in Singapore
- 4) Recent developments in Maharashtra increasing the perceived Risk of Operation in India
- 5) India’s PDPB 2019 to be passed into a law (PDPA 2021) by February 2021 with following provisions
 - a. Section 37 suggesting creation of “Notifiable Data Processing Operations” exempt from PDPA
 - b. Sandbox for hosting innovative projects with exemption from PDPA for a possible period of 3 years
 - c. Establishment of the authority called Data Protection Authority (DPA) which will be a super regulator in the IT industry.
 - d. Possible Data Localization requirement.
- 6) The relaxation in the rules of OSPs and ease of “Work from Home” option
- 7) Global pandemic scare rendering the pre-eminence of Singapore as an ADR hub and creating a need and opportunity for a global ODR Center

It is necessary to make an announcement on this immediately to preempt slipping away of the opportunities. For example, The DPA opportunity will evaporate in the next two months. The Singapore and Schrems II are hot discussions now and will get diluted over time. The Maharashtra development and the consequential advantage will also pass off. Hence Karnataka has to grab the opportunity by making an announcement quickly.. may be in the context of the new Cyber Security Policy and the November Tech Summit.

If this suggestion is of interest, I can elaborate more on these perceived opportunities.

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Opportunities that support setting up of a “Global Data Protection Tech Zone” (GDPTZ)

At the beginning of November 2020, following opportunities appear to be before us which suggest that an alert Government like Karnataka can take steps to harness these opportunities by setting up a special economic zone to attract world wide participation.

The suggested model is like the Dubai International Financial Center (DIFC).

The identified opportunities that converge now include the following:

- 1) Over 100 countries in the world having enacted independent data protection laws
- 2) Schrems II judgement of EUCJ
- 3) Recent amendment to Singapore PDPA increasing the Risk of operation in Singapore
- 4) Recent developments in Maharashtra increasing the perceived Risk of Operation in India
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1. Multiple Data Protection Laws

“Personal Data Protection laws” in different names have emerged in over 130 countries in the world. This includes GDPR which covers 27 EU countries excluding UK.

US has a few sectoral laws of federal nature like HIPAA, GLBA, COPPA etc and also statewise laws In California, (CCPA) New York, Utah etc

UK, Singapore, Thailand, Brazil, Australia, New Zealand and several other countries have their own data protection laws.

Each of these laws are primarily meant to protect the “Right to Privacy” of their citizens. Some of the laws have focussed on the data processing activity happening in their jurisdiction. Some of the laws also have extra-territorial jurisdiction. Even where there is no jurisdiction of the law, the contractual bindings signed by the Indian data processors expose themselves to the laws of other countries.

Hence, if a company in India is offering its services to people across the globe, they are likely to be processing the personal data of citizens of many countries. Hence they are simultaneously exposed to the laws of multiple countries.

The need to be compliant with multiple data protection laws requires multiple business units physical or virtual and the proposed GDPTZ can host multiple subsidiary companies with limited back office support with operations in terms of technology and manpower and rest of the operations conducted through the WFH (Work from home) network.

2. Schrems II Judgement by EUCJ

The last order from the EU Court of Justice in the FaceBook case referred to as Schrems II case ruled that the US Privacy Shield arrangement was not acceptable to EU since there was no effective means of preventing the access to personal data of EU citizens under process in US from being accessed by the intelligence agencies irrespective of the presence or absence of due process.

Since Indian law also provides similar access to the Indian law enforcement at the local police station level investigator of a crime of the rank of an inspector, there is no way EU system will accept the Indian system as providing sufficient assurance of safe guard of the Privacy rights of the EU.

This position will not change even after the passage of the Indian Personal Data Protection Act PDPA.

Hence entire India cannot legally get personal data processing business from the EU GDPR area. Even the SCC (Standard Contract Clauses) require to be compliant with the EUCJ ruling and hence cannot be used as a substitute.

Even countries other than EU will not accept Inspector level intervention in any data processing company.

By setting up the GDPTZ, we can create a special zone where the assurances of non interference could be much higher than the normal.

3. Recent amendment to Singapore PDPA increasing the Risk of operation in Singapore

Recently the Personal Data Protection Act of Singapore has been amended to the effect that the fines in respect of data breach may be as high as 10% of the turnover of a company. This increases the cost of operations by way of risk mitigation including liability insurance making it necessary for some of the Singapore based companies shifting their operations to other neighbouring countries for which India may be well suited.

Hence it is possible to use this as a leverage to persuade some industries in Singapore to shift their operations to the GDPTZ.

4. Recent developments in Maharashtra increasing the perceived Risk of Operation

The Mumbai police actions on Republic TV, indicate that Police cannot be trusted with the current powers under CRPC in respect of personal data processing. Hence it is necessary to build some special safeguards in terms of procedures by which any data processing company may be questioned by the local police.

After the Schrems II judgement, it is necessary for the country to provide assurances that what is happening in Maharashtra is an aberration and does not represent the state of democracy in India.

It is therefore necessary that the law enforcement process for the units functioning in the GDPTZ handling personal data of foreign citizens should be hardened to the extent that no action should be possible without the administrative sanction of the Commissioner of the GDPRTG and/or the Data Protection Authority of India.

This assurance if properly communicated will ensure that the global regulatory agencies do not consider that the happenings in Maharashtra is an indication of the law and order situation across the country.

This should also help preserving flight of data processing business from India and possibly help shift of existing business from Maharashtra to Karnataka.

5. India's PDPB 2019

Indian PDPB 2019 has several measures which are better administered in the special data zones like the proposed GDPTZ.

For example, Indian act provides (Sec 37) that if an organization is processing personal data of foreign citizens under a contractual arrangement with a foreign data vendor, such entities may be exempt from the application of the Indian law provided they are notified by the Data Protection Authority. This can be implemented under the GDPTZ efficiently.

Section 40 on the other hand provides that start ups can be provided a facility to run their activities under a Sand Box scheme for a period of 3 years subject to periodical approvals without the application of the Indian Act. This will also be facilitated well by the GDPTZ.

The Indian PDPA envisages the setting up of an authority called Data Protection Authority which will be the nucleus under which the Data Protection Industry in India will revolve around. Karnataka Government can propose that it can provide appropriate facilities in the GDPTZ to get the DPA established here rather than any other city in India. A decision on this will be taken at the time of passing of the Bill in the budget session and hence action is required now to initiate the request. By declaring the setting up of the GDPTZ, Karnataka Government may place itself in a position of eminence as the most preferred state in the country to establish the DPA.

The Indian Personal Data Protection Act is considering suggestion of data localization requiring data processing companies to retain sensitive personal data and possibly even the non sensitive personal data within the country. Setting up of the GDPTZ and encouraging cloud service providers to set up data centers here could be a great boon to the IT industry in India.

6. Relaxation of OSP rules

The recent relaxation of OSP rules enabling non voice based services to adopt to work from home situation using the telecom network in an era and the availability of LTE and 5G networks will strengthen the advantages of the use of thin back office services in the GDPTZ supported by the distributed employee network working from home.

7. Developing an ODR hub

Singapore is currently considered a hub for global ADR. However with the developments of the amendment of PDPA, even the ADR activity may get dampened and there is an opportunity to set up an alternative ADR centre in India. If this can be a ODR (Online dispute resolution centre) to be set up in the GDPTZ, it will have an advantage.

Thus multiple factors seem to be converging to provide an opportunity for making good use of the suggested GDPTZ as a strategy for boosting the IT investments in Bangalore.

While this is a mid term project to be implemented over at least a 3 year term, in order to ensure that competition from other states are pre-empted, a firm announcement is required to be made at the earliest and well before the Personal Data Protection Act is passed.