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Draft Code of Practice
And
Draft Policy for Distributed Responsibility

Objective

The objective of this Policy is to establish a method for handling the nomination of personal data as provided in the DPDPA 2023

Background:

DPDPA 2023 recognizes that “Nomination” is a right of the data principal which needs to be protected and facilitated as an obligation of the Data Fiduciary.

The process of “Nomination” has two distinct phases.

First is the registration of the request at the time of collection of the personal data and second is the passing of the personal data to the nominee on the occurrence of a contingent event as per the nomination.

If the contingent event is “Death” of the data principal, the data fiduciary needs a mechanism to collect the information of reported death, verify the same and there after make arrangement for transfer of custody of the personal data to the nominee. Before passing the personal data to the nominee, nominee himself should be identified, and a proper acknowledgement is obtained from him. In case there is any dispute from any “Legal heir” about the transfer of data to the nominee, the dispute needs to be effectively resolved. After the successful claim settlement, the personal data needs to be purged after a reasonable period of time.

The policy needs to address all these issues.

Policy

For the purpose of providing the right to nomination of a data principal as envisaged under the DPDPA 2023, the organization provides an option to every data principal who submits personal data to the organization for any purpose complete a “Nomination Form” indicating one or more joint/alternate nominees.

At the time of registration of the nomination, the name, email address and the mobile/phone of the proposed nominee shall be submitted by the data principal for which he/she shall be responsible to hold consent from the nominee.

The company shall send a communication to the designated nominee and obtain his/her consent through e-mail and verification through mobile OTP etc as may be necessary.

It is considered that nomination of any asset is not a transfer of ownership to a legal heir. It is considered only as a responsibility handed over to the nominee by the data principal to eventually hand over the property to the rightful owners of the property.

In the context of DPDPA 2023, the nominee is entrusted with the secured storage of the information of the data principal until he is able to transfer it to the rightful owners.

It is noted that transfer of ownership of digital data on the death of a person needs to be recorded through a paper instrument since electronic instruction in this regard is not recognized under ITA 2000.

The "Nomination" in this context of FDPPI and personal data held by it, is only an entrustment of the personal data for security purpose and does not amount to transfer of ownership and hence it is not in conflict with ITA 2000.

The nominee is an agent of FDPPI as a joint data fiduciary and shall be responsible to ensure that the data is handed over only to the legal heirs. Any non compliance of this direction shall be considered as a violation of the directions of the data fiduciary under Section 72A of ITA 2000.

In the contingent event of a confirmed knowledge of death of a data principal is received, the responsibility of FDPPI is to properly identify the nominee and handover the data to him/her and keep an acknowledgement for their records. After a reasonable time thereafter which would be 3 years in the case of FDPPI, the data would be mandatorily deleted if there is no conflicting claim from any others or there is any specific reason to retain the data.

At the point of receiving the registration FDPPI is not making any efforts to identify the nominee as per approved KYC norms. However, before transfer of the data to the nominee, FDPPI may request for satisfactory identification of the nominee.

At present the organization intends to use only a verification of the email/Mobile number of the data principal.

FDPPI reserves the right to inform the nominee about the nomination.

On receipt of any information that suggests the unfortunate demise of the data principal, FDPPI will contact the nominee over the contact information provided and initiate the further process of identification and transfer.