

WORKING DRAFT VERSION 1.0

Data Protection Authority of Sri Lanka

Draft Personal Data Protection (Classification of Categories of Personal Data Permitted to be Processed in a Third Country by a Public Authority as a Specific Controller) Directives

This document provides the draft outline of the Personal Data Protection (Classification of Categories of Personal Data Permitted to be Processed in a Third Country by a Public Authority as a Specific Controller) Directives intended to be issued by the Data Protection Authority under section 26 (1), read with section 32(s) and section 33(c) of the Personal Data Protection Act No.9 of 2022.

PERSONAL DATA PROTECTION ACT, NO. 9 OF 2022

Directive made by the Data Protection Authority of Sri Lanka, under subsection (1) of section 26, read with paragraph (s) of section 32 and paragraph (c) of section 33 of the Personal Data Protection Act, No. 9 of 2022.

Data Protection Authority of Sri Lanka

Colombo,

, 2024

DIRECTIVES

1. These Directives may be cited as the Personal Data Protection (Classification of Categories of Personal Data Permitted to be Processed in a Third Country by a Public Authority as a Specific Controller) Directives No. of 2024.

2. Categories of personal data permitted to be processed by or on behalf of a public authority in a third country prescribed by the Minister pursuant to an adequacy decision made under subsection (2) of section 26 of the Act shall be-

- (a) personal data recorded in the Register of Persons maintained under section 6 of the Registration of Persons Act, No. 32 of 1968 or otherwise processed by the Commissioner-General for the Registration of Persons or any person authorised under section 5 of the said Act, as part of an application for registration for registration and issuance of an identity card, so long as the Commissioner-General for the Registration of Persons has readily enforceable contractual or other related rights to have such personal data promptly relocated to Sri Lanka upon request at reasonable cost;

- (b) personal data processed as part of a Welfare Benefit Payment Scheme under section 9 of the Welfare Benefits Act, No. 24 of 2002, so long as the Commissioner of Welfare Benefits or the Welfare Benefits Board has readily enforceable contractual or other related rights to have such personal data promptly relocated to Sri Lanka upon request at reasonable cost;
- (c) personal data processed by the Inland Revenue Department as part of the assessment, payment or filing of taxes or disbursement of any tax refunds or credits so long as the Inland Revenue Department has readily enforceable contractual or other related rights to have such personal data promptly relocated to Sri Lanka upon request at reasonable cost;
- (d) personal data that are financial data processed in support of payments made by or on behalf of a public authority to or relating to the data subject, by or on behalf of the data subject to a public authority;
- (e) personal data transmitted in email systems, conference call systems and any other electronic communications services and platforms used by public authorities and their employees or contractors;
- (f) personal data for which the data subject, or the data subject's authorised representative, has consented to the proposed processing of personal data in a third country;
- (g) personal data which a regulatory or statutory body which regulates, authorises or supervises the public authority, or any Ministry responsible for administering the public authority permits to be processed in a third country;
- (h) personal data relating to employees or contractors of a public authority in the context of their potential, current or former employment or engagement, including without limitation in relation to administration of pensions or obligations relating to social security;
- (i) personal data concerning health that are processed as part of or in support of the provision of healthcare services by a medical practitioner licensed or otherwise accredited in Sri Lanka or another jurisdiction;
- (j) personal data a copy of which is maintained in Sri Lanka and updated at a frequency commensurate with the nature of the personal data and purpose of processing;
- (k) personal data where the public authority has readily enforceable contractual or

other rights to have such personal data promptly relocated to Sri Lanka upon its request at reasonable cost;

- (l) personal data which the public authority has determined it is more expedient to process in a third country than in Sri Lanka for reasons of data security, cost of processing or quality of service, or for technical reasons;
- (m) personal data which, by their nature or by the nature of their processing, present minimal risk of harm to the data subject if such personal data were the subject of a personal data breach; and
- (n) personal data which are authorised to be processed in a third country under any emergency regulations made by the President under Part II of the Public Security Ordinance (Chapter 40), subject to any limited purpose and duration of processing specified in such emergency regulations.

3. Directive 2 shall not apply to any personal data which have been identified under a policy of the Government of Sri Lanka as personal data that shall not be processed in a third country.

4. Any public authority processing personal data in a third country shall ensure that such processing is subject to appropriate technical and organizational measures in accordance with section 10 of the Act to protect the integrity and confidentiality of such personal data, and in particular to mitigate any risk of access to such personal data by any person not authorized by it.

5. A public authority intending to process personal data in a third country may, prior to such processing, make a request to consult the Authority for the purpose of -

- (a) ensuring that the personal data intended to be processed falls within the one or more categories of personal data specified in Directive 2;
- (b) the Authority classifying any additional category of personal data that may be processed in a third country under subsection (1) of section 26 of the Act; or
- (c) obtaining guidance on any matter relating to intended processing of personal data under these Directives.

6. A public authority making a request for a consultation with the Authority under Directive 5 shall inform the Authority of-

- (a) the nature of the personal data to be processed in a third country;

- (b) the purpose of the processing;
- (c) any processor or sub processor that is intended to carry out the processing on behalf of the public authority;
- (d) the third country where the processing is intended to occur; and
- (e) any other information necessary or useful to ascertain whether the processing and personal data falls within the categories of personal data specified in Directive 2.

7. These directives may be amended by the Authority from time to time, as may be necessary.

8. In these rules unless the context otherwise requires—

“Act” means the Personal Data Protection Act, No. 9 of 2022;

“Authority” means the Data Protection Authority of Sri Lanka;

“biometric data” means, personal data resulting from specific technical processing relating to the physical, physiological or behavioral characteristics of a natural person, which allow or confirm the unique identification of that natural person, including facial images, dactyloscopic data or iris related data;

“child” means, a natural person who is below the age of sixteen years;

“controller” means, any natural or legal person, public authority, public corporation, non-governmental organization, agency or any other body or entity which alone or jointly with others determines the purposes and means of the processing of personal data;

“data concerning health” means, personal data related to the physical or psychological health of a natural person, which includes any information that indicates his health situation or status;

“data subject” means, an identified or identifiable natural person, alive or deceased, to whom the personal data relates;

“financial data” means, any alpha-numeric identifier or other personal data which can identify an account opened by a data subject, or card or payment instrument issued by a financial institution to a data subject

or any personal data regarding the relationship between a financial institution and a data subject, financial status and credit history relating to such data subjects, including data relating to remuneration;

“genetic data” means, personal data relating to the genetic characteristics of a natural person which gives unique information about the physiology or the health of that natural person which results from an analysis of a biological sample or bodily fluid of that natural person;

“identifiable natural person” is a natural person who can be identified, directly or indirectly, by reference to any personal data;

“local authority” means, a Municipal Council, Urban Council or a Pradeshiya Sabha and includes any authority created or established by or under any law to exercise, perform and discharge powers, duties and functions corresponding or similar to the powers, duties and functions exercised, performed or discharged by any such Council or Sabha;

“personal data” means, any information that can identify a data subject directly or indirectly, by reference to-

(a) an identifier such as a name, an identification number, financial data, location data or an online identifier; or

(b) one or more factors specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of that individual or natural person;

“personal data breach” means, any act or omission that results in accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed;

“processing” means, any operation performed on personal data including but not limited to collection, storage, preservation, alteration, retrieval, disclosure, transmission, making available, erasure, destruction of, consultation, alignment, combination, or the carrying out of logical or arithmetical operations on personal data;

“processor” means, a natural or legal person, public authority or other entity established by or under any written law, which processes personal data on behalf of a controller;

“public authority” means, a Ministry, any Department or Provincial Council, local authority, statutory body or any institution established by any written law, or a Ministry, any Department or other authority or institution established or created by a Provincial Council;

“relevant regulatory or statutory body” means the regulatory or statutory body established by or under any written law which regulates, authorizes or supervises a public authority and includes a Ministry which carries out any such supervisory functions;

“special categories of personal data” means, the personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation, personal data relating to offences, criminal proceedings and convictions, or personal data relating to a child;

“Sri Lanka” means, the territorial limits of Sri Lanka as stipulated by Article 5 of the Constitution and includes the territorial waters or air space of Sri Lanka, any ship or aircraft registered in Sri Lanka, any location within the premises of a Sri Lankan mission or the residence of the Head of such mission, diplomatic agent or any other member of such mission, situated outside Sri Lanka, or within any premises occupied on behalf of, or under the control of, the Government of Sri Lanka or any statutory body established in Sri Lanka and situated outside Sri Lanka;

“sub processor” means, in accordance with subsection (3) of section 22 of the Act, a processor engaged by another processor for carrying out specific processing activities; and

“third country” means, a country prescribed under section 26 of the Act for the purpose of cross-border data flow.

13.09.2024