LYNX STRATEGIC BUSINESS ADVISORS

Egypt's Data Protection Law Simplified

LYNX Business Bulletin
May 2021

Egypt's Data Protection Law

BUSINESS BULLETIN
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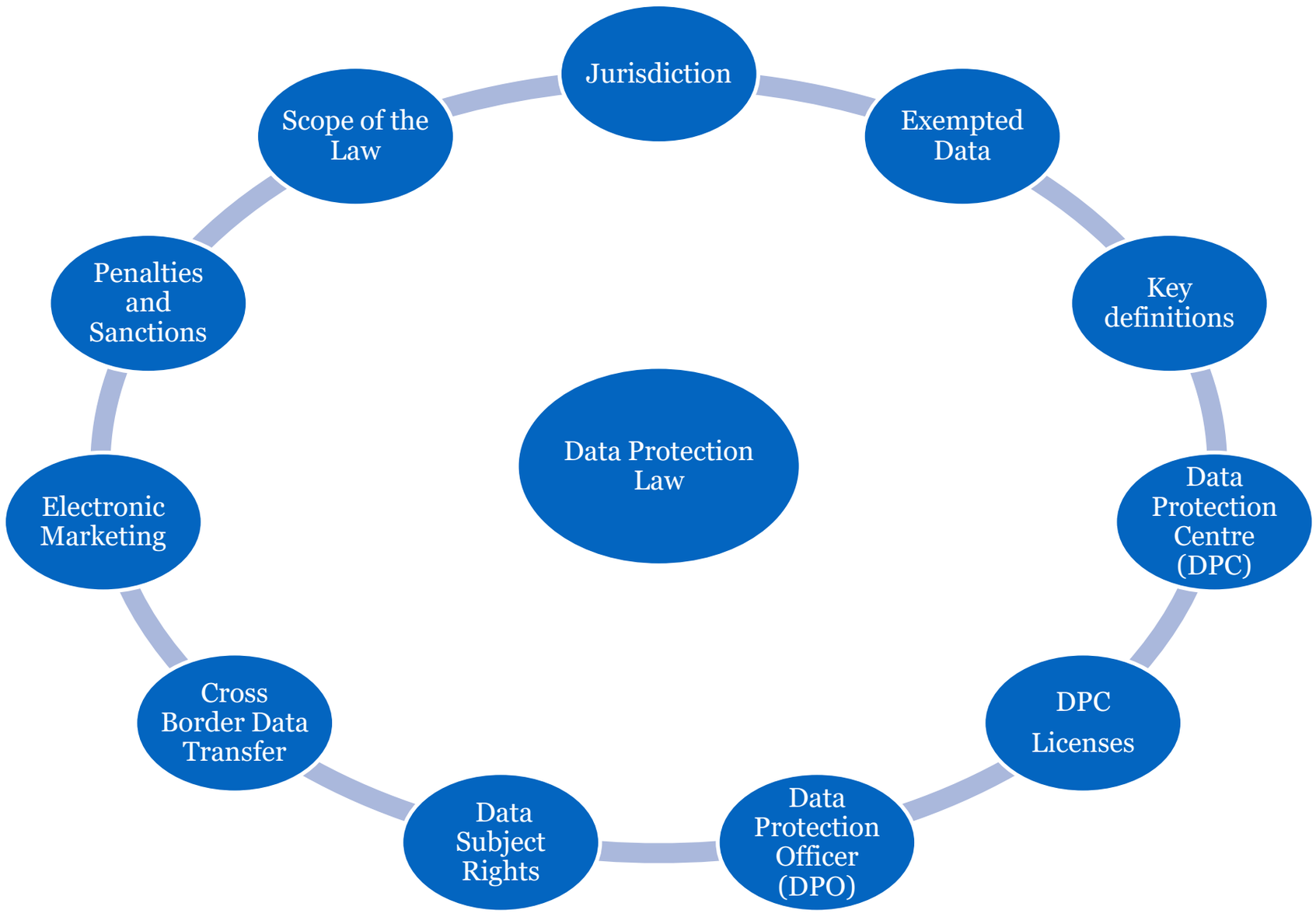
INTRODUCTION

The Egyptian Data Protection and Privacy Law (Law # 151/2020) entered into force on October 14, 2020. Prior to its enactment, Egypt lacked a single comprehensive regulatory framework governing data privacy and protection related issues. Matters of data protection were present in other legal frameworks such as the Cybercrimes Law, the Consumer Protection law, as well as the Egyptian Penal and Civil Code. The Government of Egypt (GoE) is currently drafting the law's executive regulations, which are expected in 2H2021 and will elaborate on specific clauses outlined in the law.

CONSTITUTIONAL PROVISION

Article 75 of the Egyptian Constitution stipulates that 'private life is inviolable, safeguarded and may not be infringed upon. Postal, telegraph, e-correspondence, telephone calls and any other means of communications are inviolable, and the confidentiality thereof is guaranteed, which communications may only be confiscated, examined or monitored by virtue of a judicial order for a limited period of time in the circumstances stipulated by law. The State shall protect the rights of citizens to use all means of public communications, which communications may not be arbitrarily disrupted, ceased or withheld from citizens, and shall be governed by law.'



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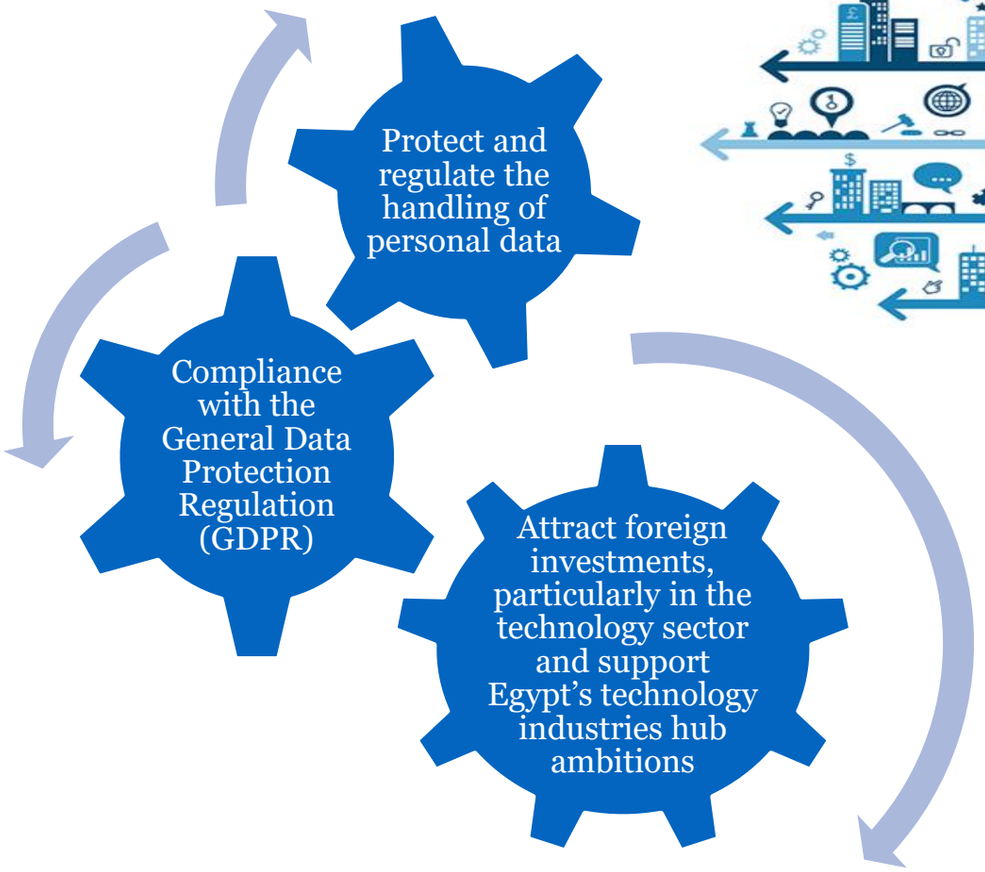
WHY A DATA PROTECTION LAW?



LAW JURISDICTION

EGYPT
- Resident Egyptians
- Foreigners resident in Egypt

EXTRATERRITORIAL
- Egyptians residing abroad
- Foreigners residing abroad if the act is illegal, and the data subject is Egyptian or a foreigner residing in Egypt

SCOPE OF THE LAW

The law identified two types of data:

PERSONAL DATA
- Related to an identified natural person
- Includes: name, voice, ID number, picture
- Determines psychological, physical, economic, or cultural identity

SENSITIVE DATA
- Includes: religious, political, financial, or health data
- Children's data
- Obtained through consent of data subject . The executive regulations will define the means of obtaining consent.

The Law also extends regulation to electronic marketing and introduces mandatory opt-out mechanism in any form of electronic marketing

EXEMPTED DATA FROM THE LAW

- Census data and exclusively processed data for media purposes
- Held by national security authorities and/or related to judicial seizure warrants, investigations and lawsuits
- Held by Central Bank of Egypt and entities falling under its authority or supervision
- Saved by natural persons for third parties and is processed solely for personal use.

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KEY DEFINITIONS *

Personal data: Data related to any natural person who can be determined whether directly or indirectly through relating the data with any other data including, *inter alia*, name, voice, identification number, and data determining psychological or physical health, economic status, or cultural or social identity.

Processing: Any electronic process used to write, collect, record, keep, store, merge, present, send, receive, circulate, publish, delete, change, amend, retrieve, or analyse the personal data using any electronic means or device, whether partially or totally. The executive regulations will outline the technical standards for data processing.

Availability of personal data: Any means that allows third parties to access personal data including, *inter alia*, pursuing, circulating, publishing, transferring, using, presenting, sending, receiving, or disclosing data.

The lawful processing of data is based on:

- Obtaining consent for one or more specific purpose(s);
- Data processing is required and necessary for:
  - Implementing a contractual obligation or legal action; or
  - Entering a contract on behalf of the data subject.
- Fulfilling an obligation by law or order from a competent authority or court
- Permitting data controllers to perform an obligation or a relevant party to carry out a legal right; or
- Obtaining the required approval or authorisation from the Personal Data Protection Centre ('DPC').

Sensitive data: Any data that discloses psychological, mental, physical, or genetic health data, biometric data, financial data, religious beliefs, political opinions, or security conditions and children's data.

Data holder: Any natural or juristic person who legally or actually holds any kind of personal data, through any means of storage, whether they are the creator of the data, or if it has been transferred to them by any means.

Data controller: Any natural or juristic person who has the right, due to the nature of his/her work, to obtain personal data and to determine the process and the criteria of keeping or processing personal data and control it according to the determined purpose.

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Source: https://www.dataguidance.com/notes/egypt-data-protection-overview

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PERSONAL DATA PROTECTION CENTRE (PDPC)

Board of Directors

- Minister of Communications and Information Technology
  - CEO of the PDPC
    - Ministry of Defense
    - Ministry of Interior
    - General Intelligence Services
    - Administrative Control Authority
    - Information Technology Industrial Regulatory Authority
    - National Telecom Regulatory Authority
    - 3 experts selected by MCIT

Types of licenses issued by PDPC

- ✓ *Sensitive Data Processing*
- ✓ *Data Storage and Processing*
- ✓ *Direct Marketing*
- ✓ *(Camera) Surveillance*
- ✓ *Cross-border Data Transfer*
- ✓ *Consulting Services*
- ✓ *Direct Commercial Marketing*

The law's executive regulations will outline the technical standards of licenses and authorizations as well as the process of reporting breaches to the PDPC

Mandate

Regulates the personal data development process; monitors cross-border data transfers

Develops strategies to protect personal data; receives complaints and inspects any individual or entity dealing with personal data.

Issues licenses, permits, accredits entities and consulting service providers handling personal data

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DATA PROTECTION OFFICER

The legal representative of any juristic person must appoint a dedicated Data Protection Officer (DPO). The DPO should be registered in the register of the Personal Data Protection Centre of officials responsible for the protection of personal data. The law does not outline specific qualifications for the DPO. The law's executive regulations will lay out the qualifications of the DPO.

DPO Duties and Responsibilities

- Monitors his/her entity's compliance with the applicable laws and regulations governing privacy and personal data protection
- Acts as the coordinator between the Controller/Processor and the PDPC
- Ensures that the data user is afforded his/her rights under the law and applicable regulations
- Notifies the PDPC on any data security breaches
- Attends to inquiries from the PDPC, as well as to complaints and requests from data users
- Rectifies any breach to personal data and ensures compliance with the applicable regulations
- Organizes training and workshops for employees on data protection.

DATA SUBJECT PRIVILEGES

Data Processor/Controller Obligations

- Appointing a DPO dedicated to supervise the application of the Law.
- Receive personal data after obtaining the consent of the data subject (within the limits allowed under the Law)
- Verify personal data and ensure its accuracy and in line with the purpose for which it was collected
- Refrain from disclosing personal data as stipulated under the Law
- Remove personal data as soon as the purpose for which it was collected is achieved
- Maintain a special register of personal data
- Notifying the personal data authority of any breach relating to personal data
- Maintaining the appropriate systems and controls for the protection of personal data privacy
- Obtain a licence or permit from the DPC to undertake data "controller" or "processing" activities
- Complying with certain conditions for electronic marketing.
- Obtaining a license and appointing local representatives by foreign businesses that control or process data for individuals residing in Egypt
- The law's executive regulations will outline the processes for data handling and processing.

Data Subject Rights

- Provided with knowledge of the type of personal data that is being held by the data controller, holder, or processor
- Ensure his/her right to check, access, or obtain such data
- Revoke any consent granted for saving or processing his/her personal data
- Amending and delete previously granted personal data
- Limit the scope of of processing personal data
- Informed of any breach of personal data
- Object to the processing of his/her personal data once a violation of rights occurs.

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ELECTRONIC MARKETING

Definition under the Law

Sending any message, statement, advertisement, or advertisement or marketing content, by any technological means, which directly or indirectly aims to promote goods, services or commercial, political, social, or charitable requests, aimed at specific persons. The executive regulations will define the technical rules and standards for electronic marketing.

General Guidelines

Any electronic communication for the purpose of direct marketing to the data subject must fulfil the following requirements:

- Obtain the consent of the data subject
- Communication shall include the identity of its creator and sender
- Sender shall have a valid address to be reached when necessary
- Communication must indicate that its purpose is electronic marketing
- Maintain electronic records evidencing the consent of the data subject to receive electronic marketing communication and any amendments thereof, or their non-objection to its continuity for a duration of three years from the date the last communication has been sent.
- Setting clear and simple mechanisms to allow the Data Subject to refuse electronic communication or to withdraw his/her consent to receiving such communication.
- The law's executive regulations will define the role and liability of consulting services.

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CROSS-BORDER MOVEMENT OF DATA

Conditions

International transfer of personal data is permitted after obtaining the approval of the data subject to:

- Save the life of the data subject, provide medical care or treatment, or manage health services
- Implement obligations to execute or defend data subject rights before foreign competent court
- Complete a bank transfer
- Implement a contract between the data processor and third parties for the data subject's benefit
- Implement an international bilateral or multilateral agreement to which Egypt is a party to.
- Implement a procedure related to international judicial cooperation
- Legal necessity or obligation to protect the public interest
- Cash transfers to another country
- The law's executive regulations will define the roles in cases of multiple data processors.

PENALTIES

Sanctions

ACTION	PENALTY
Collects, discloses, makes available or circulates personal data by means other than those authorized by the Law or without the consent of the data subject by any data holder, data controller, or data processor	USD 6400 – USD 64,000 Penalty shall incur imprisonment for a minimal period of six months and a fine ranging between USD 12800 and USD 128,000 if the act was committed in exchange for a financial or moral benefit or with the intent of endangering the data subject
Collect, hold, process, makes available, processes, stores, transfers, circulates, or keeps sensitive personal data in violation of the law by any data holder, data controller, or data processor	USD 3200 – USD 320,000 Penalty may incur imprisonment for a minimal period of three months
A dedicated data protection officer is not appointed by company's legal representative	USD 12,800 – USD 128,000
Transfer personal data to a country that lacks data protection laws or to a country with a data protection law that has a protection level that is less than the protection level of Egypt's law	USD 32,000- USD 320,000 Penalty may incur imprisonment for a minimal period of three months
Violate the licensing or authorization requirements by the Personal Data Protection Centre	USD 32,000- USD 320,000

- "Defacto manager" may be held personally liable for any breaches to the provisions of the law
- The Economic Court will determine the de facto manager; who will most likely be the DPO
- In cases of criminal actions, the criminal liability falls on the natural person

Thank you

www.lynxegypt.com info@lynxegypt.com 4 Latin America Street, Garden City, Cairo +2 02 27944331