



29 August 2008

## Recommendatory Guidelines for Adoption of Model Clauses for Transfer of Personal Data from the EU to Third Countries & Binding Corporate Rules for International Transfers of Personal Data

Dear Member Company,

After extensive consultation with the Pakistani IT Industry it has become clear that there are several concerns with regard to outsourcing of information and data, especially, from the European Union (EU) to Pakistan. Due to stringent legal requirements with regard to providing protection and security regarding outsourcing data for processing to countries outside the EU, Pakistani companies at times face severe competition when competing with companies who may have the benefit of a legal regime in their jurisdictions deemed more secure for these purposes by the EU.

In an effort to examine these concerns and develop solutions to address the concerns that have an impact in increasing the exports of IT and IT enabled services from Pakistan, PSEB has launched a study on Data Confidentiality Law and Framework which is in progress.

PSEB is aware of the marked differences between the requirements of the EU as opposed to the US in the area of Privacy law and Data Protection. Keeping in mind that EU and the US markets are both important for Pakistani IT and IT enabled trade, the approach to be adopted must not adversely affect the possibilities of Pakistani businesses to export their services to either jurisdiction.

Although work on Legislative efforts such as Data Confidentiality Law and Framework are underway, in the meantime, PSEB has taken the decision to issue "Recommendatory Guidelines" to all IT and IT enabled businesses and especially the BPO industry to explore adoption<sup>1</sup> of the following measures to enable compliance with the requirements laid down by the EU Directive on Data Protection:

### ***For those Pakistani businesses looking to process data and personal information being transferred from anywhere in the EU to Pakistan for Business Process Outsourcing:***

Since European data protection law prohibits the transfer of personal data (for example, employee records, customer data, and company information collected in the scope of a "due diligence" procedure) outside the EU to countries that do not enjoy an "adequate level of data protection"<sup>2</sup> like Pakistan, one of the ways for a Pakistani business to overcome this prohibition by the EU is to explore the possibility<sup>3</sup> of concluding an agreement containing the following:

- Adoption of the EU standard contractual clauses for the transfer of personal data to processors established in third countries, under Directive 95/46/EC (<http://www.pseb.org.pk/UserFiles/documents/AnnexA-I.pdf>)
- Adoption of the amending decision issued by the EU on December 27, 2004 (<http://www.pseb.org.pk/UserFiles/documents/AnnexA-II.pdf>) by adopting the EU approved Alternative Standard Contractual Clauses for the Transfer of Personal Data from the EU to Third Countries (controller to controller transfers) developed and proposed by the International Chamber of Commerce (<http://www.pseb.org.pk/UserFiles/documents/AnnexA-III.pdf>)

***For businesses with a presence in Pakistan frequently involved in global transfers of***

***data, especially, for businesses who regularly transfer data between corporate groups adherence:***

- Explore the possibility of adopting and making clients aware of the possibility of their adopting Binding Corporate Rules (“BCR”) throughout their organizational framework and group to enable Data Protection Authorities in the EU to give authorization for transfer of personal data to Pakistan by the adoption of the BCR as a measure that ensures adequate safeguards for the rights and freedoms of data subjects.
- Binding Corporate Rules (BCRs) are a set of rules adopted within a particular company or corporate group that provide legally-binding protections for data processing within the company or group. They offer a more holistic approach to providing a legal basis for global data transfers.<sup>4</sup>
- In this regard the ICC Report on binding corporate rules for international transfers of personal data is particularly helpful (<http://www.pseb.org.pk/UserFiles/documents/AnnexA-IV.pdf>). This measure is not just recommended to Pakistani IT and IT enabled businesses but also recommended to Multinational businesses operating in Pakistan who by adoption of the BCR will be able to outsource more EU related personal data to Pakistan for processing.

It is envisioned that by adoption of these measures, the Pakistani IT and IT enabled businesses would be able to improve their legal coverage in exporting their services and enter into relationships for outsourcing of personal data from the EU to Pakistan from the EU. This will go a long way in adoption of international best practices by Pakistani companies and demonstrate the contribution of the Pakistani public sector for adoption of the same. It is however, strongly advised that in implementation of these measures and in any amendments thereto adequate legal advice be taken being the prudent responsibility of those adopting the same.<sup>5</sup>

I strongly urge member companies to take full advantage / benefit of the Recommendatory Guidelines explained above to gain confidence of international outsourcing community, specifically the EU, and increase IT/ITeS exports from Pakistan.

With profound regards,

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From: [http://www.europa.eu.int/comm/internal\\_market/privacy/modelcontracts\\_en.htm](http://www.europa.eu.int/comm/internal_market/privacy/modelcontracts_en.htm) .

See footnote 1.

From: ICC report on binding corporate rules for international transfers of personal data.

See footnote 1

For more information: [www.pseb.org.pk](http://www.pseb.org.pk)