

## **Annex 2**

### **Sri Lanka's Legal Landscape on Cross Border Data Flow**

Governments recognize that innovation powered by cloud computing offer potential benefits which necessitates the movement of data across international borders. Striking a balance between facilitating a smooth flow of data and providing an assurance to preserve privacy, protect individual and public safety, and promote national security is a challenge. In certain countries, such as China, India, and Russia, regulatory frameworks restrict the cross-border flow of data, which include legal mandates necessitating local data storage.

In Sri Lanka, cross border data flow and processing of personal data by public (Government) authorities are discussed under the Section 26 of the Personal Data Protection Act, No. 9 of 2022. The entire section is reproduced below for clarity.

[Quote] *Where a public authority process personal data as a controller or processor, such personal data shall be processed only in Sri Lanka and shall not be processed in a third country, unless the Authority in consultation with, that controller or processor as the case may be and the relevant regulatory or statutory body, classifies the categories of personal data which may be permitted to be processed in a third country, prescribed by the Minister pursuant to an adequacy decision made under subsection (2).*

*(2) (a) For the purpose of making an “adequacy decision”, the Minister shall, in consultation with the Authority take into consideration the relevant written law and enforcement mechanisms relating to the protection of personal data in a third country and the application of the provisions of Part I, Part II and sections 20, 21, 22, 23, 24 and 25 of Part III of this Act, and such other prescribed criteria relating to the processing of personal data, in a third country for the purpose of cross border data flow.*

*(b) Any adequacy decision made by the Minister under this subsection shall–*

*(i) be subject to periodic monitoring of the developments in a third country that may affect such decisions and the Minister may review such decision at least every two years; and*

*(ii) remain in force until amended or revoked by the Minister in consultation with the authority. [Unquote]*

The same Act defines “Minister” as “the Minister assigned the subject of data protection under Article 44 or 45 of the Constitution”

It is clear that a government organization can process their data outside the boundaries of the country with the permission of the Minister responsible for data protection under Article 44 or 45 of the Constitution, in consultation of the Data Protection Authority.