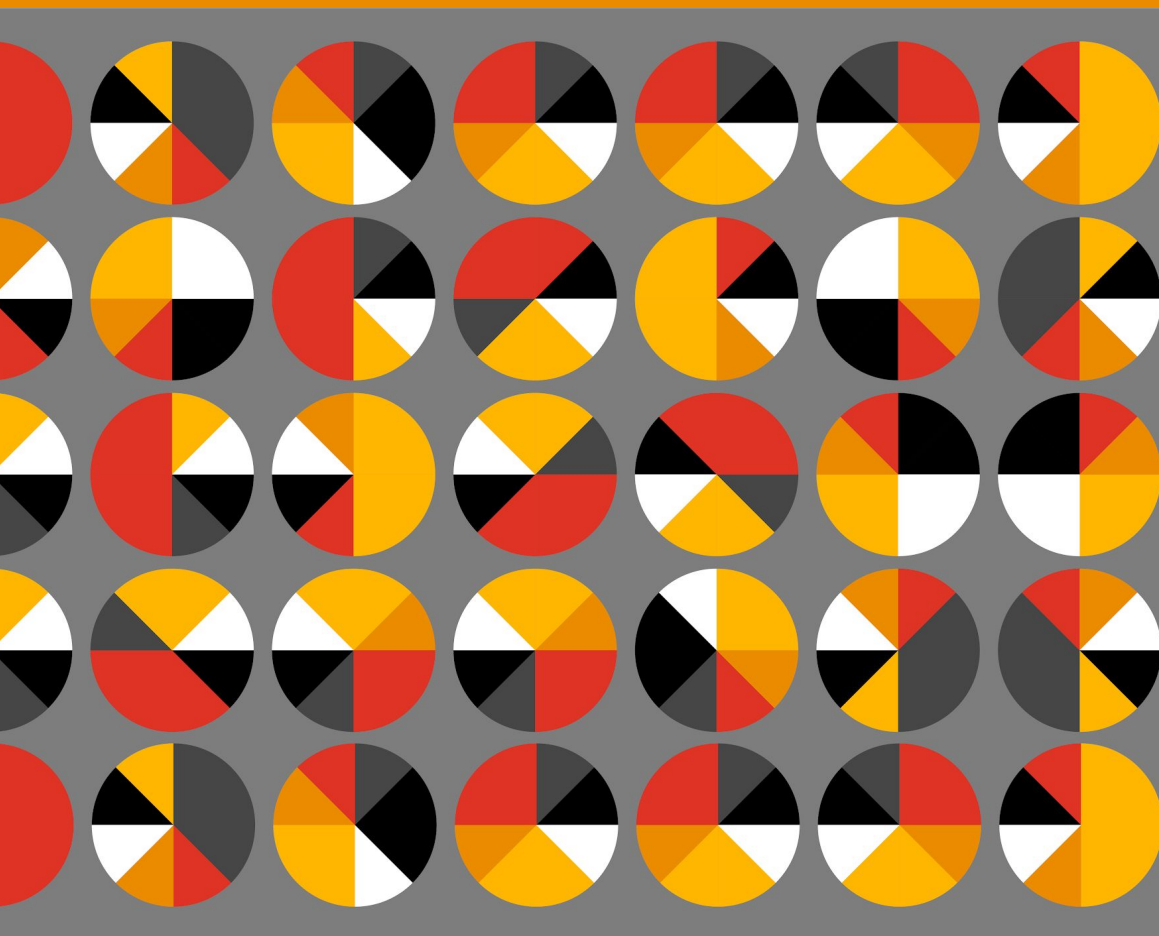


UAE: Dubai International Financial Centre - New Data Protection Law

October 2020



In brief

The Dubai International Financial Centre (“DIFC”) has released a new Data Protection Law No. 5 of 2020 (the “Law”) which was enforced on 1 October 2020. The Law seeks to align DIFC’s data protection framework more closely with international developments, in particular the EU’s General Data Protection Regulation (“GDPR”).

In detail

Who does it apply to?

The Law applies both to the processing of personal data by DIFC incorporated entities, as well as the processing of personal data within the DIFC by non-DIFC regulated entities, under certain circumstances.

The DIFC has broadly defined ‘processing’ as any operation or set of operations performed upon personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage and archiving, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, transfer or otherwise making available, alignment or combination, restricting (meaning the marking of stored personal data with the aim of limiting its processing in the future), erasure or destruction, but excluding operations or sets of operations performed on personal data by:

- A. a natural person in the course of a purely personal or household activity that has no connection to a commercial purpose; or
- B. law enforcement authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including safeguarding against and preventing threats to public security

The Law stipulates that the DIFC Authority (“DIFCA”) Board of Directors may make regulations exempting controllers (any person who alone or jointly with others determines the purposes and means of the processing of personal data) from compliance with this Law or any parts of this Law. However, this is defined robustly under Article 65 of the Law so that it can only be relied on in very limited circumstances, where it is likely to cause material prejudice to the proper discharge by a DIFC body of its powers and functions.

Key Highlights of the Law

- **Contractual requirements:** DIFC entities that outsource data processing activities must now enter into a formal contract containing certain mandatory provisions with the third party company.
- **Data Protection Officer (“DPO”):** Whilst it is not mandatory for DIFC companies to appoint a DPO, entities that engage in ‘High Risk Processing Activities’ must carry out regular data protection impact assessments and must appoint a DPO. What is considered to be high-risk is outlined in Schedule 1 of the Law and only one of the criteria needs to be met to qualify.
- **Annual Assessment:** If the DIFC entities have a DPO appointed, then there is a requirement to file an annual assessment on the first renewal date after 1 July 2021.
- **Stricter consent requirements:** Consent must be obtained from data subjects in relation to each specific data processing purpose and must be kept valid over time.

- **Expanded data subject rights:** This has expanded to include the right to withdraw consent at any time.
- **Breach notification:** Required to notify both the data commissioner and affected data subjects of a breach.
- **International transfers:** Changes to the appropriate mechanisms for transferring personal data outside of the DIFC.

Actions to be taken

All DIFC entities should review the data that is being processed to assess whether it complies with the changes that the Law introduces. For example, whether a DPO appointment is required, and whether mechanisms need to be implemented to ensure that it is compliant and is in a position to file an annual assessment, if required.

Failure to comply with the Law may lead to fines between USD 50,000 and USD 100,000, depending on the level of the breach.

How can we help you?

We have a dedicated team that can help you with the following:

- advice on whether you are caught by the Law and on the steps that need to be carried out relevant to your entity;
- prepare and file the annual assessment with the DIFC, if required;
- provide ongoing compliance support for your entity;
- assist with ad hoc data protection and privacy requests;
- provide a flexible umbrella support service for Data Protection Officers, Chief Privacy Officers, and other in-house privacy teams.

Let's Talk

For a deeper discussion of how this issue might affect your business, please contact:

Stephanie Williams-Quinn
Head of Legal, Entity Governance
& Compliance Leader
+971 (0) 54 793 3941
stephanie.williams-quinn@pwc.com

Richard Chudzynski
Legal Data Privacy and Protection
+971 (0) 56 417 6591
richard.chudzynski@pwc.com