

UAE

1. Amendments to ADGM Data Protection Regulations to Bring Them Closer to International Standards

Abu Dhabi Global Market (**ADGM**), the international financial centre established in the UAE capital, has announced a number of amendments to the ADGM Data Protection Regulations 2015 (the **Regulations**) effective from 1 February 2018.

The Data Protection (Amendment) Regulations 2018 contain updates that will bring some of the definitions closer to international standards, provide clarity on the timing of certain obligations and expand the number of jurisdictions approved for the transfer of personal data. A higher maximum fine and other changes will enhance the enforcement powers of the newly-formed Office of Data Protection (**ODP**), which was established in December 2017 as the independent data protection regulator for the ADGM.

The Regulations primarily impose obligations on "Data Controllers", i.e. persons in the ADGM (excluding individuals acting in their capacity as employees) who alone or jointly with others determine the purposes and means of processing personal data. All Data Controllers were already required to notify the ODP and to comply with the Regulations in relation to the processing of personal data.

Amendments to Core Definitions

Sensitive Personal Data: The definition has been expanded to include personal data concerning an individual's criminal record. This addresses a difference that existed in relation to the same concept under European legislation. Similarly, "Data" and "Relevant Filing System" have been introduced as new definitions in the Regulations. These amendments make it clearer that "Personal Data" *extends only to information that is processed by automatic means or otherwise in a structured manner*.

Expansion of Jurisdictions deemed Suitable for Data Export: The number of jurisdictions that are deemed to offer an adequate level of protection for personal data to allow for easier transfers from the ADGM has been expanded with the addition of the Dubai International Financial Centre (**DIFC**). The inclusion of the DIFC will be useful to organisations with establishments in both Free Zones. However, the DIFC does not currently reciprocate with recognition of the ADGM in its own list of permitted jurisdictions. The status of Canada has been narrowed to acknowledge only those recipients that are subject to the Canadian *Personal Information Protection and Electronic Documents Act* and the Regulations have clarified that transfers to the US would be subject to compliance with the terms of the EU-US Privacy Shield (replacing the previous reference to the former Safe Harbour scheme).

Updated Breach Notification Deadlines: The original version of the Regulations stated that Data Controllers should inform the Registrar "as soon as reasonably practicable" in the event of any unauthorised intrusion (including loss or disclosure) to any Personal Data. This has now been clarified with the words "without undue delay, and where feasible, not later than 72 hours after becoming aware of it". This represents an important development in breach reporting requirements in the Middle East. Both the DIFC Data Protection Law and Qatar's Personal Data Privacy Law require breaches to be notified to the respective authorities but neither of those regimes currently imposes any specific deadline.

Enhanced Enforcement Powers: A new provision in the Regulations states that enforcement-related certificates signed by the Registrar shall be deemed conclusive evidence of the application of

the enforcement action in question and *prima facie* evidence of the facts contained in the Direction or Notice. These changes provide clarity in relation to the status of the Registrar's Notices to support its ability to enforce the Regulations. The maximum fine payable for non-compliance with any Direction of the Registrar is increased from USD 15,000 to USD 25,000. This also applies to any failure to comply with the Regulations or rules made pursuant to the Regulations.

Notifications: While it was previously only implied that Data Controllers should notify the Registrar of the appointment of any Data Processor, this is now explicitly stated in the Regulations. Data Controllers must notify the Registrar of the appointment, cessation or change in particulars of any Data Processor within one month of the relevant date. While there is no fee for these notifications, this requirement to provide the authorities with details of third party processors is a distinct feature of the ADGM regime and not required in the DIFC.

2. New Arbitration Law and Opening of ICC Regional Office

On 27 February 2018, the UAE Federal National Council approved the draft of the new Arbitration Law that is expected to replace the relevant provisions of the UAE Civil Procedural Code promulgated in 1992.

Also of interest is the fact that the International Arbitration Court of the International Chamber of Commerce (**ICC**) established its regional office in Abu Dhabi in September 2017.

The ICC chose the Abu Dhabi Global Market (**ADGM**) instead of the Dubai International Financial Centre (**DIFC**) because the ICC was given exclusivity.

The DIFC already has a partnership with the London Court of International Arbitration (**LCIA**) in the DIFC-LCIA Arbitration Centre

Furthermore, the ICC opted for the capital of the UAE to better market its arbitration system. Governmental and quasi-governmental entities located in Abu Dhabi enter into important international contracts with international companies. An ICC arbitration clause with a venue in the ADGM is likely to become a strong selling point.

Qatar

Amendments to Reduce Free Zone Investment Restrictions

Qatar has amended the Investment Free Zones Law No 34 of 2005 (the **Free Zone Law**) to reduce investment restrictions in the Free Zones. The amendments aim to encourage economic development and investment by providing Qatari Nationals and foreign investors with a number of incentives including:

- no limits on capital;
- freedom to price products and set profit rates; and
- exemption from production, import and export taxes and other charges.

Projects in Free Zones are also given various guarantees, most notably freehold ownership.

The Free Zone Law also allows limited liability companies, joint ventures or any other type of corporate structure (whether owned by one or more natural or legal persons who are citizens or residents) to be established without 100% foreign ownership.

The Free Zones Authority (the **FZA**) will provide all required facilities for issuance of licences to launch projects which will save time and effort, in addition to the provision of plots of land with the required facilities in accordance with the nature of the project. The FZA will also assist in the issuance of visas to investors in exchange for foreign know-how.

In addition, the enactment of new legislation was announced to regulate the relation between the public and private sectors, review all economic legislation aiming to diversify sources of income and create sustainable economy especially under the current fluctuations in oil prices, geopolitical, social, technological and environmental changes the world is facing.

Italy

Simplification of Authorisation Procedures for Export of Dual-Use Items and Technologies

On 17 January, 2018 the Legislative Decree No. 221 (the **Decree**) came into force, which aimed (i) to organise and simplify the authorisation procedures for the exportation of dual-use items and technologies and (ii) to revise the sanctions regime within the trade embargo.

The Decree definitively adapts the Italian legal framework to applicable European regulations, i.e. (i) Council Regulation (EC) n. 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, as amended from time to time (the **Reg. 428/2009**); (ii) Council Regulation (EC) n. 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture, or other cruel, inhuman or degrading treatment or punishment (**Reg. 1236/2005**); (iii) Regulations disposed by Council, according to article 215 of TFUE, concerning restrictive financial and economic measures to certain third countries (collectively the **EC Regulations**).

The Decree is aimed at simplifying and completing the legal framework applicable to dual-use items exports, as well as to items and products relevant in light of anti-torture measures and of EU restrictive measures. It will have a substantial impact in supporting a key area of the Italian economy, since Italy is the eighth biggest exporter of dual-use items and technologies.

Namely, the Decree provides for the operations of export, import, transfer, brokering, transit and technical assistance of dual-use items and technologies to be subject to the State's control, authorisations or prohibitions.

The common list of dual-use items are set out in Annex I to Regulation (EC) No 428/2009 as lastly amended by the Commission Delegated Regulation 2017/2268 of 26 September 2017 (**Annex I or Listed Items**), and are regularly updated so as to ensure full compliance with international security obligations, to guarantee transparency, and to maintain the competitiveness of economic operators.

Furthermore, the Decree subjects to State's control, pursuant to its article 3, all the operations of export, import, transfer, brokering, transit, technical assistance and other activities for which the EC Regulations provide for prohibitions or preventive authorisations. In addition, the activities of export, transfer, brokering and transit concerning dual-use items not listed are also subject to State's control, authorisations or prohibitions (**Not Listed Items**).

The main provisions of the Decree regard:




- Intangible Transfer of Data (Clause 6);
- The authorisation procedure and the different authorisations;
- The Zero License (Clause 8.5) and the "Catch All" Clause (Clause 9);
- Refusal, annulment, revocation, suspension and modification of the authorisation;
- Inspection measures (Clause 17);
- Sanctions Regarding Dual-use Listed and Not Listed Items;
- Sanctions Regarding Items Listed Under Reg. 1236/2005.

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