



CONSULTATION PAPER NO. 3

December 2011

**AMENDMENTS TO THE DATA PROTECTION LAW, DIFC LAW NO. 1
OF 2007 AND THE DATA PROTECTION REGULATIONS**

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Why are we issuing this paper?

1. This Consultation Paper seeks public comment on DIFCA's proposals to amend the Data Protection Law, DIFC Law No. 1 of 2007 ("DIFC Data Protection Law") and the Data Protection Regulations ("DIFC Data Protection Regulations").

Who should read this paper?

2. The proposals in this Consultation Paper would be of interest to:
 - (a) Data Controllers established in the jurisdiction of the DIFC;
 - (b) Data Controllers intending to establish in the DIFC;
 - (c) legal advisors advising on data protection matters in the DIFC.

How to provide comments

3. All comments should be provided to the person specified below. You may, if relevant, identify the organisation you represent in providing your comments. DIFCA reserves the right to publish including on its website any comments you provide, unless you expressly request otherwise at the time of making comments.

What happens next?

4. The deadline for providing comments on this proposal is 14 January 2012. Once we receive your comments, we will consider if any further refinements are required to this proposal. We will then proceed to enact the changes to the DIFC Data Protection Law and the DIFC Data Protection Regulations. Because these are still proposals, you should not act on them until the relevant changes to the DIFC Data Protection Law and the DIFC Data Protection Regulations are made. We will issue a notice on our website advising you when this happens.

Comments to be addressed to:

Roberta Calarese
Commissioner of Data Protection
DIFC Authority
Level 14, The Gate, P. O. Box 74777
Dubai, UAE
or e-mailed to: roberta.calarese@difc.ae

Defined Terms

5. Defined terms are identified throughout this paper by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in the DIFC Data Protection Law. Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

Background

6. Since its enactment in 2007, a number of issues relating to the application of the DIFC Data Protection Law and the DIFC Data Protection Regulations have come to light.
7. The DIFC Authority has consulted with a number of participants in the DIFC to determine which provisions raised issues in their practical application and how best to address them.

Legislative Proposal

8. The legislative proposal is divided in two parts:
 - a) the draft DIFC Data Protection Law attached at Annex A; and
 - b) the draft DIFC Data Protection Regulations at Annex B.

Proposed amendments

9. We provide below an explanation of the substantive changes made to the DIFC Data Protection Law and the DIFC Data Protection Regulations.

Duty to notify changes

10. Article 21 is a new Article which makes the Data Controller responsible to notify the Commissioner of Data Protection of any changes to the registrable particulars of the notification. It will therefore be an offence for a Data Controller to fail to notify the Commissioner of Data Protection of changes to the register entry. The DIFC Data Protection Regulations provide that such notification must be given as soon as possible and in any event within a period of 14 days from the date upon which the entry becomes inaccurate or incomplete as a statement of the Data Controller's registrable particulars.

Delegation powers of the Commissioner of Data Protection

11. Article 23 is a new Article which empowers the Commissioner of Data Protection to delegate, if required, such of his functions and powers in relation to any particular matters to be performed by the officers and employees of the DIFCA. This new Article has been added to provide delegation powers needed to assist the Commissioner of Data Protection in delegating such of his functions and powers to be performed by officers and employees of the DIFCA.

General contravention and administrative imposition of fines

12. Currently in the DIFC Data Protection Law there are no provisions relating to contraventions and the administrative imposition of fines. In order for the DIFC

Commissioner of Data Protection to properly administer the DIFC Data Protection Law and exercise his powers and functions in an effective manner such legislative proposals are essential.

General exemptions

13. Article 39 is a new Article which empowers the DIFCA Board of Directors to make Regulations exempting Data Controllers from compliance with the DIFC Data Protection Law or any parts of it. Currently, the exempted Data Controllers are the DFSA, DIFCA and the Registrar of Companies. This proposal is in line with the data protection regime in other recognised international financial jurisdictions where similar public authorities are exempt from certain data protection requirements. This exemption applicable to the DFSA, DIFCA and the Registrar of Companies is limited to those instances where they are exercising their powers and functions as prescribed in relevant legislation they administer, including any powers or functions delegated to them. The ability of the DFSA, DIFCA and the Registrar of Companies to effectively perform their supervisory and enforcement powers is of critical importance to the reputation of the DIFC as an international financial centre.

Definition of Personal Data, Data and Relevant Filing System

14. The definition of “Personal Data” in the Defined Terms has been amended to include reference to “Data” instead of “information”. Further, we have proposed a new definition of “Data” which includes reference to the “Relevant Filing System”. This change is now in line with international best practices and provides greater clarity to the scope of the DIFC Data Protection Law in DIFC as it captures processing of personal data which forms part of a “Relevant Filing System”.

Definition of Interested Person

15. Currently, the DIFC Data Protection Law provides that DIFCA shall invite Interested Persons to make representations with respect to the proposed legislation. “Interested Person” is defined as “...any person(s) invited by the DIFCA Board of Directors to make representations with respect to the draft Regulations.” We are proposing to delete this definition as we feel that consultation in respect of any proposed legislation should be with the public at large, and not with a limited group of persons.

Consequential and miscellaneous amendments

16. Throughout the DIFC Data Protection Law and the DIFC Data Protection Regulations, miscellaneous amendments have been made which do not alter the substance of the DIFC Data Protection Law and the DIFC Data Protection Regulations but are aimed to improve drafting, legal interpretation and provide greater legal certainty.
17. Consequential amendments have also been made throughout the DIFC Data Protection Law and the DIFC Data Protection Regulations to give effect to changes made to relevant Articles and the Schedules.