DATA PROTECTION REGULATIONS 2020

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ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

DATA PROTECTION REGULATIONS [2020]

Regulations to make provision for the protection of personal data processed or controlled from within the Abu Dhabi Global Market.

Date of Enactment: [•]

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers under Article 6(1) of the Law No.4 of 2013 concerning the Abu Dhabi Global Market issued by His Highness the Ruler of the Emirate of Abu Dhabi, enacts the following Regulations.

PART I
General provisions

1. Subject-matter and objectives

(1) The objects of these Regulations are:

(a) to promote the protection of individuals' Personal Data;

(b) to recognise that the right to the protection of Personal Data is not an absolute right; it must be considered in relation to its function and balanced against other rights;

(c) to provide the basis for consistent regulation and Processing of Personal Data within ADGM;

(d) to promote lawful, fair and transparent Processing of Personal Data;

(e) to establish the primary responsibility and liability of the Controller for any processing of personal data carried out by the Controller or on the Controller's behalf;

(f) to facilitate the transfer of Personal Data across borders while ensuring that the rights of individuals are respected;

(g) to provide a means for individuals to complain about an alleged infringement of their rights relating to their Personal Data and to receive an effective judicial remedy; and

(h) to implement ADGM's international commitments in relation to the Processing of Personal Data.

2. Material scope

(1) These Regulations apply to the Processing of Personal Data wholly or partly by automated means and to the Processing other than by automated means of Personal Data which forms part of a Filing System or is intended to form part of a Filing System. Files or sets of files,

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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as well as their cover pages, which are not structured according to specific criteria do not fall within the scope of these Regulations.

(2) These Regulations do not apply to the Processing of Personal Data:

(a) by a natural person for the purposes of purely personal or household activity; or

(b) by public authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to national security.

3. Territorial scope

(1) These Regulations apply to the Processing of Personal Data in the context of the activities of an Establishment of a Controller or a Processor in ADGM, regardless of whether the Processing takes place in ADGM or not.

(2) These Regulations apply to natural persons whatever their nationality or place of residence.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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PART II
Principles

4. Principles relating to Processing of Personal Data

(1) Personal Data must be:

(a) Processed lawfully, fairly and in a transparent manner in relation to the Data Subject;

(b) collected for specified, explicit and legitimate purposes and not further Processed in a manner that is incompatible with those purposes;

(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are Processed;

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that Personal Data that is inaccurate, having regard to the purposes for which they are Processed, is erased or rectified without delay;

(e) kept in a form which permits identification of Data Subjects for no longer than is necessary for the purposes for which the Personal Data is Processed; and

(f) Processed in a manner that ensures appropriate security of the Personal Data, including protection against unauthorised or unlawful Processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

(2) The Controller is responsible for, and must be able to demonstrate compliance with, section 4(1).

(3) Where Personal Data is Processed for Archiving and Research Purposes;

(a) this Processing is deemed to be compatible with the initial purposes for which the Personal Data was collected as required by section 4(1)(b); and

(b) it may be stored for longer periods than stated in section 4(1)(e) provided appropriate technical and organisational measures are used to safeguard the rights of the Data Subject.

5. Lawfulness of Processing

(1) Processing is lawful only if and to the extent that:

(a) the Data Subject has given Consent to the Processing of their Personal Data for one or more specific purposes;

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(b) Processing is necessary for the performance of a contract to which the Data Subject is a party or in order to take steps at the request of the Data Subject prior to entering into a contract;

(c) Processing is necessary for compliance with a legal obligation to which the Controller is subject under Applicable Law;

(d) Processing is necessary to protect the vital interests of the Data Subject or of another natural person;

(e) Processing is necessary for the performance of a task carried out by a public authority in the interests of ADGM, or in the exercise of (i) ADGM's; (ii) the FSRA's; (iii) the Court's; or (iv) the Registration Authority's functions or in the exercise of official authority vested in the Controller under Applicable Law; or

(f) Processing is necessary for the purposes of the legitimate interests pursued by the Controller or by a Third Party, except where such interests are overridden by the interests or rights of the Data Subject which require protection of Personal Data, in particular where the Data Subject is a Child.

(2) Section 5(1)(f) does not apply if Processing is necessary for any of the purposes described in section 5(1)(e).

(3) For the purposes of section 4(1)(b) the Controller must, in order to ascertain whether Processing for another purpose is compatible with the purpose for which the Personal Data is initially collected, take into account:

(a) any link between the purposes for which the Personal Data has been collected and the purposes of the intended further Processing;

(b) the context in which the Personal Data has been collected, in particular the relationship between Data Subjects and the Controller;

(c) the nature of the Personal Data, in particular whether Special Categories of Personal Data are Processed, pursuant to section 7;

(d) the possible consequences of the intended further Processing for Data Subjects; and

(e) the existence of appropriate safeguards, which may include encryption or Pseudonymisation.

6. Conditions for Consent

(1) Consent means any freely given, specific, informed and unambiguous indication of the Data Subject's wishes by which they (whether in writing, electronically or orally), by a statement or by a clear affirmative action, signify agreement to the Processing of Personal Data relating to them.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(2) Silence, pre-ticked boxes or inactivity do not constitute Consent.

(3) For Consent to be informed, the Data Subject should be aware at least of the identity of the Controller and the purposes for which it is intended the Personal Data will be Processed.

(4) Where Processing is based on Consent, the Controller must be able to demonstrate that the Data Subject has consented to Processing of their Personal Data.

(5) If the Data Subject's Consent is given in the context of a written declaration which also concerns other matters, the request for Consent must be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language.

(6) Any part of such a declaration which constitutes a contravention of these Regulations will not be binding.

(7) The Data Subject has the right to withdraw their Consent at any time. The withdrawal of Consent will not affect the lawfulness of Processing based on Consent before its withdrawal. The Data Subject must be informed of this before giving Consent.

(8) It must be as easy to withdraw Consent as it is to give Consent.

(9) When assessing if Consent is freely given the assessor must take into account whether:

(a) the Data Subject has a genuine or free choice or is unable to refuse or withdraw Consent without detriment; and

(b) the performance of a contract is conditional on Consent to the Processing of Personal Data that is not necessary for the performance of that contract.

7. Processing of Special Categories of Personal Data

(1) Processing of:

(a) Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs;

(b) Genetic Data, Biometric Data for the purpose of uniquely identifying a natural person, Data Concerning Health or data concerning a natural person's sex life or sexual orientation; and

(c) Personal Data relating to criminal convictions and offences or related security measures,

(together, 'Special Categories of Personal Data') is prohibited.

(2) Section 7(1) does not apply if one of the following applies:

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(a) the Data Subject has given explicit Consent to the Processing of their Personal Data for one or more specified purposes;

(b) Processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the Controller or of the Data Subject in the field of employment law, provided that when the Processing is carried out, the Controller has an appropriate policy document in place in accordance with section 7(3);

(c) Processing is necessary to protect vital interests of the Data Subject or of another natural person where the Data Subject is physically or legally incapable of giving Consent;

(d) Processing is necessary for health purposes, including preventative or occupational medicine, the assessment of the working capacity of an employee, medical diagnosis, the provision of health care or treatment or the management of health care systems or services or pursuant to a contract with a health professional provided that Processing is by or under the responsibility of a Professional subject to the obligation of professional secrecy or duty of confidentiality;

(e) Processing is necessary for reasons of public interest in the area of public health, such as protecting against serious threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices;

(f) Processing is necessary for Archiving and Research Purposes in accordance with Applicable Law;

(g) Processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body including religious, cultural, educational, social or fraternal purposes or for other charitable purposes and on condition that the Processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the Personal Data is not disclosed outside that body without the Consent of the Data Subjects;

(h) Processing relates to Personal Data which is intentionally made public by the Data Subject;

(i) Processing is required for the performance of a contract to which the Data Subject is party or in order to take steps at the request of the Data Subject prior to entering into a contract;

(j) Processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity; or

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(k) Processing is necessary for reasons of substantial public interest, provided that (unless specified otherwise) the Controller has, when the Processing is carried out, an appropriate policy document in place in accordance with section 7(3), where it is necessary for:

(i) the exercise of a function or requirement conferred on a person by Applicable Law;

(ii) the exercise of a function of the Board, Abu Dhabi or UAE government;

(iii) the administration of justice;

(iv) equality of opportunity or treatment provided that the Processing does not, or is not likely to, cause substantial damage or substantial distress to an individual; and it does not relate to an individual who has given written notice to the Controller not to Process their Personal Data;

(v) diversity at senior levels of organisations, where the Controller cannot reasonably be expected to obtain the Consent of the Data Subject and is not aware of the Data Subject withholding Consent provided that the Processing does not, or is not likely to, cause substantial damage or substantial distress to an individual;

(vi) the prevention or detection of an unlawful act or omission where the Processing must be carried out without the Consent of the Data Subject so as not to prejudice this purpose; and if the Processing relates to the disclosure of Personal Data to a relevant public authority an appropriate policy document in accordance with section 7(3) need not be in place for the Processing to be lawful under these Regulations;

(vii) the protection of the members of the public against dishonesty, malpractice or other seriously improper conduct, unfitness or incompetence, mismanagement in the administration of a company, body or association, or failures in services provided by a company, body or association where the Processing must be carried out without the Consent of the Data Subject so as not to prejudice this purpose;

(viii) compliance with, or assisting other persons to comply with, a regulatory requirement which involves a person taking steps to establish whether another person has committed an unlawful act or omission, or been involved in dishonesty, malpractice or other seriously improper conduct where the Controller cannot reasonably be expected to obtain the Consent of the Data Subject to the Processing;

(ix) the prevention of fraud in connection with Processing of Personal Data as a member of, or in accordance with arrangements made by, an anti-fraud organisation;

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(x) the disclosure in good faith to an appropriate public authority regarding suspected terrorist financing, to identify terrorist property or in relation to suspected money laundering, in accordance with Applicable Law; or

(xi) the publication of a judgment or other decision of a court or tribunal or if the Processing is necessary for the purposes of publishing such a judgment or decision.

(3) Where it is specified that a condition in section 7(2) is met only if the Controller has an appropriate policy document in place, the Controller will have an appropriate policy document in place if:

(a) the policy document (which may incorporate other documents by reference) explains, for Personal Data Processed in reliance on the condition:

(i) how the Controller will comply with the principles in section 4; and

(ii) the Controller's policies regarding the retention and erasure of that Personal Data; and

(b) from the date the Controller starts to Process Personal Data in reliance on the condition until 6 months after the Controller ceases to carry out such Processing, the policy document referred to in section 7(3)(a) is:

(i) retained, reviewed and updated (as appropriate); and

(ii) made available to the Commissioner of Data Protection on request.

8. Processing which does not require identification

(1) If the purposes for which a Controller Processes Personal Data do not or no longer require the identification of a Data Subject by the Controller, the Controller is not obliged to maintain, acquire or Process additional information in order to identify the Data Subject for the sole purpose of complying with these Regulations.

(2) Where, in cases referred to in section 8(1), the Controller is able to demonstrate that it is not in a position to identify the Data Subject, the Controller must inform the Data Subject accordingly, if possible.

(3) In such cases, sections 13 to 18 will not apply except where the Data Subject, for the purpose of exercising their rights under those sections, provides additional information enabling their identification.

9. Processing for Archiving and Research Purposes

(1) Processing for Archiving and Research Purposes must be subject to the following safeguards:

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(a) technical and organisational measures must be in place, in particular to ensure compliance with section 4(1)(c), which may include Pseudonymisation or anonymisation;

(b) the Processing must not cause, or be likely to cause, substantial damage or substantial distress to a Data Subject; and

(c) the Processing must not be carried out for the purposes of measures or decisions with respect to a particular Data Subject, unless the purposes for which the Processing is necessary include the purpose of medical research that has been approved by a public authority or research institution.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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PART III
Rights of the Data Subject

10. Transparent information, communication and modalities for the exercise of the rights of the Data Subject

(1) The Controller must take appropriate measures to provide any information referred to in sections 11 and 12 and any communication under sections 13 to 20 and section 32 relating to Processing to the Data Subject:

(a) in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a Child; and

(b) in writing, electronically or, if requested by the Data Subject, orally as long as that Data Subject has provided proof of their identity.

(2) The Controller must facilitate the exercise of Data Subject rights under sections 13 to 20. In the cases referred to in section 8(3), the Controller must not refuse to act on the request of the Data Subject to exercise their rights under sections 13 to 20, unless the Controller demonstrates that it is not in a position to identify the Data Subject.

(3) Subject to section 10(4), the Controller must provide information on action taken on a request under sections 13 to 20 to the Data Subject without undue delay and in any event within two months of receipt of the request. Where the Data Subject makes the request by means of an electronic form, the information may be provided by electronic means where possible, unless otherwise requested by the Data Subject.

(4) The period referred to in section 10(3) may be extended by two further months where necessary, taking into account the complexity and number of the requests including any related requests received by the Controller whether or not from the same Data Subject. The Controller must inform the Data Subject of any such extension within two months of receipt of the request, together with the reasons for the delay.

(5) If the Controller does not take action on the request of the Data Subject, the Controller must inform the Data Subject without delay and at the latest within two months of receipt of the request of:

(a) the reasons for not taking action; and

(b) their right to lodge a complaint with the Commissioner of Data Protection and the possibility of seeking a judicial remedy.

(6) Information provided under sections 11 and 12 and any communication and any actions taken under sections 13 to 20 and section 32 must be provided free of charge. Where requests from a Data Subject are unreasonable or excessive, in particular because of their repetitive character, the Controller may either:

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(a) charge a reasonable fee taking into account the administrative costs of providing the information or communication or taking the action requested; or

(b) refuse to act on the request.

The Controller bears the burden of demonstrating the unreasonable or excessive character of the request.

(7) Without limiting section 8, where the Controller has reasonable doubts concerning the identity of the natural person making the request referred to in sections 13 to 19, the Controller may request the provision of additional information necessary to confirm the identity of the Data Subject.

(8) Public authorities to which Personal Data is disclosed for the exercise of their official mission, such as tax and customs authorities, financial investigation units, independent administrative authorities or financial market authorities responsible for the regulation and supervision of securities markets should not be regarded as Recipients (or categories of Recipients) for the purposes of sections 11, 12, 13, 17, 28 and 49 if they receive Personal Data which is necessary to carry out an inquiry in accordance with Applicable Law.

11. Information to be provided where Personal Data is collected from the Data Subject

(1) Where Personal Data relating to a Data Subject is collected from the Data Subject, the Controller must, at the time when Personal Data is obtained, provide the Data Subject with all of the following information:

(a) the identity and the contact details of the Controller;

(b) the contact details of the Data Protection Officer, where applicable;

(c) the purposes of the Processing for which the Personal Data is intended as well as the legal basis for the Processing;

(d) where the Processing is based on section 5(1)(f), the legitimate interests pursued by the Controller or by a Third Party;

(e) the Recipients or categories of Recipients of the Personal Data, if any; and

(f) where applicable, the fact that the Controller intends to transfer Personal Data to a Recipient outside of ADGM or to an International Organisation and:

(i) the existence or absence of an adequacy decision by the Commissioner of Data Protection; or

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

(ii) in the case of transfers referred to in sections 41, 42, or section 43(1)(b), reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.

(2) In addition to the information referred to in section 11(1), the Controller must, at the time when Personal Data is obtained, provide the Data Subject with the following further information necessary to ensure fair and transparent Processing:

(a) the period for which the Personal Data will be stored, or if that is not possible, the criteria used to determine that period;

(b) the existence of the rights set out in sections 13 to 16, 18 and 19;

(c) where the Processing is based on either of sections 5(1)(a) or 7(2)(a):

(i) the existence of the right to withdraw Consent at any time; and

(ii) that the lawfulness of any Processing based on Consent prior to that withdrawal will not be affected by the subsequent withdrawal of Consent;

(d) the right to lodge a complaint with the Commissioner of Data Protection;

(e) whether the provision of Personal Data is a requirement under Applicable Law, a contractual requirement, or a requirement necessary to enter into a contract;

(f) whether the Data Subject is obliged to provide the Personal Data and the possible consequences of failure to provide such data; and

(g) the existence of automated decision-making, including Profiling, referred to in sections 20(1) and 20(4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such Processing for the Data Subject.

(3) Where the Controller intends to further Process the Personal Data for a purpose other than that for which the Personal Data was collected, the Controller must provide the Data Subject prior to that further Processing with information on that other purpose and with any relevant further information as referred to in section 11(2).

(4) Sections 11(1), 11(2) and 11(3) do not apply to the extent that the Data Subject already has the information.

12. Information to be provided where Personal Data has not been obtained from the Data Subject

(1) Where Personal Data has not been obtained from the Data Subject, the Controller must provide the Data Subject with the following information:

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

(a) the identity and the contact details of the Controller;

(b) the contact details of the Data Protection Officer, where applicable;

(c) the purposes of the Processing for which the Personal Data is intended as well as the legal basis for the Processing;

(d) the categories of Personal Data concerned;

(e) the Recipients or categories of Recipients of the Personal Data, if any; and

(f) where applicable, that the Controller intends to transfer Personal Data to a Recipient outside of ADGM or to an International Organisation and:

(i) the existence or absence of an adequacy decision by the Commissioner of Data Protection; or

(ii) in the case of transfers referred to in sections 41, 42, or section 43(1)(b), reference to the appropriate or suitable safeguards and the means to obtain a copy of them or where they have been made available.

(2) In addition to the information referred to in section 12(1), the Controller must provide the Data Subject with the following information necessary to ensure fair and transparent Processing in respect of the Data Subject:

(a) the period for which the Personal Data will be stored, or if that is not possible, the criteria used to determine that period;

(b) where the Processing is based on section 5(1)(f), the legitimate interests pursued by the Controller or by a Third Party;

(c) the existence of the rights set out in sections 13 to 16, 18 and 19;

(d) where Processing is based on either section 5(1)(a) or 7(2)(a),

(i) the existence of the right to withdraw Consent at any time; and

(ii) that the lawfulness of any Processing based on Consent prior to that withdrawal will not be affected by the subsequent withdrawal of Consent;

(e) the right to lodge a complaint with the Commissioner of Data Protection;

(f) from which source the Personal Data originates, and if applicable, whether it came from publicly accessible sources; and

(g) the existence of automated decision-making, including Profiling, referred to in sections 20(1) and 20(4) and, at least in those cases, meaningful information

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

about the logic involved, as well as the significance and the envisaged consequences of such Processing for the Data Subject.

(3) The Controller must provide the information referred to in sections 12(1) and 12(2):

(a) within a reasonable period after obtaining the Personal Data, but at the latest within two months, having regard to the specific circumstances in which the Personal Data is Processed;

(b) if the Personal Data is to be used for communication with the Data Subject, at the latest at the time of the first communication to that Data Subject; or

(c) if a disclosure to another Recipient is envisaged, at the latest when the Personal Data is first disclosed.

(4) Where the Controller intends to further Process the Personal Data for a purpose other than that for which the Personal Data was obtained, the Controller must provide the Data Subject prior to that further Processing with information on that other purpose and with any relevant further information as referred to in section 12(2).

(5) Sections 12(1) to 12(4) do not apply to the extent that:

(a) the Data Subject already has the information;

(b) the provision of such information proves impossible or would involve a disproportionate effort (having regard to the number of Data Subjects, the age of the data and any appropriate safeguards adopted), in particular for processing for Archiving and Research Purposes or in so far as the obligation referred to in section 12(1) is likely to render impossible or seriously impair the achievement of the objectives of that Processing, provided that the Controller takes appropriate measures to protect the Data Subject's rights and legitimate interests, including making the information publicly available;

(c) obtaining or disclosure is expressly required by Applicable Law which provides appropriate measures to protect the Data Subject's legitimate interests; or

(d) where the Personal Data must remain confidential subject to an obligation of professional secrecy, or duty of confidentiality, regulated by Applicable Law.

13. Right of access by the Data Subject

(1) A Data Subject has the right to obtain from the Controller confirmation as to whether or not Personal Data concerning him or her is being Processed, and, where that is the case, access to the Personal Data and the following information:

(a) the purposes of the Processing;

(b) the categories of Personal Data concerned;

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

(c) the Recipients or categories of Recipient to whom the Personal Data has been or will be disclosed, in particular Recipients outside of ADGM or International Organisations;

(d) where possible, the envisaged period for which the Personal Data will be stored, or, if not possible, the criteria used to determine that period;

(e) the existence of the right to request from the Controller rectification or erasure of Personal Data or restriction of Processing of Personal Data concerning the Data Subject or to object to such Processing;

(f) the right to lodge a complaint with the Commissioner of Data Protection;

(g) where the Personal Data is not collected from the Data Subject, any available information as to its source; and

(h) the existence of automated decision-making, including Profiling, referred to in sections 20(1) and 20(4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such Processing for the Data Subject.

(2) Where Personal Data is transferred outside of ADGM or to an International Organisation, the Data Subject has the right to be informed of the appropriate safeguards pursuant to section 41 relating to the transfer.

(3) The Controller must provide a copy of the Personal Data undergoing Processing. For any further copies requested by the Data Subject, the Controller may charge a reasonable fee based on administrative costs. Where the Data Subject makes the request by electronic means, and unless otherwise requested by the Data Subject, the information must be provided in a commonly used electronic form.

(4) The right to obtain a copy referred to in section 13(3) must not adversely affect the rights of others.

(5) Where the Controller Processes a large quantity of information concerning the Data Subject, the Controller may request that, before the information is delivered, the Data Subject specify the information or Processing activities to which the request relates.

14. Right to rectification

A Data Subject has the right to request and obtain from the Controller without undue delay the rectification of inaccurate Personal Data concerning him or her. Taking into account the purposes of the Processing, the Data Subject has the right to have incomplete Personal Data completed, including by means of the Controller providing a supplementary statement.

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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15. Right to erasure

(1) The Data Subject has the right to obtain from the Controller the erasure of Personal Data concerning him or her without undue delay and the Controller has the obligation to erase Personal Data without undue delay where one of the following applies:

(a) the Personal Data is no longer necessary in relation to the purposes for which it was collected or otherwise Processed;

(b) the Data Subject withdraws Consent on which the Processing is based according to section 5(1)(a) or 7(2)(a), and where there is no other legal ground for the Processing;

(c) the Data Subject objects to the Processing pursuant to section 19(1) and there are no overriding legitimate grounds for the Processing, or the Data Subject objects to the Processing pursuant to section 19(3);

(d) the Personal Data has been unlawfully Processed; or

(e) the Personal Data has to be erased for compliance with a legal obligation in Applicable Law to which the Controller is subject.

(2) Where the Controller has made the Personal Data public and is obliged pursuant to section 15(1) to erase the Personal Data, the Controller, taking account of available technology and the cost of implementation, must take reasonable steps, including technical measures, to inform Controllers which are Processing the Personal Data that the Data Subject has requested the erasure by such Controllers of any links to, or copy or replication of, that Personal Data.

(3) Sections 15(1) and 15(2) will not apply to the extent that Processing is necessary:

(a) for compliance with a legal obligation which requires Processing under Applicable Law to which the Controller is subject or for the performance of a task carried out by a public authority in the interests of ADGM, or in the exercise of (i) ADGM's; (ii) the FSRA's; (iii) the Court's; and (iv) the Registration Authority's functions or in the exercise of official authority vested in the Controller;

(b) for reasons of public interest in the area of public health in accordance with sections 7(2)(d) and 7(2)(e);

(c) for Archiving and Research Purposes to the extent that the right referred to in section 15(1) is likely to render impossible or seriously impair the achievement of the objectives of that Processing, or

(d) for the establishment, exercise or defence of legal claims.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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16. Right to restriction of Processing

(1) The Data Subject has the right to obtain from the Controller restriction of Processing where one of the following applies:

(a) the accuracy of the Personal Data is contested by the Data Subject, for a period enabling the Controller to verify the accuracy of the Personal Data;

(b) the Processing is unlawful and the Data Subject opposes the erasure of the Personal Data and requests the restriction of its use instead;

(c) the Controller no longer needs the Personal Data for the purposes of the Processing, but it is required by the Data Subject for the establishment, exercise or defence of legal claims; or

(d) the Data Subject has objected to Processing pursuant to section 19(1) pending the verification whether the legitimate grounds of the Controller override those of the Data Subject.

(2) Where Processing has been restricted under section 16(1), such Personal Data must, with the exception of storage, only be Processed with the Data Subject's Consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest.

(3) The Controller must inform a Data Subject who has obtained restriction of Processing pursuant to section 16(1) before the restriction of Processing is lifted.

17. Notification obligation regarding rectification or erasure of Personal Data or restriction of Processing

(1) The Controller must communicate any rectification or erasure of Personal Data or restriction of Processing carried out in accordance with sections 14, 15(1) and 16 to each Recipient to whom the Personal Data has been disclosed, unless this proves impossible or involves disproportionate effort (having regard to the number of Data Subjects, the age of the data and any appropriate safeguards adopted).

(2) The Controller must inform the Data Subject about the Recipients referred to in section 17(1), if the Data Subject requests it.

18. Right to data portability

(1) The Data Subject has the right to receive the Personal Data that is held by, or on behalf of, the Controller concerning them, which they have provided to a Controller, in a structured, commonly used and machine-readable format and has the right to transmit that data to another Controller without hindrance from the Controller to which the Personal Data has been provided, where:

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

(a) the Processing is based on Consent pursuant to section 5(1)(a) or 7(2)(a) or on a contract pursuant to section 5(1)(b); and

(b) the Processing is carried out by automated means.

(2) A Data Subject has the right to have the Personal Data transmitted directly from one Controller to another, where technically feasible.

(3) Section 18(1) does not apply to any Processing that is carried out in reliance on section 5(1)(e).

(4) The right in section 18(1) must not adversely affect the rights of others.

19. Right to object

(1) A Data Subject has the right to object at any time, on grounds relating to their particular situation, to the Processing of their Personal Data, which is based on sections 5(1)(e) and 5(1)(f), including Profiling based on those provisions.

(2) Where the Data Subject objects to the Processing of their Personal Data, the Controller must not Process the Personal Data unless the Controller reasonably considers that:

(a) there are legitimate grounds for the Processing which override the interests or rights of the Data Subject; or

(b) the Processing is necessary for the establishment, exercise or defence of legal claims.

(3) Where Personal Data is Processed for direct marketing purposes, the Data Subject has the right to object at any time to the Processing, including Profiling, of their Personal Data for such direct marketing purposes.

(4) Where the Data Subject objects to Processing for direct marketing purposes, the Personal Data must not be Processed for such purposes.

(5) Where Personal Data is Processed for Archiving and Research Purposes the Data Subject has the right to object to Processing of their Personal Data, unless the Processing is necessary for the performance of a task carried out for reasons of public interest.

(6) No later than the time of the first communication with the Data Subject, the right referred to in sections 19(1) and 19(3) must be explicitly brought to the attention of the Data Subject and must be presented clearly and separately from any other information.

20. Automated individual decision-making, including Profiling

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(1) The Data Subject has the right not to be subject to a decision based solely on automated Processing, including Profiling, which produces legal effects concerning him or her, or similarly significantly affects him or her.

(2) Section 20(1) does not apply if the decision:

(a) is necessary for entering into, or performance of, a contract between the Data Subject and a Controller;

(b) is based on the Data Subject's explicit Consent; or

(c) (not falling within section 20(2)(a) or 20(2)(b)) is required or authorised by Applicable Law (including for fraud prevention, anti-money laundering and security and integrity purposes) and in respect of which:

(i) the Controller has, as soon as reasonably practicable, notified the Data Subject in writing that a decision has been taken based solely on automated Processing; and

(ii) the Data Subject has not, before the end of a period of 1 month beginning with the receipt of the notification, requested the Controller to either reconsider the decision or take a new decision that is not based solely on automated decision making.

(3) In the cases referred to in sections 20(2)(a) and 20(2)(b), the Controller must implement suitable measures to safeguard the Data Subject's rights and legitimate interests, at least the right to obtain human intervention on the part of the Controller, to express his or her point of view and to contest the decision.

(4) Decisions referred to in section 20(2) must not be based on Special Categories of Personal Data, unless section 7(2)(a) or 7(2)(k) applies and suitable measures to safeguard the Data Subject's rights and legitimate interests are in place.

21. Restrictions

(1) The obligations and rights provided for in sections 10 to 20 and 32, and section 4 (to the extent the provisions correspond to the rights and obligations provided for in sections 10 to 20), do not apply to the extent such obligations and rights:

(a) would be likely to prejudice national security, national defence, the prevention or detection of crime, apprehension or prosecution of offenders, or the assessment or collection of a tax or duty or an imposition of a similar nature;

(b) relate to information required to be disclosed by Applicable Law (including by court order) or in connection with legal proceedings, obtaining legal advice or establishing, exercising or defending legal rights, to the extent that the

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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application of those provisions would prevent the Controller from complying with the rights and obligations;

(c) would be likely to prejudice the discharge of public functions designed to protect the public against:

(i) dishonesty, malpractice or other seriously improper conduct including, but not limited to, protection from financial loss by, or the unfitness or incompetence of, persons concerned in the provision of banking, insurance, investment or other financial services or the management of bodies corporate;

(ii) financial loss due to the conduct of insolvent body corporates or individuals; or

(iii) business conduct that adversely affects the public;

(d) would be likely to prejudice the proper discharge of public functions designed to:

(i) secure workers' health, safety and welfare or to protect others against health and safety risks in connection with (or arising from) someone at work; or

(ii) regulate conduct (or agreements) preventing, restricting or distorting commercial competition, or to regulate undertakings abusing a dominant market position;

(e) would be likely to prejudice ADGM's ability to comply with international obligations and standards to which it is a signatory (including the International Organisation of Securities Commissions), where inspection of Personal Data is required;

(f) would require the disclosure of information the disclosure of which is prohibited or restricted by Applicable Law;

(g) would be likely to prejudice audit functions for supervising the quality of public accounting and financial reporting by a public authority;

(h) would be likely to prejudice the regulatory functions of a public authority; or

(i) would be likely to prejudice judicial appointments, independence and proceedings, including any individual or court acting in a judicial capacity.

(2) The obligations and rights provided for in sections 13(1) to 13(3), and section 4 (to the extent the provisions correspond to the rights and obligations provided for in the provisions identified in sections 13(1) to 13(3)) do not oblige a Controller to disclose

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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information to the Data Subject to the extent that doing so would involve disclosing information relating to another individual who can be identified from the information, unless:

(a) the individual has Consented to the disclosure; or

(b) it would be reasonable to disclose the information without the Consent of the individual.

(3) The obligations and rights provided for in sections 11(1) to 11(3), sections 12(1) to 12(4) and sections 13(1) to 13(3), and section 4 (to the extent the provisions correspond to the rights and obligations identified in sections 11(1) to 11(3)), sections 12(1) to 12(4) and sections 13(1) to 13(3)), do not apply to the extent such obligations and rights:

(a) relate to information in respect of which a claim to legal professional privilege could be maintained in legal proceedings, or in respect of which a duty of confidentiality is owed by a professional legal advisor to his or her client;

(b) would be likely to prejudice a natural person's ability to protect themselves from self-incrimination, to the extent that compliance with these regulations might expose that person to proceedings for committing an offence (excluding perjury or an offence under these Regulations);

(c) relate to records of the intentions of the Controller in relation to any negotiations with the Data Subject to the extent that the application of those provisions would be likely to prejudice those negotiations;

(d) would be likely to affect the price of a financial instrument or have a prejudicial effect on the orderly functioning of financial markets (or the efficient allocation of capital within the economy), provided that it is reasonable for the professional taking the decision to believe that complying with the provisions above could affect someone's decision whether to:

(i) deal in, subscribe for or issue a financial instrument; or

(ii) act in a way likely to have an effect on a business activity (such as an effect on an undertaking's capital structure, the legal or beneficial ownership of a business or asset or a person's industrial strategy);

(e) would be likely to prejudice management forecasting or planning in relation to business or other activity; or

(f) relate to confidential references for the education, training or employment or appointment and retirement of the Data Subject, including, in the case of regulatory appointments and retirements, any related opinions or reasoning provided to the relevant regulator.

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(4) The obligations and rights provided for in sections 13(1) to 13(3), section 14, section 16(1), section 17, section 18(1), and section 19(1) will not apply to Personal Data processed for Archiving and Research Purposes:

(a) to the extent that the application of those provisions would prevent or seriously impair the achievement of those purposes; and

(b) provided that sections 13(1) to 13(3) will only not apply to Processing for scientific or historical research or statistical purposes where the results of the research or any resultant statistics are not made available in a form which identifies a Data Subject.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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PART IV
Controller and Processor

22. Responsibility of the Controller

(1) Taking into account the nature, scope, context and purposes of Processing as well as the risks of varying likelihood and severity for the rights of natural persons, the Controller must:

(a) implement appropriate technical and organisational measures to ensure and to be able to demonstrate that Processing is performed in accordance with these Regulations; and

(b) review and update those measures where necessary.

(2) Where proportionate in relation to Processing activities, the measures referred to in section 22(1) must include the implementation of appropriate data protection policies by the Controller.

23. Data protection by design and by default

(1) The Controller must take appropriate steps to ensure that:

(a) its systems, business processes and practices in respect of which Personal Data is Processed are designed taking into account compliance with the principles, rights and obligations in these Regulations ('data protection by design'); and

(b) only the Processing of Personal Data that is necessary for each specific purpose of the Processing is Processed ('data protection by default').

24. Data Protection Fee

(1) A Controller must, before, or as soon as reasonably practicable after, it starts Processing Personal Data under these Regulations:

(a) pay a Data Protection Fee to the Commissioner of Data Protection in respect of the twelve months from the date it commenced Processing Personal Data under these Regulations; and

(b) notify the Commissioner of Data Protection of:

(i) its name and address (which, in the case of a registered company, will be its registered office); and

(ii) the date it commenced Processing Personal Data under these Regulations.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(2) Each year, within one month of the expiry of the anniversary on which it commenced Processing Personal Data under these Regulations, the Controller must pay a Renewal Fee in the amount specified by rules made by the Board to the Commissioner of Data Protection.

25. Joint Controllers

(1) Where two or more Controllers jointly determine the purposes and means of Processing, they are joint Controllers. They must determine their respective responsibilities for compliance with the obligations under these Regulations in a transparent manner, in particular as regards the exercising of the rights of the Data Subject and their respective duties to provide the information referred to in sections 11 and 12, by means of an arrangement between them unless the respective responsibilities of the Controllers are determined by Applicable Law. The arrangement may designate a contact point for Data Subjects.

(2) The arrangement referred to in section 25(1) must set out the respective roles and relationships of the joint Controllers with respect to the Data Subjects. The essence of the arrangement must be made available to the Data Subject.

(3) Irrespective of the terms of the arrangement referred to in section 25(1), the Data Subject may exercise his or her rights under these Regulations in respect of and against each of the Controllers.

26. Processor

(1) Where Processing is to be carried out on behalf of a Controller, the Controller must use only Processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that Processing will meet the requirements of these Regulations and ensure the protection of the rights of the Data Subject.

(2) The Processor must not engage another Processor without prior specific or general written authorisation of the Controller. In the case of general written authorisation, the Processor must inform the Controller of any intended changes concerning the addition or replacement of other Processors, thereby giving the Controller the opportunity to object to such changes.

(3) Processing by a Processor must be governed by a contract or other legal act under Applicable Law, that is binding on the Processor with regard to the Controller and that sets out the subject-matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and categories of Data Subjects and the obligations and rights of the Controller. That contract or other legal act must stipulate, in particular, that the Processor:

(a) Processes the Personal Data only on documented instructions from the Controller, including with regard to transfers of Personal Data outside of ADGM

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

or to an International Organisation, unless required to do so by Applicable Law to which the Processor is subject; in such a case, the Processor must inform the Controller of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest;

(b) ensures that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate obligation of confidentiality under Applicable Law;

(c) takes all measures required pursuant to section 30;

(d) respects the conditions referred to in sections 26(2) and 26(5) for engaging another Processor;

(e) taking into account the nature of the Processing, assists the Controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controller's obligation to respond to requests for exercising the Data Subject's rights in Part III;

(f) assists the Controller in ensuring compliance with the obligations pursuant to sections 30 to 33 taking into account the nature of Processing and the information available to the Processor;

(g) at the choice of the Controller, deletes or returns all the Personal Data to the Controller after the end of the provision of services relating to Processing, and deletes existing copies unless Applicable Law requires storage of the Personal Data; and

(h) makes available to the Controller all information necessary to demonstrate compliance with the obligations in this section and allows for and contributes to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller.

(4) With regard to section 26(3)(a), the Processor must immediately inform the Controller if, in its opinion, an instruction contravenes these Regulations or other data protection provisions contained in Applicable Law.

(5) Where a Processor engages another Processor for carrying out specific Processing activities on behalf of the Controller, the same data protection obligations as set out in the contract or other legal act between the Controller and the Processor as referred to in section 26(3) must also be imposed on that other Processor by way of a contract or other legal act under Applicable Law, in particular, providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of these Regulations. The initial Processor remains fully liable to the Controller for the performance of that other Processor's obligations.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

(6) The Commissioner of Data Protection may adopt standard contractual clauses for the matters referred to in sections 26(3) and 26(5), including by approving the then current standard contractual clauses issued by the European Commission or adopted by a Supervisory Authority for the same purpose upon which approval such standard contractual clauses will be incorporated into these Regulations by reference.

(7) The contract or the other legal act referred to in sections 26(3) and 26(5) may be based, in whole or in part, on standard contractual clauses referred to in section 26(6), including when they are part of a certification granted to the Controller or Processor pursuant to section 38.

(8) The contract or the other legal act referred to in sections 26(3) and 26(5) must be in writing.

(9) Without limiting the effect of sections 54, 55 and 59, if a Processor contravenes these Regulations by determining the purposes and means of Processing, the Processor will be a Controller in respect of that Processing.

27. Processing under the authority of the Controller or Processor

The Processor and any person acting under the authority of the Controller or of the Processor, who has access to Personal Data, must not Process that data except on instructions from the Controller, unless required to do so by Applicable Law.

28. Records of Processing activities

(1) Each Controller must maintain a record of Processing activities under its responsibility. That record must contain all of the following information:

(a) the name and contact details of the Controller and, where applicable, the joint Controller and the Data Protection Officer;

(b) the purposes of the Processing;

(c) a description of the categories of Data Subjects and of the categories of Personal Data;

(d) the categories of Recipients to whom the Personal Data has been or will be disclosed including Recipients outside of ADGM or in International Organisations;

(e) where applicable, transfers of Personal Data outside of ADGM or to an International Organisation, including the identification of that location outside of ADGM or the International Organisation and, in the case of transfers referred to section 43(1)(b), the documentation of suitable safeguards;

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(f) where possible, the envisaged time limits for erasure of the different categories of data; and

(g) where possible, a general description of the technical and organisational security measures referred to in section 30(1).

(2) Each Processor must maintain a record of all categories of Processing activities carried out on behalf of a Controller, containing:

(a) the name and contact details of the Processor or Processors and of each Controller on behalf of which the Processor is acting and the Data Protection Officer;

(b) the categories of Processing carried out on behalf of each Controller;

(c) where applicable, transfers of Personal Data outside of ADGM or to an International Organisation, including the identification of that location outside of ADGM or the International Organisation and, in the case of transfers referred to in section 43(1)(b), the documentation of suitable safeguards; and

(d) where possible, a general description of the technical and organisational security measures referred to in section 30(1).

(3) The records referred to in sections 28(1) and 28(2) must be in writing, including in electronic form.

(4) The Controller or the Processor must make the record available to the Commissioner of Data Protection on request.

(5) The obligations referred to in sections 28(1) and 28(2) do not apply to an Establishment employing fewer than five employees unless it carries out High Risk Processing Activities.

29. Cooperation with the Commissioner of Data Protection

The Controller and the Processor must cooperate, on request, with the Commissioner of Data Protection in the performance of their duties and functions.

30. Security of Processing

(1) Taking into account the State Of The Art , the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights of natural persons, the Controller and the Processor must implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including as appropriate:

(a) the Pseudonymisation and encryption of Personal Data;

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;

(c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and

(d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.

(2) In assessing the appropriate level of security the Controller and Processor must take into account the risks that are presented by Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed.

(3) The Controller and Processor must take steps to ensure that any natural person acting under the authority of the Controller or the Processor who has access to Personal Data does not Process it except on instructions from the Controller, unless they are required to do so by Applicable Law.

31. Notification of a Personal Data Breach to the Commissioner of Data Protection

(1) In the case of a Personal Data Breach, the Controller must without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the Personal Data Breach to the Commissioner of Data Protection, unless the Personal Data Breach is unlikely to result in a risk to the rights of natural persons. Where the notification to the Commissioner of Data Protection is not made within 72 hours, it must be accompanied by reasons for the delay.

(2) The Processor must notify the Controller without undue delay after becoming aware of a Personal Data Breach.

(3) The notification referred to in sections 31(1) and 31(2) must:

(a) describe the nature of the Personal Data Breach, including where possible, the categories and approximate number of Data Subjects concerned, and the categories and approximate number of Personal Data records concerned;

(b) communicate the name and contact details of the Data Protection Officer or other contact point where more information can be obtained;

(c) describe the likely consequences of the Personal Data Breach; and

(d) describe the measures taken or proposed to be taken by the Controller to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(4) Where it is not possible to provide the information referred to in section 31(3) at the same time, the information may be provided in phases without undue further delay.

(5) The Controller must document any Personal Data Breaches, comprising the facts relating to the Personal Data Breach, its effects and the remedial action taken. The documentation must enable the Commissioner of Data Protection to verify compliance with this section.

32. Communication of a Personal Data Breach to the Data Subject

(1) When the Personal Data Breach is likely to result in a high risk to the rights of natural persons, the Controller must communicate the Personal Data Breach to the Data Subject without undue delay.

(2) The communication to the Data Subject referred to in section 32(1) must describe in clear and plain language the nature of the Personal Data Breach and contain at least the information and measures referred to in sections 31(3)(b), 31(3)(c) and 31(3)(d). The communication must where practical make recommendations for the natural person concerned to mitigate potential adverse effects and contain sufficient detail to allow him or her to take the necessary precautions.

(3) The communication to the Data Subject referred to in section 32(1) is not required if any of the following conditions are met:

(a) the Controller has implemented appropriate technical and organisational protection measures, and those measures were applied to the Personal Data affected by the Personal Data Breach, in particular those that render the Personal Data unintelligible to any person who is not authorised to access it, such as encryption;

(b) the Controller has taken subsequent measures which ensure that the high risk to the rights of Data Subjects referred to in section 32(1) is no longer likely to materialise; or

(c) it would involve disproportionate effort (having regard to the number of Data Subjects, the age of the data and any appropriate safeguards adopted). In such a case, there must instead be a public communication or similar measure whereby the Data Subjects are informed in an equally effective manner.

(4) If the Controller has not already communicated the Personal Data Breach to the Data Subject, the Commissioner of Data Protection, having considered the likelihood of the Personal Data Breach resulting in a high risk, may require it to do so or may decide that any of the conditions referred to in section 32(3) are met.

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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33. Data Protection Impact Assessment

(1) The Controller must, prior to Processing that is likely to result in a high risk to the rights of natural persons, carry out an assessment of the impact of the envisaged Processing operations on the protection of Personal Data (a 'Data Protection Impact Assessment').

(2) A single Data Protection Impact Assessment may address a set of similar Processing operations that present similar high risks. The outcome of the Data Protection Impact Assessment should be taken into account when determining the appropriate measures to be taken in order to demonstrate that the Processing of Personal Data complies with these Regulations.

(3) The Controller must seek the advice of the Data Protection Officer, where designated, when carrying out a Data Protection Impact Assessment.

(4) The Commissioner of Data Protection must publish a list of the kind of Processing operations which are subject to the requirement for a Data Protection Impact Assessment pursuant to section 33(1) and may review this list from time to time.

(5) The Data Protection Impact Assessment must:

(a) describe the nature, scope, context and purpose of the Processing;

(b) assess necessity, proportionality and compliance measures;

(c) identify and assess risks to individuals; and

(d) identify any additional measures to mitigate the risks identified.

(6) Where necessary, the Controller must carry out a review to assess if Processing is performed in accordance with the Data Protection Impact Assessment including when there is a change of the risk represented by Processing operations.

(7) The Controller must notify the Commissioner of Data Protection prior to carrying out any Processing where a Data Protection Impact Assessment indicates that the Processing would be likely to result in a high risk to the rights of natural persons. The notification must contain information in section 33(5).

34. Designation of the Data Protection Officer

(1) The Controller and the Processor must appoint a person to perform the tasks listed in section 36 (a 'Data Protection Officer') where:

(a) the Processing is carried out by a public authority, except for courts acting in their judicial capacity;

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(b) the core activities of the Controller or the Processor consist of Processing operations which, by virtue of their nature, scope and purposes, require regular and systematic monitoring of Data Subjects on a large scale; or

(c) the core activities of the Controller or the Processor consist of Processing on a large scale of Special Categories of Personal Data.

(2) A Data Protection Officer:

(a) may be appointed in respect of a single entity, a Group or multiple, independent entities;

(b) may perform additional roles in respect of a Controller or Processor in addition to performing the role of Data Protection Officer;

(c) does not need to be an employee of the relevant Controller or Processor provided it enters into an agreement in writing with the Controller, or Processor, as the case may be; and

(d) does not need to be resident within ADGM,

in each case, provided that the Data Protection Officer is easily accessible by each entity it acts for, and no other role held by the Data Protection Officer conflicts or is likely to conflict with the Data Protection Officer's obligations under these Regulations.

(3) The Data Protection Officer must be appointed on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in section 36.

(4) The Controller or the Processor must notify the Commissioner of Data Protection within one month following the appointment or resignation of any Data Protection Officer. The notification must include the contact details of the new Data Protection Officer and, in the case of a resignation, reasons for the resignation.

(5) The obligations referred to in sections 34(1) and 34(2) do not apply to an Establishment employing fewer than five employees unless it carries out High Risk Processing Activities.

35. Position of the Data Protection Officer

(1) The Controller and the Processor must ensure that the Data Protection Officer:

(a) is involved, properly and in a timely manner, in all issues which relate to the protection of Personal Data;

(b) is provided with sufficient resources, access to Personal Data and Processing operations to carry out the role;

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(c) is not dismissed or penalised for performing the tasks referred to in section 36; and

(d) reports directly to the highest level of management in the Controller or Processor.

(2) Data Subjects may contact the Data Protection Officer with regard to all issues related to Processing of their Personal Data and to the exercise of their rights under these Regulations.

(3) The Data Protection Officer must be bound by secrecy or confidentiality concerning the performance of his or her tasks, in accordance with Applicable Law and the confidentiality policies and procedures of the Controller or Processor.

36. Tasks of the Data Protection Officer

(1) The responsibilities of the Data Protection Officer include:

(a) to inform and advise the Controller or the Processor and the employees who carry out Processing of their obligations pursuant to these Regulations and to other data protection provisions under Applicable Law;

(b) to monitor compliance with these Regulations, with other data protection provisions under Applicable Law and with the policies of the Controller or Processor in relation to the protection of Personal Data, including the assignment of responsibilities, awareness-raising and training of Staff involved in Processing operations, and the related audits;

(c) to provide advice where requested as regards the Data Protection Impact Assessment and monitor its performance pursuant to section 33;

(d) to cooperate with the Commissioner of Data Protection; and

(e) to act as the contact point for the Commissioner of Data Protection on issues relating to Processing and to consult with the Commissioner of Data Protection, where appropriate, with regard to any other matter.

(2) The Data Protection Officer must in the performance of their tasks have due regard to the risk associated with Processing operations, taking into account the nature, scope, context and purposes of Processing.

37. Codes of conduct

(1) The Commissioner of Data Protection may approve codes of conduct prepared by associations and other bodies representing categories of Controllers or Processors and intended to contribute to the proper application of these Regulations, if it finds that they provide appropriate safeguards.

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(2) The Commissioner of Data Protection must make available to the public a register of all codes of conduct that have been approved in accordance with section 37(1).

(3) Adherence to an approved code of conduct may be used as an element by which to:

(a) demonstrate compliance with the obligations of the Controller in accordance with section 22;

(b) demonstrate sufficient guarantees as referred to in sections 26(1) and 26(5);

(c) demonstrate compliance with the requirements set out in section 30(1); and

(d) assess the impact of the Processing operations performed by Controllers or Processors, in particular for the purposes of a Data Protection Impact Assessment in accordance with section 33.

38. Certification

(1) The Commissioner of Data Protection may approve data protection certification mechanisms and data protection seals and marks, for the purpose of demonstrating compliance with these Regulations of Processing operations by Controllers and Processors.

(2) The Commissioner of Data Protection must take into account the specific needs of micro, small and medium-sized Establishments when approving certification schemes under section 38(1).

(3) The certification must be voluntary and available via a process that is transparent.

(4) The Commissioner of Data Protection must collate all certification mechanisms and data protection seals and marks in a register and must make them publicly available by any appropriate means.

(5) Adherence to an approved certification mechanism may be used as an element by which to demonstrate (among other things):

(a) compliance with the obligations of the Controller in accordance with section 22;

(b) the requirements set out in section 23;

(c) sufficient guarantees as referred to in sections 26(1) and 26(5); and

(d) compliance with the requirements set out in section 30(1).

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PART V
Transfers of Personal Data outside of ADGM or to International Organisations

39. General principle for transfers

(1) All provisions in this Part must be applied to ensure that the high level of protection of natural persons guaranteed by these Regulations is not undermined.

(2) Any transfer of Personal Data that is undergoing Processing or is intended for Processing after transfer to a jurisdiction outside of ADGM or to an International Organisation can only take place if, subject to the other provisions of these Regulations, the conditions in this Part are complied with by the Controller and Processor, including for further onward transfers of Personal Data.

40. Transfers on the basis of an adequacy decision

(1) A transfer of Personal Data outside of ADGM or to an International Organisation may take place where the Commissioner of Data Protection has decided that the receiving jurisdiction, one or more specified sectors within that jurisdiction, or the International Organisation in question ensures an adequate level of protection of Personal Data. Such a transfer will not require any specific authorisation.

(2) When assessing the adequacy of the level of protection of Personal Data, the Commissioner of Data Protection must, in particular, take account of the following elements:

(a) the rule of law, respect for individuals' rights, relevant legislation, both general and sectoral, including concerning public security, defence, national security and criminal law and the access of public authorities to Personal Data, as well as the implementation of such legislation, data protection rules, professional rules and security measures, including rules for the onward transfer of Personal Data to another jurisdiction, sector or International Organisation which are complied with in that jurisdiction, sector or International Organisation, case-law, as well as effective and enforceable Data Subject rights and effective administrative and judicial redress for the Data Subjects whose Personal Data is being transferred;

(b) the existence and effective functioning of one or more independent supervisory authorities in the receiving jurisdiction or sector or to which an International Organisation is subject, with responsibility for ensuring and enforcing compliance with adequate data protection rules described in section 40(2)(a), including adequate enforcement powers, for assisting and advising the Data Subjects in exercising their rights and for cooperation with the Commissioner of Data Protection; and

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(c) the international commitments the receiving jurisdiction, sector or International Organisation concerned has entered into, or other obligations arising from legally binding conventions or instruments as well as from its participation in multilateral or regional systems, in particular in relation to the protection of Personal Data.

(3) The Commissioner of Data Protection, after assessing the adequacy of the level of protection, may decide that a jurisdiction outside of ADGM, or one or more specified sectors within a jurisdiction outside of ADGM, or an International Organisation ensures an adequate level of protection:

(a) within the meaning of section 40(2); or

(b) on the basis that the jurisdiction, sector or International Organisation has received an adequacy decision by the European Commission in accordance with Article 45(3) of the GDPR.

In each case the Commissioner of Data Protection must provide for a review of the decision within four years, which must take into account all relevant developments in the jurisdiction outside of ADGM or International Organisation.

(4) The Commissioner of Data Protection must, on an ongoing basis, monitor developments in jurisdictions outside of ADGM and International Organisations that could affect the functioning of decisions adopted pursuant to section 40(3).

(5) The Commissioner of Data Protection must, where available information reveals, in particular following the review referred to in section 40(3), that a jurisdiction outside of ADGM or one or more specified sectors within a jurisdiction outside of ADGM, or an International Organisation no longer ensures an adequate level of protection within the meaning of section 40(2), to the extent necessary, repeal, amend or suspend the decision referred to in section 40(3) without retroactive effect.

(6) The Commissioner of Data Protection must publish a list of the jurisdictions outside of ADGM and specified sectors within jurisdictions outside of ADGM and International Organisations for which it has decided that an adequate level of protection is or is no longer ensured.

(7) Jurisdictions designated as providing an adequate level of protection for Personal Data under section 4 of the ADGM Data Protection Regulations 2015 will remain valid until amended, replaced or repealed by the Commissioner of Data Protection.

41. Transfers subject to appropriate safeguards

(1) In the absence of a decision pursuant to section 40(3), a Controller or Processor may transfer Personal Data to a Controller or Processor outside of ADGM or to an International Organisation only if the Controller or Processor has provided appropriate

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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safeguards, and on condition that enforceable Data Subject rights and effective legal remedies for Data Subjects are available.

(2) The Commissioner of Data Protection may adopt standard contractual clauses that contain appropriate safeguards for the rights of Data Subjects whose Personal Data is being transferred, including by approving the then current standard contractual clauses issued by the European Commission, or adopted by a Supervisory Authority for the same purpose, upon which approval such standard contractual clauses will be incorporated into these Regulations by reference.

(3) The appropriate safeguards referred to in section 41(1) may be provided for, without requiring any specific authorisation from the Commissioner of Data Protection, by:

(a) a legally binding and enforceable instrument between public authorities;

(b) Binding Corporate Rules in accordance with section 42;

(c) standard data protection clauses adopted by the Commissioner of Data Protection in accordance with section 41(2);

(d) an approved code of conduct pursuant to section 37 together with binding and enforceable commitments of the Controller or Processor in the jurisdiction outside of ADGM to apply the appropriate safeguards, including as regards Data Subjects' rights; or

(e) an approved certification mechanism pursuant to section 38 together with binding and enforceable commitments of the Controller or Processor in the jurisdiction outside of ADGM to apply the appropriate safeguards, including as regards Data Subjects' rights.

(4) Subject to the authorisation from the Commissioner of Data Protection, the appropriate safeguards referred to in section 41(1) may also be provided for by:

(a) contractual clauses between the Controller or Processor and the Controller, Processor or the Recipient of the personal data outside of ADGM or the international organisation; or

(b) provisions to be inserted into administrative arrangements, including regulatory memorandums of understanding between public authorities or domestic or international bodies which include enforceable and effective data subject rights.

(5) Permits issued under section 5(1)(a) of the ADGM Data Protection Regulations 2015 will remain valid as evidence of compliance with this section until amended, replaced or revoked, if necessary, by the Commissioner of Data Protection.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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42. Binding Corporate Rules

(1) The Commissioner of Data Protection may approve Binding Corporate Rules, provided that they:

(a) have the following features:

(i) are legally binding and apply to and are enforced by every member concerned of the Group, including their employees;

(ii) expressly confer enforceable rights on Data Subjects with regard to the Processing of their Personal Data; and

(iii) fulfil the requirements in section 42(2), or

(b) have already been approved by a Supervisory Authority for the same purpose.

(2) The Binding Corporate Rules referred to in section 42(1) must specify at least:

(a) the structure and contact details of the Group and of each of its members;

(b) the details of the data transfers, including the categories of Personal Data, the type of Processing and its purposes, the type of Data Subjects affected and the identification of the relevant jurisdiction(s) outside of ADGM;

(c) their legally binding nature, both internally and externally;

(d) the application of the general data protection principles, including purpose limitation, data minimisation, limited storage periods, data quality, data protection by design and by default, legal basis for Processing, Processing of Special Categories of Personal Data, measures to ensure data security, and the requirements in respect of onward transfers to bodies not bound by the Binding Corporate Rules;

(e) the rights of Data Subjects and the means to exercise those rights, including the right to obtain redress and, where appropriate, compensation for a breach of the Binding Corporate Rules;

(f) how the information on the Binding Corporate Rules, in particular on the provisions referred to in sections 42(2)(d) and 42(2)(e) are provided to the Data Subjects in addition to sections 11 and 12;

(g) the tasks of any Data Protection Officer designated in accordance with section 34 or any other person or entity in charge of monitoring compliance with the Binding Corporate Rules within the Group;

(h) the complaint procedures;

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

(i) the mechanisms within the Group for monitoring compliance with the Binding Corporate Rules and cooperating with the Commissioner of Data Protection to ensure compliance. Such mechanisms must include data protection audits and methods for ensuring corrective actions to protect the rights of Data Subjects. Results of such monitoring activities should be communicated to the board of the parent company of a Group, and should be made available to the Commissioner of Data Protection upon request;

(j) the procedures for reporting and recording changes to the rules and reporting those changes to the Commissioner of Data Protection;

(k) the reporting mechanisms for notifying the Commissioner of Data Protection of any legal requirements to which a member of the Group, is subject outside of ADGM and which are likely to have a substantial adverse effect on the protections provided by the Binding Corporate Rules; and

(l) the data protection training provided to personnel with permanent or regular access to Personal Data.

43. Derogations for specific situations

(1) In the absence of an adequacy decision pursuant to section 40(3), or of appropriate safeguards pursuant to section 41, including Binding Corporate Rules, a transfer or a set of transfers of Personal Data outside of ADGM or to an International Organisation, must take place only on one of the following conditions:

(a) the Data Subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the Data Subject due to the absence of an adequacy decision and appropriate safeguards;

(b) the transfer is necessary for the performance of a contract between the Data Subject and the Controller or the implementation of pre-contractual measures taken at the Data Subject's request;

(c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the Data Subject between the Controller and another natural or legal person;

(d) the transfer is necessary for important reasons of public interest;

(e) the transfer is required by law enforcement agencies of the UAE in accordance with Applicable Law;

(f) the transfer is necessary for the establishment, exercise or defence of legal claims (including judicial, administrative, regulatory and out-of-court procedures); or

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(g) the transfer is necessary in order to protect the vital interests of the Data Subject or of another person, where the Data Subject is physically or legally incapable of giving Consent.

(2) Sections 43(1)(a), 43(1)(b) and 43(1)(c) do not apply to activities carried out by public authorities in the exercise of their public powers.

(3) The public interest referred to in section 43(1)(d) must be recognised in Applicable Law to which the Controller is subject.

44. Data sharing with public authorities

(1) In addition to a Controller or Processor's other obligations under these Regulations, where a Controller or Processor receives a request for Personal Data from any public authority outside of ADGM which has jurisdiction over the Controller or Processor or any part of its Group (a 'Requesting Authority') the Controller or Processor should:

(a) exercise reasonable diligence to determine the validity and proportionality of the request, including to ensure that any disclosure of Personal Data is necessary for the purpose of meeting the objectives of the Requesting Authority identified in the request;

(b) assess the impact of the proposed transfer in light of the potential risks to the rights and legitimate interests of any affected Data Subject and, where appropriate, implement measures to minimise such risks, including by redacting or minimising the Personal Data transferred or utilising appropriate measures to safeguard the transfer; and

(c) where reasonably practicable, obtain appropriate assurances from the Requesting Authority that it will respect the rights of Data Subjects and take appropriate steps to safeguard the Personal Data.

(2) A Controller or Processor may consult with the Commissioner of Data Protection in relation to any matter in connection with this section 44.

45. International cooperation for the protection of Personal Data

(1) In relation to jurisdictions outside of ADGM and International Organisations, the Commissioner of Data Protection may:

(a) develop international cooperation mechanisms to facilitate the effective enforcement of legislation for the protection of Personal Data;

(b) provide international mutual assistance in the enforcement of legislation for the protection of Personal Data, including through notification, complaint referral, investigative assistance and information exchange, subject to appropriate safeguards for the protection of Personal Data and other rights;

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(c) engage relevant stakeholders in discussion and activities aimed at furthering international cooperation in the enforcement of legislation for the protection of Personal Data; and

(d) promote the exchange and documentation of Personal Data protection legislation and practice, including on jurisdictional conflicts with jurisdictions outside of ADGM.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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PART VI
Independent supervisory authority

46. Commissioner of Data Protection

(1) The Board will:

(a) assign to the Registrar the competency to oversee the administration and operation of the Office for Data Protection as an independent data protection supervisory authority;

(b) appoint a person to be the Commissioner of Data Protection in accordance with section 46(2).

(2) The Board, when appointing the Commissioner of Data Protection, must:

(a) ensure the person has appropriate experience and qualifications for the role;

(b) make the selection based on:

(i) the Registrar's recommendation of at least two candidates; and

(ii) merit and the basis of fair and open competition;

(c) publish its decision along with reasons; and

(d) specify the period of appointment which must not exceed 4 years.

(3) The period specified in section 46(2)(e) may be renewed on three occasions.

(4) The Commissioner of Data Protection may at any time resign as the Commissioner of Data Protection by giving three months' written notice addressed to the Registrar.

(5) The Commissioner of Data Protection may only be removed from office by written notice issued by the Board:

(a) for reasons of serious misconduct; or

(b) if the Commissioner of Data Protection no longer fulfils the conditions required for the performance of his or her duties.

(6) The Commissioner of Data Protection is responsible for the monitoring and enforcing the application of these Regulations in order to protect the rights of natural persons in relation to Processing of Personal Data in ADGM.

(7) The Commissioner of Data Protection is not personally liable for acts or omissions carried out as part of their powers, duties or functions.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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47. Independence

(1) The Commissioner of Data Protection must act with complete independence (including from the other functions of the Registrar) in performing its duties and exercising its powers and functions in accordance with these Regulations.

(2) In performing its duties and exercising its powers and functions the Commissioner of Data Protection must:

(a) remain free from external influence, whether direct or indirect, and neither seek nor take instructions from anybody;

(b) refrain from any action incompatible with their duties; and

(c) not engage in any occupation that is incompatible with the role of the Commissioner of Data Protection, whether or not the role is remunerated.

(3) The Commissioner of Data Protection:

(a) may appoint other officers and Staff who will be, and remain, subject to the exclusive direction and authority of the Commissioner of Data Protection;

(b) is to determine the remuneration and other conditions of service of individuals appointed under this subsection; and

(c) may delegate any of its functions, duties or powers to be carried out by its officers or Staff provided that the Commissioner of Data Protection remains ultimately responsible for how they are carried out.

(4) The Commissioner of Data Protection and other officers or Staff are collectively referred to as the Office of Data Protection.

(5) The Commissioner of Data Protection is the head of the Office of Data Protection within the Registration Authority.

(6) The independence of the Commissioner of Data Protection is not affected by the financial or other controls and reporting obligations to which it is subject in accordance with sections 51 to 53.

48. Functions and obligations of Staff of the Commissioner of Data Protection

(1) The Commissioner of Data Protection has such powers, duties and functions as conferred on it under these Regulations and must exercise those powers and perform those duties and functions in pursuit of the objectives of these Regulations.

(2) The Commissioner of Data Protection must:

(a) monitor and enforce the application of these Regulations;

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(b) promote public awareness and understanding of the risks, rules, safeguards and rights in relation to Processing;

(c) advise the Board, the Registration Authority and other institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights with regard to Processing, in accordance with Applicable Law;

(d) promote the awareness of Controllers and Processors of their obligations under these Regulations;

(e) provide the public with opportunities to provide views on the activities of the Office of Data Protection;

(f) handle complaints lodged by a Data Subject, and investigate, to the extent appropriate, the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation is necessary;

(g) cooperate with, including sharing information and provide mutual assistance to, other data protection authorities with a view to facilitating the effective enforcement of legislation for the protection of Personal Data;

(h) conduct investigations on the application of these Regulations;

(i) monitor relevant developments insofar as they have an impact on the protection of Personal Data, in particular the development of information and communication technologies and business practices;

(j) adopt or authorise standard contractual clauses referred to in section 26(6) and 41(2);

(k) establish and maintain a list in relation to the requirement for Data Protection Impact Assessment pursuant to section 33(4);

(l) take into account the specific needs of small and medium sized Establishments in the application of these Regulations;

(m) approve codes of conduct which provide sufficient safeguards pursuant to section 37(1);

(n) approve the criteria of certification pursuant to section 38(1);

(o) authorise contractual clauses and provisions referred to in section 41(4);

(p) approve Binding Corporate Rules pursuant to section 42;

(q) keep internal records of contraventions of these Regulations and of measures taken in accordance with section 49(5);

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(r) collect Data Protection Fee and Renewal Fee payments and notifications by Controllers in accordance with section 24; and

(s) fulfil any other tasks related to the protection of Personal Data within ADGM.

(3) The Commissioner of Data Protection is not competent to supervise Processing operations of the Court acting in its judicial capacity.

(4) The Commissioner of Data Protection and its officers and Staff:

(a) are subject to a duty of professional secrecy or duty of confidentiality both during and after their term of office in respect of any confidential information which they become aware of in the course of the performance of their duties and functions or exercise of their powers; and

(b) during their term of office must not engage in any political activity nor any activity which would create a conflict of interest with the work of the Office of Data Protection.

49. General Powers

(1) The investigative powers of the Commissioner of Data Protection include the powers to:

(a) order, by notice in writing, Controllers and Processors to provide any information it reasonably requires for the performance of its duties and functions;

(b) initiate investigations into a Controller's or Processor's compliance with these Regulations;

(c) appoint one or more competent persons to conduct an investigation on its behalf into a Controller's or Processor's compliance with these Regulations. The Commissioner of Data Protection, and any person appointed under this section 49(1)(c) must give the Controller or Processor (as the case may be) written notice of the decision to investigate unless the Commissioner of Data Protection believes that would likely result in the investigation being frustrated;

(d) carry out investigations in the form of data protection audits;

(e) carry out a review on certifications issued pursuant to section 38;

(f) notify Controllers and Processors of any alleged contravention of these Regulations;

(g) obtain, by notice in writing, from Controllers and Processors, access to all Personal Data and to all information reasonably necessary for the performance of its duties and functions; and

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(h) subject to section 49(3) obtain access to any premises of Controllers and Processors, including to any data Processing equipment and means, in accordance with Applicable Law and to search and take possession of any relevant documents or information.

(2) A statement made to the Commissioner of Data Protection or a person appointed under section 49(1)(c) during the course of an investigation is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(3) The Court may issue a warrant for the Commissioner of Data Protection to exercise their powers under section 49(1)(h) if the Court is satisfied on information on oath given by or on behalf of the Commissioner of Data Protection or a person appointed under section 49(1)(c) that there are reasonable grounds for believing that:

(a) a Controller or Processor has materially failed to meet the requirements of these Regulations; and

(b) evidence of the failure is to be found on the premises specified in the information or is capable of being viewed using equipment on such premises.

(4) Any document that is seized under section 49(1)(h) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances. A person claiming to be the owner of the document may apply to the Court in accordance with section 38 of the Commercial Licensing Regulations 2015.

(5) The corrective powers of the Commissioner of Data Protection include the power to:

(a) issue and publish Directions and warnings and make recommendations to Controllers and Processors that intended Processing operations are likely to contravene provisions of these Regulations;

(b) issue and publish Directions and reprimands to Controllers and Processors where Processing operations have contravened provisions of these Regulations;

(c) order Controllers and Processors to comply with a Data Subject's requests to exercise his or her rights pursuant to these Regulations;

(d) order Controllers and Processors to bring Processing operations into compliance with the provisions of these Regulations, where appropriate, in a specified manner and within a specified period;

(e) order a Controller to communicate a Personal Data Breach to the Data Subject;

(f) impose a temporary or permanent limitation (including a ban) on Processing;

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

(g) order the rectification or erasure of Personal Data or restriction of Processing pursuant to sections 14, 15 and 16 and the notification of such actions to Recipients to whom the Personal Data has been disclosed pursuant to sections 15(2) and 17;

(h) withdraw a certification if the requirements for the certification are not or are no longer met;

(i) impose an administrative fine pursuant to section 55, in addition to, or instead of, measures referred to in this subsection, depending on the circumstances of the individual case;

(j) order the suspension of data flows to a Recipient inside or outside of ADGM or to an International Organisation; and

(k) where appropriate, refer contraventions of these Regulations to the attention of the Court and where appropriate, commence legal proceedings, in order to enforce the provisions of these Regulations.

(6) The authorisation and advisory powers of the Commissioner of Data Protection include the powers to:

(a) issue, on its own initiative or on request, opinions to the Board, the Registrar or, in accordance with Applicable Law, to other institutions and bodies as well as to the public on any issue related to the protection of Personal Data;

(b) prepare and publish guidance on these Regulations;

(c) prescribe forms to be used for any of the purposes of these Regulations;

(d) approve draft codes of conduct in accordance with section 37;

(e) issue certifications and approve criteria of certification in accordance with section 38;

(f) adopt standard data protection clauses referred to in sections 26(6) and 41(2);

(g) authorise contractual clauses referred to in section 41(4);

(h) advise the Board in the course of the preparation of a legislative or regulatory measure which provides for the Processing of Personal Data, in order to ensure compliance of the intended Processing with these Regulations and in particular to mitigate the risk involved for the Data Subject;

(i) prepare and publish a list (to be updated from time to time) of Processing activities that it considers require a Data Protection Impact Assessment in accordance with section 33; and

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(j) approve Binding Corporate Rules pursuant to section 42.

50. Budget

(1) The Commissioner of Data Protection must have its own annual budget. The Board must ensure that there is a provision of sufficient human, technical and financial resources to enable the Commissioner of Data Protection to effectively perform its duties and functions and exercise its powers in accordance with these Regulations.

(2) To help inform the budget, before the end of the current financial year the Commissioner of Data Protection must submit to the Board for approval estimates (including for staffing costs) of the annual income and expenditure of the Commissioner of Data Protection for the next financial year.

51. Accounts and audit

(1) The Commissioner of Data Protection must keep proper accounts of its financial activities.

(2) The Board must appoint auditors to conduct an audit in relation to each financial year of the Commissioner of Data Protection.

(3) The Commissioner of Data Protection, must before the end of the first quarter of the financial year, prepare financial statements for the previous financial year in accordance with accepted accounting standards. The accounts prepared under this section must be submitted for the approval of the Board, who must, as soon as reasonably practicable, provide such statements to the relevant auditors for audit.

(4) The auditors must prepare a report on the financial statements and send the report to the Board.

(5) The auditors' report must, where appropriate, include an opinion given by the auditors as to whether or not the financial statements to which the report relates give a true and fair view of the financial position of the Commissioner of Data Protection as at the end of the financial year to which the financial statements relate and of the results of its operations and cash flows in the financial year.

(6) The auditors have the right to access at all reasonable times all information which is reasonably required by them for the purposes of preparing the report and which is held or controlled by any officer or member of Staff of the Commissioner of Data Protection.

(7) The auditors are entitled to reasonably require from the officers and Staff of the Commissioner of Data Protection such information as they consider necessary for the performance of their duties.

(8) A person must not without reasonable excuse intentionally engage in conduct that obstructs a person appointed under section 52(2) in the exercise of his or her powers.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

52. Annual report

(1) As soon as practicable after 1 January each year, the Commissioner of Data Protection must deliver to the Board a report on the management of the administrative affairs of the Commissioner of Data Protection for the previous year. This report must include a list of types of contraventions addressed by the Commissioner of Data Protection in the previous year and the measures taken in response.

(2) Such report must give a true and fair view of the state of the Commissioner of Data Protection's regulatory operations in ADGM, and its financial statements as at the end of the relevant financial year.

(3) This report must be made available to the public.

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PART VII
Fines and Remedies

53. Directions

(1) If the Commissioner of Data Protection is satisfied, after duly conducting all reasonable and necessary inspections and investigations, that a Controller or Processor has contravened or is contravening these Regulations or any rules made under these Regulations, the Commissioner of Data Protection may issue a direction requiring the Controller or Processor to do any of the measures referred to in sections 49(5)(a) to 49(5)(h) and section 49(5)(j) (a 'Direction').

(2) A Direction issued under section 54(1) must contain:

(a) a statement of the contravention of these Regulations or rules which the Commissioner of Data Protection is satisfied is being or has been committed; and

(b) a statement to the effect that the Controller or Processor may refer the decision of the Commissioner of Data Protection to the Court for review.

(3) A Direction issued under section 54(1) is enforceable, on the application of the Commissioner of Data Protection or any person authorised in writing by the Commissioner of Data Protection, by an injunction that can be imposed by the Court.

(4) A Controller or Processor may ask the Commissioner of Data Protection to review the Direction within 21 days of receiving a Direction under this section. The Commissioner of Data Protection may receive further submissions and amend or discontinue the Direction.

(5) If a Direction is amended or discontinued in accordance with section 54(4), the Commissioner of Data Protection must provide the Controller or Processor with reasons for the amendment or discontinuance.

54. General conditions for imposing administrative fines

(1) Where a Controller or Processor (i) does an act or thing that it is prohibited from doing; or (ii) omits to do an act or thing that it must do by or under:

(a) any Direction issued by the Commissioner of Data Protection under section 54;

(b) these Regulations; or

(c) any rules made pursuant to these Regulations,

the Commissioner of Data Protection, by written notice (a 'Penalty Notice') to the Controller or Processor, may impose a fine in respect of the contravention of such amount as the Commissioner of Data Protection determines to be appropriate, taking

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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into account the factors in section 55(3). The amount determined by the Commissioner of Data Protection must not exceed USD 28 million.

(2) Any fine imposed by the Commissioner of Data Protection under section 55(1) may, depending on the circumstances of each individual case, be imposed in addition to, or instead of, measures referred to in sections 49(5)(a) to 49(5)(h) and section 49(5)(j).

(3) When deciding whether to impose a fine and deciding on the amount of the fine in each individual case, the Commissioner of Data Protection must consider the following factors:

(a) the nature, gravity and duration of the contravention taking into account the nature scope or purpose of the Processing concerned as well as the number of Data Subjects affected, and the level of damage suffered by them;

(b) the intentional or negligent character of the contravention;

(c) any action taken by the Controller or Processor to mitigate the damage suffered by Data Subjects;

(d) the degree of responsibility of the Controller or Processor taking into account technical and organisational measures implemented by them pursuant to sections 23 and 30;

(e) any relevant previous contraventions of these Regulations or the ADGM Data Protection Regulations 2015 by the Controller or Processor;

(f) degree of cooperation with the Commissioner of Data Protection, in order to remedy the contravention and mitigate its possible adverse effects;

(g) the categories of Personal Data affected by the contravention;

(h) the manner in which the contravention became known to the Commissioner of Data Protection, in particular whether, and if so to what extent, the Controller or Processor notified the Commissioner of Data Protection of the contravention;

(i) where measures referred to in section 49(5) have previously been ordered against the Controller or Processor concerned in relation to the same subject-matter, compliance with those measures;

(j) adherence to approved codes of conduct pursuant to section 37 or approved certification mechanisms pursuant to section 38; and

(k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the contravention.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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(4) Before giving a Controller or Processor a Penalty Notice the Commissioner of Data Protection must, by written notice (a 'Notice of Intent') inform the Controller or Processor that the Commissioner of Data Protection intends to give a Penalty Notice.

(5) The Notice of Intent must set out:

(a) the reasons why the Commissioner of Data Protection considers it appropriate to issue a Penalty Notice;

(b) an indication of the amount of the penalty;

(c) the period in which a Controller or Processor may make written representations about the Commissioner of Data Protection's intention to issue a Penalty Notice (which must be at least 21 days from the date of the Notice of Intent); and

(d) whether the Commissioner of Data Protection considers it appropriate for the person to have an opportunity to make oral representations about the Commissioner of Data Protection's intention to issue a Penalty Notice.

(6) If a Controller or Processor intentionally or negligently, for the same or linked Processing operations, contravenes several provisions of these Regulations, the total amount of the administrative fine must not exceed USD 28 million.

(7) If, within the period specified in the Penalty Notice, the Controller or Processor (as applicable):

(a) pays the fine specified in the Penalty Notice to the Commissioner of Data Protection, then no proceedings or action may be commenced, whether in the Court or otherwise, by the Commissioner of Data Protection against the Controller or Processor in respect of the relevant contravention, provided that neither the imposition nor payment of a fine restricts the Commissioner of Data Protection from taking any action against a Controller or Processor, or refrain from doing any act or thing, in respect of any continuing contravention;

(b) has not paid the prescribed fine to the Commissioner of Data Protection, then the obligation of the Controller or Processor to pay the fine is enforceable as a debt payable to the Commissioner of Data Protection and the Commissioner of Data Protection may apply to the Court for the recovery of the debt, plus such interest, costs of enforcement (including legal costs) and other expenses directly arising from the failure to pay as the Court sees fit to order; or

(c) has appealed to the Court in accordance with section 58, then the provisions of section 58 apply.

55. Fixed penalty for non-payment of the Data Protection Fee or Renewal Fee

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

(1) If a Controller fails to pay the Data Protection Fee or the Renewal Fee in accordance with section 24, the Commissioner of Data Protection may issue a monetary penalty, imposing a fine on the Controller of up to 150 per cent of the Data Protection Fee, or Renewal Fee, in addition to the Data Protection Fee, or Renewal Fee, as the case may be.

(2) The amount of the penalty for a failure to pay the Data Protection Fee in accordance with section 24 must be specified by rules made by the Board.

(3) If a Controller has not paid the prescribed fine under section 56(1) to the Commissioner of Data Protection within the period specified in the monetary penalty, then the obligation of the Controller to pay the fine is enforceable as a debt payable to the Commissioner of Data Protection and the Commissioner of Data Protection may apply to the Court for the recovery of the debt, plus such interest, costs of enforcement (including legal costs) and other expenses directly arising from the failure to pay as the Court sees fit to order.

56. Right to lodge a complaint with the Commissioner of Data Protection

(1) Without prejudice to any other administrative or judicial remedy, a Data Subject has the right to lodge a complaint with the Commissioner of Data Protection if the Data Subject considers that the Processing of Personal Data relating to him or her contravenes these Regulations.

(2) Where multiple Data Subjects are affected by the same alleged contravention, they may raise such complaint collectively, including via a representative body. The Commissioner of Data Protection may choose to deal collectively with multiple allegations which relate to the same contravention, whether or not such allegations are brought collectively.

(3) The Commissioner of Data Protection must assess the complaint and inform the complainant on the progress and the outcome of the complaint.

(4) Upon completion of the assessment, the Commissioner of Data Protection may, as appropriate:

(a) dismiss the complaint;

(b) uphold the complaint and take further action including under sections 54 or 55; or

(c) uphold the complaint and take no further action.

57. Application to the Court

(1) Notwithstanding any other administrative or non-judicial remedy:

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

(a) a Controller or Processor in respect of whom a Penalty Notice or Direction is issued may refer the matter to the Court for review within three months of the Penalty Notice or Direction being issued;

(b) a Controller, Processor or affected Data Subject who considers the Commissioner of Data Protection has failed to handle a complaint under section 57 in accordance with these Regulations may refer the matter to the Court for review within three months immediately following the date that the complaint was made.

(2) The Court may make any orders that the Court may think just and appropriate in the circumstances, including remedies for damages, penalties or compensation, imposition of administrative fines and findings of fact in relation to whether or not these Regulations have been contravened.

(3) Court Procedure Rules may make provision for any reference to the Court under this section.

58. Rights against a Controller and/or Processor

(1) Any person who has suffered material or non-material damage as a result of a contravention of these Regulations is entitled to compensation from the Controller or Processor for the damage suffered. Any compensation is in addition to, and will not limit, any fine imposed on the same Controller or Processor under section 55.

(2) Any Controller involved in Processing is liable for the damage caused by Processing which contravenes these Regulations.

(3) A Processor is liable for the damage caused by Processing only where it has not complied with obligations of these Regulations specifically directed to Processors or where it has acted outside or contrary to lawful instructions of the Controller.

(4) A Controller or Processor is exempt from liability under section 59(2) and 59(3) if it proves that it is not in any way responsible for the event giving rise to the damage.

(5) It is a defence to a claim brought under section 59(2) for the Controller or Processor to prove that it had taken such care as in all the circumstances was reasonably required to comply with the requirement concerned.

(6) Where more than one Controller or Processor, or both a Controller and a Processor, are involved in the same Processing and where they are responsible for any damage caused by Processing, each Controller or Processor will be held jointly and severally liable for the entire damage in order to ensure effective compensation of the Data Subject.

(7) Where a Controller or Processor has, in accordance with section 59(6), paid full compensation for the damage suffered, that Controller or Processor is entitled to claim

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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back from the other Controllers or Processors involved in the same Processing that part of the compensation corresponding to their part of responsibility for the damage, in accordance with the conditions set out in section 59(2) and 59(3).

(8) Proceedings for exercising the right to receive compensation must be brought before the Court.

(9) A Data Subject may apply to the Court for an order that is binding on the Controller, or Processor, to take, or refrain from taking, specified steps in order to comply with these Regulations.

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PART VIII
Final provisions

59. Power of the Board to make rules

(1) The Board may make such rules applying to matters within the scope and objectives of these Regulations (as defined within sections 1 to 3) as appear to the Board to be in the interests of the Abu Dhabi Global Market.

(2) Rules made by the Board in accordance with section 59(1):

(a) may make different provision for different cases;

(b) may make provision in relation to matters such as protection of Data Subjects rights and legitimate interests, procedural fairness and conduct of investigations by the Commissioner of Data Protection, provision of information to the Commissioner of Data Protection and provision of other assistance to the Commissioner of Data Protection to enable the Commissioner of Data Protection to discharge its functions; and

(c) may contain such incidental, supplemental, consequential and transitional provision as the Board considers appropriate.

60. Previously concluded agreements

International agreements involving the transfer of Personal Data outside of ADGM or to International Organisations, which were concluded or adopted by ADGM or UAE prior to the commencement of these Regulations and which comply with Applicable Law as applicable prior to the commencement of these Regulations, remain in force until amended, replaced or revoked.

61. Definitions

(1) For the purposes of these Regulations capitalised terms which are not defined in these Regulations have the meaning given to them in the Interpretation Regulations 2015, while the remaining capitalised terms have the following meanings:

'**Applicable Law**' means any enactment or subordinate legislation applicable in (i) ADGM; or (ii) under Abu Dhabi or Federal Law having application in ADGM, as it applies to Controllers and Processors that are within the scope of these Regulations;

'**Archiving and Research Purposes**' means archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with section 9;

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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'**Binding Corporate Rules**' means Personal Data protection policies which are adhered to by a Controller or Processor in ADGM for transfers or a set of transfers of Personal Data to a Controller or Processor outside ADGM within a Group;

'**Biometric Data**' means Personal Data resulting from specific technical Processing relating to the physical, physiological or behavioural characteristics of a natural person, which allows or confirms the unique identification of that natural person, such as facial images or dactyloscopic data;

'**Child**' means a natural person under the age of 18 years old;

'**Commissioner of Data Protection**' means the person appointed by the Board in accordance with section 46 to be the head of the Office of Data Protection;

'**Consent**' has the meaning given in section 6;

'**Controller**' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data;

'Court Procedure Rules' has the meaning given under Part 7 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015;

'**Data Concerning Health**' means Personal Data related to the physical or mental health of a natural person, including the provision of health care services, which reveals information about his or her health status;

'**Data Protection Fee**' means a fee to be paid by the Controller in respect of the first 12 months it Processes Personal Data in the amount specified by rules made by the Board as set out in section 24;

'**Data Protection Impact Assessment**' has the meaning given in section 33(1);

'**Data Protection Officer**' has the meaning given in section 34;

'**Data Subject**' means an identified or identifiable living natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

'**Direction**' means a direction issued by the Commissioner of Data Protection in accordance with section 54;

'**Establishment**' means any authority, body corporate, branch, representative office, institution entity, or project established, registered or licensed to operate or conduct any activity within the ADGM or exempt from being registered or licensed under the laws of the ADGM;

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
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'**Filing System**' means any structured set of Personal Data which is accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;

'**GDPR**' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, as amended from time to time;

'**Genetic Data**' means Personal Data relating to the inherited or acquired genetic characteristics of a natural person which gives unique information about the physiology or the health of that natural person and which results, in particular, from an analysis of a biological sample from the natural person in question;

'**Group**' has the meaning given to that term in the Commercial Licensing Regulations 2015;

'**High Risk Processing Activities**' means the Processing of Personal Data where one or more of the following applies:

(a) a considerable volume of Personal Data will be Processed;

(b) the Processing is likely to result in a high risk to the rights of Data Subjects;

(c) the Processing will involve a systematic and extensive evaluation of personal aspects relating to natural persons, based on automated Processing, including Profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person; or

(d) the Processing includes Special Categories of Personal Data, except where Processing of such data is:

  (i) required by Applicable Law; or

  (ii) being carried out solely for the purposes of fulfilling the Controller's obligations under the Employment Regulations 2019.

'**International Organisation**' means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries;

'**Office of Data Protection**' means the Commissioner of Data Protection, any deputy commissioners and other officers or Staff of the Commissioner of Data Protection;

'**Penalty Notice**' has the meaning given in section 55(1);

'**Personal Data**' means any information relating to a Data Subject;

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'**Personal Data Breach**' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;

'**Processing**' means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

'**Processor**' means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Controller;

'**Professional**' means:

(a) a health professional; or

(b) another person who in the circumstances owes a duty of confidentiality under Applicable Law.

'**Profiling**' means any form of automated Processing of Personal Data consisting of the use of Personal Data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;

'**Pseudonymisation**' means the Processing of Personal Data in such a manner that the Personal Data can no longer be attributed to a specific Data Subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the Personal Data is not attributed to an identified or identifiable natural person;

'**Recipient**' means a natural or legal person, public authority, agency or another body, to which the Personal Data is disclosed, whether a Third Party or not;

'**Renewal Fee**' means a fee to be paid by the Controller any 12 month period that is not the first 12 months it Processes Personal Data in the amount specified by rules made by the Board as set out in section 24;

'**Requesting Authority**' has the meaning given in section 44(1);

'**Special Categories of Personal Data**' means the categories of data listed in section 7(1);

'**Staff**' includes past, existing or prospective employees, directors, partners, trustees, officers, office holders, temporary or casual workers, agents and volunteers;

ADGM Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE
مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

'**State Of The Art**' means the current state of technological development, as appropriate to the context in which the measures are being implemented, including industry practices, the type and scale of the processing and the availability of a product or solution in the market;

'**Supervisory Authority**' means:

(a) an independent authority which has been established pursuant to Article 51 of the GDPR, which includes, for these purposes, the United Kingdom's Information Commissioner's Office; or

(b) an independent authority with responsibility for ensuring and enforcing compliance with the data protection rules that is established in a jurisdiction which the Commissioner of Data Protection has decided ensures an adequate level of protection in accordance with section 40(3); and

'**Third Party**' means a natural or legal person, public authority, agency or body other than the Data Subject, Controller, Processor and persons who, under the direct authority of the Controller or Processor, are authorised to Process Personal Data.

62. Repeal of ADGM Data Protection Regulations 2015

(1) The ADGM Data Protection Regulations 2015 are repealed with effect from:

(a) the date that is 6 months after the date of publication of these Regulations for any new Establishment that is established in ADGM on or following the date of publication of these Regulations; and

(b) the date that is 12 months after the date of publication of these Regulations for any Establishments established in ADGM prior to the date of entry into force of these Regulations.

(2) In each case these Regulations are binding from the date the ADGM Data Protection Regulations 2015 are repealed.

(3) References to the ADGM Data Protection Regulations 2015 in Applicable Law shall be construed as references to these Regulations.

63. Short title, scope and commencement

(1) These Regulations may be cited as the Data Protection Regulations 2020.

(2) These Regulations apply in the Abu Dhabi Global Market.

(3) These Regulations come into force on the date of their publication. The Board may by rules make any transitional, transitory, consequential, saving, incidental or supplementary provision in relation to the commencement of these Regulations as the Board thinks fit.

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مبنى سلطات سوق أبوظبي العالمي، مربعة سوق أبوظبي العالمي، جزيرة الماريه، ص ب 111999، أبوظبي، الإمارات العربية المتحدة
T +971 2 333 8888 adgm.com

(4) Rules made under section 63(3) may amend any provision of any other enactment including subordinate legislation made under such enactment.

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T +971 2 333 8888 adgm.com