

The rise of Data Protection Officers (DPO) in the Dubai International Financial Centre (DIFC)

How the new DPO role in DIFC compares with the European concept of DPOs

We have set out below a comparison of the DPO role under the GDPR and the DIFC Law

Fundamental	GDPR	DIFC Law
Designation of a DPO		
When is an organisation required to appoint a DPO?	<p>✓ Art. 37(1)</p> <p>A controller or a processor must appoint a must appointed a DPO where:</p> <ul style="list-style-type: none"> (i) the processing is carried out by a public authority or body, except for courts acting in their judicial capacity; (ii) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale; <u>or</u> (i) the core activities of the controller or the processor consist of processing on a large scale of special categories of data or data relating to criminal convictions and offences 	<p>✓ Art. 16(2)</p> <p>A DPO must be appointed:</p> <ul style="list-style-type: none"> (i) DIFC Bodies, other than the Courts acting in their judicial capacity; and (ii) A Controller or Processor performing High Risk Processing Activities on a systematic or regular basis.
The DPO must notably have sufficient knowledge of data protection law and requirements	<p>✓ Art. 37(5)</p>	<p>✓ Art. 17(1)</p>
Even if an organisation is not required to appoint a DPO, they may be required to appoint a DPO by the relevant data protection authority	<p>✓ NO</p> <p>Pursuant article 58(2) (d) of the GDPR, supervisory authorities can to order the controller or processor to bring processing operations into compliance with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period.</p>	<p>✓ Art. 16(3)</p>

The DPO can be a member of staff, employee of the group or be outsourced to a third-party provider	✓ Art. 37(6) However there may be certain limitations applicable to certain employees given their management roles within the organisation.	✓ Art. 16(5)
A group of undertakings may appoint a single data protection officer	✓ Art. 37(2)	✓ Art. 16(6)
Residency criteria of the DPO	No, the GDPR is silent on this point. However, the Working Party 29 (WP29) adopted guidelines ¹ recommending that the DPO should be located within the European Union.	✓ Art. 16(7) The DPO must reside in the UAE unless they are an individual employed within the organisation's Group and performs a similar function for the Group on an international basis.
The organisation must publish the contact details of the DPO	✓ Art. 37(7)	✓ Art. 16(8)
The organisation must communicate contact details of the DPO with the data protection authority	✓ Art. 37(7)	✓ Art. 16(8) Only upon request from the data protection authority
Position of the DPO		
The DPO should perform their duties and tasks in an independent manner, and be able to act on their own authority	✓ Art. 38(3)/Recital 97	✓ Art. 17(2)(b)
The DPO should have direct access and report to top management	✓ Art. 38(3)	✓ Art. 17(2)(c)
The DPO should have sufficient resources to perform their duties in an effective, objective and independent manner	✓ Art. 38(2)	✓ Art. 17(2)(d)
The DPO should have access to personal data and processing operations within the organisation to carry out their duties and responsibilities	✓ Art. 38(2)	✓ Art. 17(2)(e)
The DPO may hold other roles or titles within the organisation or within each such group, and may fulfil additional tasks and duties	✓ Art. 38(6) However there may be certain limitations applicable to certain employees given their management roles within the organisation.	✓ Art. 17(4)
The DPO should not be dismissed or penalised by the organisation for performing their tasks	✓ Art. 38(3)	✓ N/A
The DPO can be found liable personally if their advice lead to a situation of non-compliance of the organisation they represent	✓ N/A	✓ N/A
Role of the DPO		
The DPO should be properly involved in a timely manner, on all issues relating to the protection of personal data	✓ Art. 38(1)	✓ Art. 18(1)(a)

¹ Guidelines on Data Protection Officers (“DPOs”), WP 243 rev.01

Any additional tasks and duties fulfilled by the DPO do not result in a conflict of interest	✓ Art. 38(6)	✓ Art. 18(1)(c)
Data subjects may contact the DPO with regard to all issues related to processing of their personal data and the exercise of their rights	✓ Art. 38(4)	✓ Art. 18(2)
Annual review of the organisations processing activities	No, the GDPR is silent on this point. However, the EDPB guidelines recommend that the production of an annual report	<p>✓ Art. 19</p> <p>Where a controller is required to appoint a DPO, the DPO must undertake an assessment of the controller's processing activities, at least once per year ("the Annual Assessment"), which shall be submitted to the data protection authorities.</p> <p>This requirement does not seem to be applicable to processing activities undertaken by a data processor.</p>

Get in touch

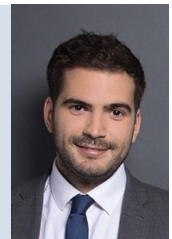
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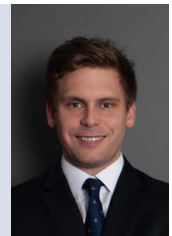
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