



# ETHICAL DATA MANAGEMENT RISK INDEX

## FAQs

**Methodology**

**What is the methodology and purpose behind the structure of the EDMRI?**

The [EDMRI](#) or “Index” is a tool created by the DIFC Commissioner’s office to assess the jurisdictions from a holistic risk perspective and then provide guidance and recommendations on how to handle data export to that jurisdiction. Holistic for our purposes means that, other than data protection laws, EDMRI delves into additional considerations concerning environmental factors, supervision and enforcement efforts of local regulators, access to redress remedies, government access to personal data, and prevalence of corruption factors, amongst many others. The results, as documented in the Index, provide an exporting organization with a way of knowing quickly, efficiently, and with regulatory certainty, how a company or other importing organization (even such as a public authority) in any given jurisdiction might (or might not comply) withing the data protection regime there.

The methodology for assessing risk using this tool is set out in Appendix 2 of the [Data Export and Sharing Handbook](#) but is also reflected in the **Risk Weight Rationale** Column of each country’s risk rating assessment document:

2. Itemized Assessment Criteria and Rating

Assessment Criteria	Risk Weighting Rationale	
DP Law in the jurisdiction	Existence of a DP Law is a positive factor in ensuring lower risk when processing Personal Data in a jurisdiction, but it does not guarantee either effectiveness or enforcement. It also is not determinative that businesses will implement the law when processing Personal Data due to a	General / December

The EDMRI research was completed primarily by an independent law firm that then scored the information in the country index narratives. It was then reviewed against the weighting rationale methodology and a final index rating given.

**Does the ranking in the Index represent a political / economic assessment of the jurisdictions or the forms and bodies of government in them?**

No. The Index rating is not DIFC’s assessment of the country, the government, or any political / economic situation but instead is an assessment of the risk of whether a Data Importer in the particular jurisdiction is more or less likely to lawfully or unlawfully processing Personal Data.

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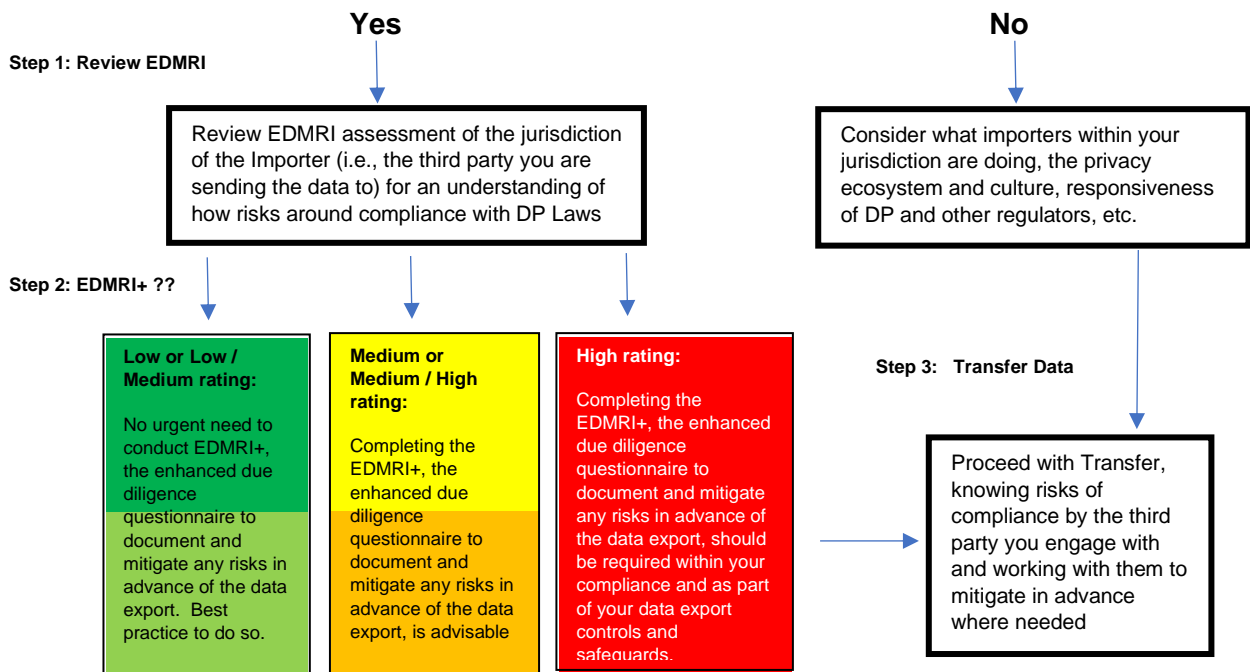
Use

**How can I use the EDMRI and EDMRI+ tools when deciding whether to transfer data to a Data Importer?**

The following is a high-level basic overview of the process. Refer to the EDMRI assessments for each country and the [EDMRI+ page](#) for the actual detailed steps and considerations.

1. If your business exports (i.e., transfers) personal data to a processor or controller in another jurisdiction, you should consult the EDMRI to understand the risk of that importer complying with your home DP law (as it should be fairly well documented in any contract you sign with them) or with their own country’s law and obligations, or both. The Index provides a holistic risk assessment not only of the importing jurisdiction, but of the compliance propensity of importers in that jurisdiction. Each jurisdiction’s risk rating reflects the primary concerns, if any, about whether importing entities either comply with DP laws or reliably implement adequate mechanisms to safeguard personal data.
2. Knowing the risks, based on the EDMRI, you may proceed with documenting the importing entity’s specific, practical application of these risk criteria using the EDMRI+ questions. Actually, in case of jurisdictions with a medium / high or high-risk rating, you are strongly recommended to conduct the EDMRI+ assessment.
3. Finally, if you complete the EDMRI+, you will have a greater understanding of potential risks of the importing entity breaching relevant data protection laws and can make decisions about how to mitigate them. Hence, based on your assessment, you would either move forward with the transfer via incorporating necessary safeguards (if satisfied), enquire further information (especially if you have answered "No" or "Don't Know" in multiple EDMRI+ questions) or not proceed with the transfer.

**Exporting Data outside the DIFC / your jurisdiction?**



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**The Data Importer is from a jurisdiction assessed as Low or Low / Medium risk. Does this mean that I can transfer data without any risk?**

The EDMRI and EDMRI+ are guidance tools which aid you in assessing the compliance risks of importing organizations outside of the DIFC in a holistic manner, rather than providing definite black and white, binary answers. Often, such answers result in tick box exercises rather than really understanding the risk environment and best approaches to compliance.

That said, usually in low and low / medium risk jurisdictions there will only be minimal concerns about the importing entity complying with DP laws and assuring data subjects' rights. Hence, completing EDMRI+ would not be necessary / required, but it may be useful in order to understand potential risks of the importing entity breaching relevant data protection laws. You may wish to do further due diligence in any case.

**The Data Importer is from a jurisdiction assessed as Medium / High or High risk. Does this mean that I cannot make a data transfer?**

The EDMRI and EDMRI+ are guidance tools which aid you in assessing the risk of jurisdictions and importing organizations in a holistic manner, rather than providing definite black and white answers. That said, in medium / high and high-risk jurisdictions there will be increased, significant concerns about the importing entity complying with DP laws and assuring data subjects' rights. Hence, completing EDMRI+ would be strongly recommended (and perhaps in your organization, you may wish to make it a requirement) to understand potential risks of the importing entity breaching relevant data protection laws.

**The risk rating of the jurisdiction is Medium, Medium/High or High. I conducted the EDMRI+ assessment and I was not satisfied that the Data Importer has adequate safeguards in place for the transfer and processing of the data. What should I do?**

In such a case, you are urged to redo the survey after gathering further information on the questions you answered either "No" or "Don't Know", in order to ensure that the importing entity employs adequate data protection policies. If, despite the above uncertainties, you move forward with exporting such Personal Data, you have to be satisfied that you have taken proper measures to mitigate any risk arising. Otherwise, you may be liable in case your business partner breaches provisions of the DIFC Data Protection Law.

**Legal Nature**

**Is it mandatory to complete the EDMRI+ assessment before data transfers to Data Importers? What is the benefit of using this tool?**

Currently, completing the EDMRI+ assessment is not mandatory. However, especially in the case of medium / high and high-risk jurisdictions, the Commissioner's Office would strongly recommend that you complete it, to ensure that the importing entity employs adequate data protection policies. Despite not being mandatory, undertaking this assessment and implementing proper risk mitigation measures would be viewed as having taken reasonable steps towards enhanced due diligence and compliance, in case of a subsequent mishandling of the data by the Data Importer. As such, per the guidance, you may "require" that it is completed as part of your company's compliance procedures for data transfers.

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### **Do the EDMRI and EDMRI+ tools constitute legal advice?**

No. The EDMRI and EDMRI+ assessment results are for guidance purposes only and they do not constitute legal advice.

### **Updates**

#### **Will new jurisdictions be added to the EDMRI?**

Yes. New jurisdictions will be incorporated into the Index gradually. During the first phases of launching this tool, special focus is on including the jurisdictions which host the vast majority of Data Importers and that constitute the bulk of the global/DIFC data transfers/imports.

2 January 2024 Update: The newly evaluated countries / jurisdictions are:

ADGM	Malta
Argentina	Oman
Bharain	Peru
Chile	Poland
Colorado	Rwanda
Connecticut	Thailand
Croatia	Uganda
Estonia	Utah
Gibraltar	

#### **Will the EDMRI jurisdictions be reviewed periodically to incorporate updates?**

Yes. The EDMRI will be periodically updated to include new developments related to data protection and privacy risks occurring in the jurisdictions, in order to ensure that the Index stays up to date and reflects the latest risk levels.

#### **Will other criteria or general thematics be assessed in the future by the EDMRI?**

Yes. In later phases, the EDMRI will incorporate further elements, with a view on reviewing the latest global trends that could pose a risk to data protection and privacy, including Artificial Intelligence and other emerging technology, and the Metaverse, amongst others. The focus would again be on how jurisdictions globally *and ethically* handle risks arising out of those developments with respect to privacy and security.

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2 January 2024 Update: The most recent version of the EDMRI, dated 22 December 2023, contains the following additional criteria:

Thematic Group	New Criteria Indicator(s)	New Criteria Rationale
Laws and Regulations Rating	The privacy laws in the jurisdiction apply to personal data processing by (i) government entities and (ii) businesses majority-owned by the government.	Where government entities or businesses that are majority-owned by the government are held to the same or similar accountability, transparency, and safeguards obligations, individual rights are better protected and compliance with the DIFC DP Law is better assured.
Regulators, Supervision and Enforcement Rating	None	N/A
Privacy Culture and Due Diligence	Government, acting through either law enforcement or other government agencies and state-controlled businesses, has a culture of respecting privacy and private rights	Accountability frameworks, protocols and educational factors exist within government-related processing environments, and as such, culture and due diligence tends to exist in government agencies and entities that better assure individual rights and redress options.
Accountability and Transparency Rating	None	N/A
Individual Rights and Redress Rating	Criminal or monetary penalties for misuse or unlawful processing of Personal Data	Where general, broad criminal sanctions are imposed, a chilling effect may impair proper reporting / willingness to report, thus creating a higher risk that misconduct and non-compliance will go unaddressed.

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Thematic Group	New Criteria Indicator(s)	New Criteria Rationale
Individual Rights and Redress Rating	Data subjects may directly go to the courts to seek protection of their legal privacy rights and compensation for breach of these, without the need to involve the regulator first	Direct access to the courts reduces the amount of time necessary to resolve an unlawful processing matter. As such, importers are more likely to comply with safeguard obligations knowing that specifically a foreign regulator's decision is not directly determinative, and rather the local or foreign courts may directly issue an order to act or not act.
Public Authority Access to Personal Data and Remedies Factors	Article 28 Controls included in laws or policies	If the local law or policies require similar, additional controls regarding necessity, proportionality and written assurance or risk assessments prior to sharing Personal Data in response to a government access request, the risk of unlawful processing and non-compliance is reduced.
	In practice, law enforcement and other government agencies with lawful rights to access Personal Data held by Controllers or Processors exercise these rights sparsely and judiciously	Government entities and law enforcement implement necessity and proportionality controls, procedures and have protocols to assure the purpose limitation, transparency, minimization and accountability principles are respected.

The final, overall assessment is also now split into two separate risk ratings for

1. Laws and Regulations, Regulators and Enforcement, and Accountability; and
2. Culture / Corruption, Public Authorities' Access, and Individual Rights / Redress

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## **Miscellaneous**

### **What is the relationship between the EDMRI and Adequacy Decisions?**

Many of the countries on the EDMRI have data protection laws which are deemed “adequate” by relevant decisions. However, when it comes to risk of non-compliance by the importing organizations in such jurisdictions, it can still be quite high. Hence, the EDMRI goes further than such binary regulatory decisions and provides an exporting organization with a holistic risk assessment, incorporating elements such as environmental factors, supervision and enforcement efforts of local regulators, access to redress remedies, government access to personal data and corruption factors, amongst many others.

### **Are the EDMRI and EDMRI+ tools applicable to both public and private sector entities?**

The EDMRI and EDMRI+ can be utilised to assess the risks of the relevant jurisdictions irrespective of whether the Data Importer is a private or a public/government entity. However, when deciding on data transfers pursuant to a request from a public authority, you should additionally apply the safeguards prescribed by Article 28 of DIFC Data Protection Law 2020. Please refer to the Commissioner’s Article 28 guidance document for more information.