



DIRECT MARKETING & ELECTRONIC COMMUNICATIONS

Commissioner of Data Protection

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1. Introduction

Direct Marketing means any form of advertising, whether written or oral, sent to one or more identified or identifiable end-users of electronic communications services. It is generally permitted as a means of doing business in most countries. There are, however, certain requirements under the [Data Protection Law, DIFC Law No. 5 of 2020](#) (the “DP Law”) and potentially other [applicable data protection laws and regulations](#) for direct marketing in a way that is compliant with very important data protection principles. Every DIFC registered entity that collects and maintains Personal Data for electronic direct marketing purposes must comply with these requirements.

Personal Data is defined in the DIFC DP Law as, “Any Data referring to an Identifiable Natural Person” and Special Category Data is defined as, “Personal Data revealing or concerning (directly or indirectly) racial or ethnic origin, communal origin, political affiliations or opinions, religious or philosophical beliefs, criminal record, trade-union membership and health or sex life and including genetic data and biometric data where it is used for the purpose of uniquely identifying a natural person.” Such data includes but is not limited to name, address, business or personal email address, business or personal phone numbers, geolocations, job title or other employee data, health and biometric data, religious affiliations or criminal history. In sum, Personal Data generally can be any information that when viewed together (or in some cases is so unique) clearly identifies a living individual. It could be data about clients, employees, suppliers, or family members, to name a few categories of Personal Data.

The defined terms used herein have the same meaning as the defined terms in the DP Law.

If you require further information or clarification about anything provided in this guidance document or any other guidance referenced herein, please contact the DIFC Commissioner of Data Protection (the **Commissioner**) either via the DIFC switchboard, via email at commissioner@dp.difc.ae or via regular mail sent to the DIFC main office. Also, you may wish to refer to the [DIFC Online Data Protection Policy](#).

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2. Scope

This guidance addresses all Personal Data processed for electronic direct marketing purposes that is subject to the DP Law and / or any other applicable data protection law, as set out below the following [Do's and Don'ts](#) section. Due to DIFC's historical reliance on UK and EU data protection and privacy principles and the interpretation thereof by the UK authorities, from a common law perspective, this guidance should be read in conjunction with those existing UK and EU laws and guidance on the same topic, with which the DP Law is also aligned.

*Please note that **this guidance expresses no opinion on lawfulness of specific business activities, does not have the force of law, and is not intended to constitute legal advice.** Please contact legal counsel for assistance in determining your data protection and privacy policies in respect of the issues under discussion to ensure compliance with the applicable laws and regulations. The Commissioner does not make any warranty or assume any legal liability for the accuracy or completeness of the information herein as it may apply to the particular circumstances of an individual or a firm.*

Also, this guidance has been prepared from a data protection regulation perspective and expresses no opinion on the lawfulness or the regulatory requirements relating to any financial promotion conducted by way of Direct Marketing, which is typically a heavily regulated activity and in respect of which specialist legal advice should be sought prior to embarking on any such activity.

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3. Do's and Don'ts

TOPIC	DO	DON'T
<p>Web scraping / Web mining: the practice of a third party extracting Personal Data from a webpage for uses that are in many cases incompatible with the original purposes for which it was collected and therefore in breach of data protection principles regarding fair and lawful processing of Personal Data.</p>	<p>Use contact or other information provided on websites for your own purposes, such as calling the business or individual to request further information for a product or service you require from them. Such data may also be used for research, statistics, invitations to business functions if requested or likely to be anticipated, or to inform the individual about matters that may be of interest to them, <u>provided</u> such use is in line with the privacy notice posted on the entity's website.</p>	<p>Take personal information from any website or digital interface to compile a marketing list for your own business or to broker to other businesses. The owner of the information did not necessarily publish their information for this purpose, nor were they notified about processing their Personal Data in this manner. Finally, they did not give the necessary consent for or opt into processing their Personal Data in this manner. The gathering of Personal Data in this manner constitutes unfair and unlawful processing.</p>

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TOPIC	DO	DON'T
<p>Consent / Opt-in Option: means any freely given, specific, informed and unambiguous indication of an individual's wishes by which they, by a statement or by a clear affirmative action, signifies agreement to the processing of Personal Data relating to them. Consent is one means of legitimate processing of Personal Data, but it is not the only one and it not strictly required in all electronic communications situations.</p>	<p>Obtain consent if specifically required to under any applicable law, or if the business is sure that it can accurately collect, maintain, and update the validity of such consent where other legitimate processing mechanisms are available under Article 10(1)(f) of the DP Law, such as the data controller pursuing legitimate interests, except where overridden by compelling legitimate interests of a data subject in a particular situation.</p> <p>Easy, effective means to withdraw consent are required. One such method includes providing an “unsubscribe” link in the body of a direct marketing email.</p>	<p>Do not rely on stale or indirect consent for processing Personal Data in the context of direct marketing by electronic means. Purchasing marketing lists, doing webscraping or mining websites to use Personal Data for marketing (even if the data was originally provided to the data controller in respect of a particular website with consent, such as that data which is listed on the DIFC Public Registry), or other forms of data collected via indirect consent are not permitted.</p>
<p>Third Party Consent or Indirect Consent: means a notice by the original collector of Personal Data that it will share the Personal Data collected for electronic communications with a third party, and that the individual involved has been informed and agrees to such data sharing for specific purposes. A general notification is insufficient to convey third party or indirect consent.</p>	<p>Third Party Consent or Indirect Consent might be valid for use by a third party if the original consent that was provided is clear and specific enough. The consenting party must have anticipated by providing such consent that their Personal Data would be passed to a third party organisation collecting it, and that they were consenting to messages from that organisation. This will depend on what exactly they were informed of when their consent was originally obtained by the collecting organisation (i.e. a list broker or other entity that originally collected the information).</p>	<p>Third Party information holders cannot infer Third Party Consent just because consent was given to a similar organisation, or an organisation in the same group. It must have extended to the organisation actually sending the message as well. General consent notices (i.e., marketing ‘from selected third parties’) do not demonstrate an individual’s valid consent to marketing calls, texts or emails. Therefore, lists created on a Soft Opt-in basis will never provide a proper and valid consent basis on which to send marketing messages as a third party marketer.</p>

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<p>Soft Opt-in: means that an entity that has collected an individual's email information for electronic direct marketing as that person had not previously opted out and are likely to be interested in information about other products or services that the entity provides. The Soft Opt-in rule means an entity may be able to email or text its own clients, but it does not apply to prospective clients or customers, or new contacts (i.e., from bought-in lists). It also does not apply to non-commercial promotions (e.g. charity fundraising or political campaigning).</p>	<p>Soft Opt-in is only applicable in certain jurisdictions and it is best to get clear legal advice. Generally, it can only be used as a means of marketing by the original collecting organisation (i.e. selling / buying the contact information as a third party is not permitted).</p> <p>When legitimately and fairly collecting Personal Data for direct marketing purposes, an Opt-in Option¹ must be provided to the data subject. This must be an affirmative statement or an action that is clear, concise and otherwise unambiguous in demonstrating that the data subject wishes to receive marketing. Obtaining clear Opt-in statements for various types of marketing is advisable, or alternatively ensure that privacy notices, declarations and / or other information provided to data subjects are worded clearly and concisely in a manner that the individual understands everything they are opting in to.</p>	<p>Pre-ticked boxes are not allowed and do not constitute valid forms of affirmative action to indicate marketing preferences. Such devices rely on data subject inaction or silence to assume preferences, which is prohibited under most data protection laws.</p> <p>Do not use Soft Opt-in as a basis for sending electronic marketing if it is to be used by any third party other than the original collecting organisation.</p>

¹ See Consent / Opt-in definition above.

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<p>Preference Services: means “do not call” or “do not message” lists or registries, typically maintained by governments, telecoms service providers or, in some cases, private entities in order to clarify to direct marketers that they should not use the listed method (call, email, etc.) to contact an individual to whom the contact information belongs.</p>	<p>Clean up any marketing list on a regular basis by checking the Preference Services available in your jurisdiction.</p> <p>There is no such service in the UAE, but for example the UK has:</p> <ul style="list-style-type: none"> • T/M/CT/BM and FPS – Telephone, Marketing, Corporate Telephone, Baby Mailing and Fax preference services • Your Choice – for opting out of unaddressed mail <p>Other EU Member States as well as the US, Canada, Australia, and South Africa, and many other countries, have national “do-not-call” registries that individuals may list their numbers on and which should be checked prior to calling.</p> <p>Some countries operate in an opt-out² fashion by using these preference lists, but others require an affirmative opt in for telemarketing. Please seek legal advice for assistance regarding international telemarketing requirements.</p>	<p>Even after checking a preference services list or registry, if the caller says they wish to be removed from the calling list, please do so.</p>

² **Opt-out:** means an individual’s indication that consent for processing Personal Data in the context of electronic direct marketing is withdrawn.

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<p>Cold Calling / Telemarketing: means an unsolicited telephonic contact for marketing purposes.</p>	<p>Screen against a Preference Service, if available in a jurisdiction, prior to making the call. Best practice is to use Opt-in data wherever possible. Fines for breaching marketing regulations in some places may be very steep.</p> <p>Ensure that your Caller ID is available and operational for each cold call, and all the recipient to Opt-out of receiving any further calls.</p>	<p>Do not assume any Telemarketing list has been cleansed against a Preference Service or that it is up to date.</p>
<p>Uploading Contacts from Social Media</p>	<p>If you use social media such as Linked In to communicate informally with business contacts, remember that:</p> <ol style="list-style-type: none"> 1. You are the collector and therefore controller of their Personal Data; 2. Use business information only to maintain your own business contacts elsewhere, such as in your Outlook Contacts; and 3. Sharing your business contacts from social media to your company's CRM makes the company a controller as well, and as such, they have obligations under the DIFC DP Law, including but not limited to Articles 30 and 34, as well as Articles 9 and 10, to ensure your contact is informed of the company's acquisition of the contact's Personal Data. 	<p>Do not simply upload the contact's Personal Data to a new controller CRM or share it any other way by virtue of your relationship on social media. As with any assessment regarding data sharing and accountability, it is critical to consider what the Data Subject's expectations are regarding the personal details, and appropriate notice, as well as a lawful basis and an opportunity to object should be provided to the Data Subject contact for such processing.</p>

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<p>Spam: means an electronic message of any type that is unsolicited, usually sent to a large number of recipients, and may also include damaging content that compromises the security of IT systems.</p>	<p>Spam is generally not illegal, but various laws apply to whether such emails can be sent based on individual preferences (whether someone has opted in or out, for example. It may also depend on the type of email address to which the Spam message is being sent, i.e., to corporate subscribers. The requirements may vary depending on applicable law.</p> <p>To ensure that individuals uniformly retain the ability to exercise marketing preferences, any emails and other electronic messages (“e-messages”) such as SMS, What’s App, etc. involved in Direct Marketing, must contain:</p> <ul style="list-style-type: none"> • the senders name and valid business address and other relevant contact information; • a means to unsubscribe (i.e. to withdraw consent or Opt-out); and • an offer of commercial goods or services. <p>Specific consent is often required to send Direct Marketing by way of e-messages, but that is not always the case. (See the Soft Opt-in section above for additional information.)</p>	<p>Without valid consent or another legitimate means for sending Direct Marketing by way if an e-message, do not send the message. If in doubt, contact a legal professional for clear advice, as this area can be very tricky and the penalties for a misstep can be very costly.</p> <p>If a corporate subscriber communicates an Opt-out request to a marketer, it is best practice to honor that request immediately and remove them from all stipulated marketing lists in the Opt-out request. Remember that corporate subscribers do not include sole traders and some partnerships in many jurisdictions, so if there is ambiguity about the recipient of the e-message, it may be best to simply not send it.</p>

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<p>Suppression Lists: means a list maintained by an organisation to be able to identify who <u>not</u> to market to.</p>	<p>Maintain a Suppression List of people who have opted out or otherwise indicated directly that they do not want to receive marketing messages. This will assist the organisation in knowing for future campaigns or messages whether to send e-messages to an individual or not.</p>	<p>Do not contact people on a suppression list at a future time to ask them if they want to Opt-in again to receiving marketing. This sort of contact will almost inevitably violate any applicable general data protection laws or privacy laws.</p>
<p>Statistics and research: means processing of data for informational purposes only, unrelated to direct marketing.</p>	<p>Marketing rules are generally inapplicable to electronic communications made for statistics gathering and / or research. However, the communication must be genuinely about such activities.</p>	<p>Masking a marketing message or offer for goods / services in a research or statistics email or other e-messages or calls is not allowed.</p>

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4. Applicable Laws and Regulations

Data Protection Law, DIFC Law No. 5 of 2020: the current governing data protection law of the Dubai International Financial Centre, supported by the DIFC Data Protection Regulations 2020.

There are several laws with breach reporting requirements that may apply in addition to the DIFC DP Law 2020, the most common for DIFC entities being those listed below, including but not limited to:

UK General Data Protection Regulation and the UK Data Protection Act 2018: The [‘UK GDPR’](#) sits alongside an amended version of the DPA 2018.

The key principles, rights and obligations remain the same. However, there are implications for the rules on transfers of Personal Data between the UK and the EEA.

The UK GDPR also applies to controllers and processors based outside the UK if their processing activities relate to:

- offering goods or services to individuals in the UK; or
- monitoring taking place in the UK of individual’s behavior.

Remember as well that the European regulation, the EU GDPR may also apply.

General Data Protection Regulation (EU) 2016/679: the EU GDPR is the current governing data protection law of the European Union that has wide-reaching applicability and contains general requirements about Personal Data security breaches.

e-Privacy Directive / Regulations: the Privacy and Electronic Communications Directive 2002/58/EC, which has been enacted in all EU Member States (i.e., in the UK it is embodied in the Privacy in Electronic Communications Regulations 2003), and is undergoing transformation into a new, updated EU regulation that will align with the GDPR to specify direct marketing rules and penalties for breach. In other words, the e-PR can be thought of as a specialised subset of rules that fall under the overall privacy framework established by the GDPR.

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5. Applicability

The DIFC DP Law 2020 is always applicable in the DIFC to all DIFC entities and in some cases, those they do business with. Please see Article 6(3) of the DIFC DP Law 2020.

The above-named laws may also be applicable in the DIFC and the GCC.

Other country's laws may also be applicable to your business, in cases where for example your parent company or group is based in another jurisdiction with data protection laws in place. Bear in mind that many, including the DIFC DP Law 2020, share similar principles and time-based actions.

Compliance with the DP Law and regulations is therefore critical to the operations of any business or other legal entity based in the DIFC. Administrative fines under such regulations can be very steep, and that's without considering the fines that may be imposed under the DP Law.

Further, the EU e-Privacy laws and the UK equivalent incorporates by reference the applicability and consent provisions of the GDPR, and much more broadly.

Therefore, both these laws can and often will apply to non-EU businesses that market to end-users based in the EU (regardless of citizenship or permanent residency), the UK, or potentially elsewhere. For example, a recent draft of the EU e-Privacy Regulation states:

Furthermore, this Regulation should apply regardless of whether the processing of electronic communications data or personal data of end-users who are in the Union takes place in the Union or not, or of whether the service provider or person processing such data is established or located in the Union or not.

Compliance with these regulations is therefore critical to the operations of any business or other legal entity based in the DIFC. Administrative fines under both regulations can be very steep, and that's without considering the fines that may be imposed under the DP Law.

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6. Questions and Comments

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