STEP BY STEP PORTAL GUIDE FOR REGULATION 10 CERTIFICATION

Commissioner of Data Protection

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1. Introduction

The goal of the DIFC Commissioner of Data Protection (the "Commissioner") in producing this guidance is to assist Controllers and Processors subject to the Data Protection Law, DIFC Law No. 5 of 2020 (the "DPL") and the Data Protection Regulations issued pursuant to the DPL (the "DP Regulations") about implementation of Regulation 10 on Personal Data Processed through Autonomous and Semi-Autonomous Systems ("Regulation 10"). All capitalised terms have the same meaning as the definitions in either the DPL or the relevant DP Regulations. Guidance regarding Regulation 10 and many of the concepts listed below is available on the DIFC website.

If you require further information or clarification about anything provided in this guidance document or any other guidance referenced herein, please contact the Commissioner's Office either 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.

2. Regulation 10 Certification: Background

Regulation 10 of the DIFC Data Protection Regulations applies where Personal Data is processed through autonomous or semi-autonomous Systems, including Systems commonly described as artificial intelligence. The Regulation establishes conditions under which such Systems may be used for commercial use, particularly where the processing is assessed as High Risk Processing under the DIFC Data Protection Law.

Regulation 10.3.3 introduces a certification-based mechanism for good AI governance where Systems are engage in High Risk Processing Activities for commercial use. Certification is therefore intended to operate as evidence that required safeguards, controls, and governance measures have been considered and implemented ideally before such Systems are developed or before they are used.

For the purposes of Regulation 10, responsibility attaches to the roles of Deployer, Operator, and Provider, reflecting how Systems are developed, operated, and used in practice. Where an entity benefits from or authorises the operation of a System, it is required to assess whether the System falls within scope and whether certification is required. This assessment must take place at an early stage, prior to or before continued commercial use of the System for High Risk Processing.

The certification process is structured in stages, beginning with preliminary questions to determine eligibility, followed by a detailed assessment, review by an Accredited Certification Body or the Commissioner, and, where applicable, issuance of a Regulation 10 Certificate. The steps set out below describe this process and the actions an applicant must take to seek certification for a System under Regulation 10.[1]

[1] Multiple Systems may be certified in the same application if agreed in advance with the Commissioner's Office and the ACB.

3. Step by Step Workflow

Kindly refer to the brief step by step guidance below to assist you with the Regulation 10 Certification Application process.

1. Assess Applicability

The entity assesses whether its System is engaged in High-Risk Processing for commercial use under Regulation 10. Guidance is available on both High Risk Processing and commercial use, and a general data protection impact assessment or, if available, an AI impact assessment will assist with this decision.

2. Seek Initial Guidance (Optional but Recommended)

To better understand Regulation 10 requirements and readiness expectations., before beginning this process, it may be useful to seek informal guidance from either:

- an Accredited Certification Body (ACB) (information on ACBs available here); or
- the Commissioner's Office (commissioner@dp.difc.ae)

Doing so may help to avoid rejection of the preliminary questions submission or detailed certification application later, which in turn helps to avoid loss of application fees or an additional waiting period before applying again.

3. Submit Certification Request via Portal

- DIFC entities log into the DIFC portal and create a Regulation 10 Certification request under the "Requests" section.
- Non-DIFC entities first register for portal access here and then submit the Regulation 10 Certification request

4. Complete Preliminary Questions & Make Payment

- The entity completes the Preliminary Questions through the portal to determine eligibility.
- Payment is required at this stage to proceed:
    - USD 100 for DIFC entities
    - USD 200 for non-DIFC entities

- Upon successful payment, the entity selects an Accredited Certification Body (ACB) to review the request.
- Certification application fees that ABC's may charge is currently capped at USD 5000. ACBs are aware of that this cap has been imposed, but may discuss additional services should there be a need.

5. Commissioner & ACB Review – Preliminary Stage

The DIFC Data Protection Commissioner's Office reviews the preliminary questions submission and may:

- request additional information or clarification;
- Reject the preliminary questions submission if it appears that certification is not required;[2] or
- approve the preliminary questions submission, allowing the entity to proceed to detailed certification questionnaire and ACB assessment.

The selected ACB will have a choice to accept or reject the application at this stage. If rejected, the applicant would have to select another ACB to proceed with their application.

6. Complete Detailed Certification Application

Once preliminary questions approval is granted, the entity completes and submits the Detailed Certification Questionnaire, including all required supporting documentation.

7. ACB Review – Detailed Stage

The ACB reviews the Detailed Certification Questionnaire and will:

- request further information, if required;
- Reject the Detailed Certification Questionnaire; or
- approve the Detailed Certification Questionnaire

[2] DIFC's application fees are non-refundable, even if the preliminary questions submission is rejected.

8. Submission to the Commissioner's Office

Following approval at the Detailed Certification Questionnaire stage, the ACB submits a certification report to the Commissioner's Office for final consideration.

9. Final Decision by the Commissioner's Office

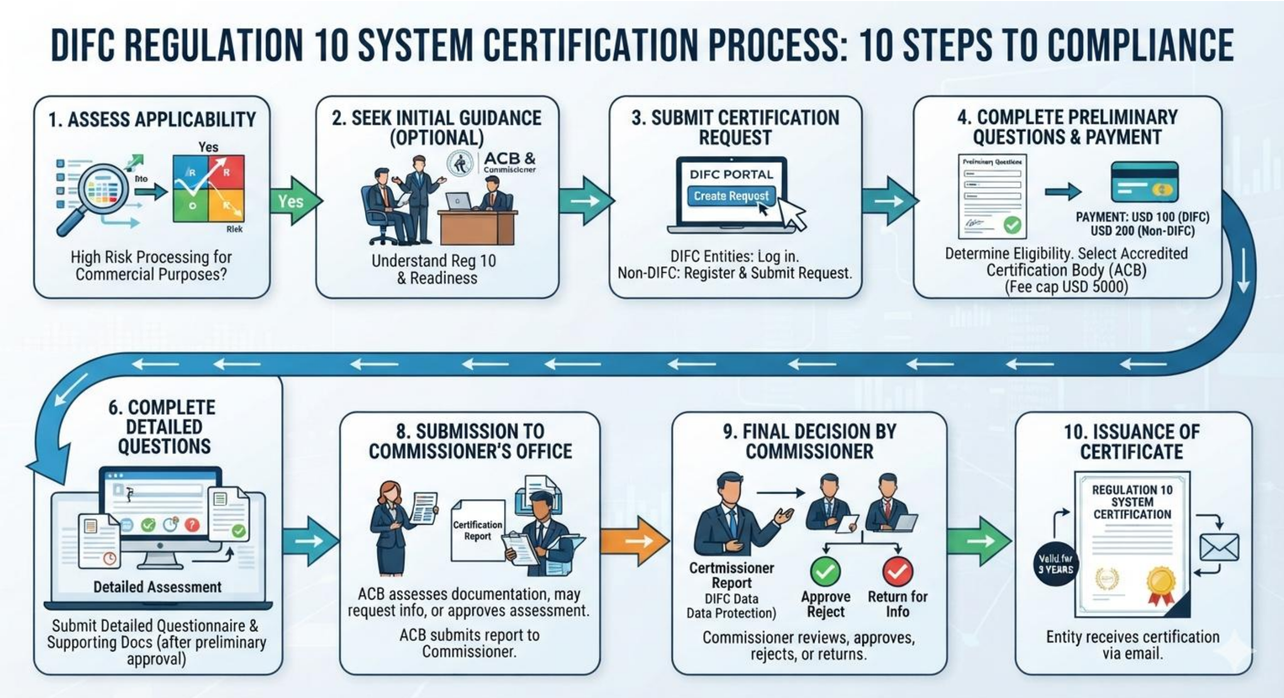
The Commissioner's Office reviews the Detailed Certification Questionnaire submission and will:

- return it for further information
- approve the Detailed Certification Questionnaire; or
- reject the Detailed Certification Questionnaire

If rejected, the entity must wait the prescribed time set out in the relevant certification scheme in order to reapply.

10. Issuance of Certificate

Once the Certification Application is approved, the entity is issued a Regulation 10 System Certification, valid for three years, and issued via email.



Pictorial representation of the above steps

4. Questions and Comments

For further information about Regulation 10 vis a vis the objectives of the DP Law 2020, please review general guidance about Regulation 10, Data Protection Impact Assessments, Obligations of Controllers and Processors or High Risk Processing & DPO Appointments, as well as assessment tools to get quick, simple and practical answers about these topics.

Please contact the DIFC Commissioner of Data Protection via email at commissioner@dp.difc.ae. You may also wish to refer to the DIFC Online Data Protection Policy.