

MEMORANDUM OF UNDERSTANDING

between the

DIFC Data Protection Commissioner

and

The Isle of Man Information Commissioner

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Definitions

In this Memorandum of Understanding, unless the context requires otherwise:

"Applicable Law"	means any law (statutory, common or customary) applicable to DIFC or the Isle of Man to a matter covered by this MoU;
"Commissioner"	means the Data Protection Commissioner for DIFC (appointed pursuant to Article 43 of the DPL 2020);
"Controller"	means the same as defined in Schedule 1, Article 3 of DPL 2020;
"DPL 2020"	means the Data Protection Law, DIFC Law No 5 of 2020 (as may be amended from time to time);
"IOM GDPR"	means the legal instruments constituting 'data protection law 2018' as enacted in the Isle of Man;
"IOM FOI"	means the Freedom of Information Act 2015 in the Isle of Man;
"GDPR"	means the General Data Protection Regulation (EU) 2016/679;
"IOMIC"	means the Isle of Man Information Commissioner;
"DIFCA"	means the DIFC Authority, established in accordance with Dubai Law No. 5 of 2021;
"MoU"	means this memorandum of understanding;
"Parties"	means the DIFCA/ Commissioner and the IOMIC;
"Person"	means a natural person, legal entity, partnership or unincorporated association;
"Receiving Party"	means either party receiving information from the other under this MoU;
"Sending Party"	means either party when sending information to the other under this MoU;

Memorandum of Understanding ("MoU")

between the

**Dubai International
Financial Center
("DIFC") Authority
Data Protection
Commissioner
("DIFCA")/
"Commissioner")**

-and-

**The Isle of Man
Information
Commissioner
("IOMIC")**

Recitals

- A. DIFCA is a statutory body established under Dubai Law 5 of 2021. The Commissioner is empowered by the Data Protection Law, DIFC Law No. 5 of 2020 (the DPL 2020) to serve as DIFCA's independent regulator uphold the requirements of the DPL 2020 in the jurisdiction of the DIFC. .
- B. The Commissioner is empowered to take a range of regulatory action for contraventions of the DPL 2020.
- C. Part 8 of the DPL 2020 places a broad range of statutory duties on the Commissioner, including monitoring and enforcement of the DPL 2020, promotion of good practice and adherence to the data protection obligations by those who process personal data.
- D. The Commissioner's regulatory and enforcement powers include:
- a. conducting assessments of compliance with the DPL 2020;
 - b. issuing information notices requiring individuals, controllers or processors to provide information in relation to an investigation;
 - c. issuing enforcement notices, warnings, reprimands, practice recommendations and other orders requiring specific actions by an individual or organisation to resolve breaches (including potential breaches) of data protection legislation and other information rights obligations;
 - d. administering fines by way of penalty notices in the circumstances set out in Article 62 of the DPL 2020;
 - e. issuing decision notices detailing the outcome of an investigation under DPL 2020; and
 - f. investigating potential regulatory matters including liaising with the Dubai Financial Services Authority where appropriate;
- E. Article 46 of the DPL 2020 requires the Commissioner, amongst other things, to:
- 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 the significant interests of data subjects;

- c. engage relevant stakeholders in discussion and activities aimed at furthering international co-operation 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 third countries.

F. The IOMIC is established by statute as the Isle of Man's Information Commissioner, functioning as an independent regulator to uphold information rights, promote openness by public bodies and data privacy for individuals.

G. The IOMIC is empowered to take a range of regulatory actions for breaches of, inter alia, the following legislation (as amended from time to time):

- a. The IOM GDPR;
- b. The GDPR and LED Implementing Regulations 2018 (**"Implementing Regulations"**);
- c. The Data Protection Act (Application of the GDPR) Order 2018 (**"GDPR Order"**);
- d. The Data Protection (Application of LED) Order 2018 (**"LED Order"**);
- e. The Unsolicited Communications Regulations 2005 (**"UCR"**);
- f. The Freedom of Information Act 2015 (**"IOM FOI"**)

H. Section 2 of Chapter VI of the IOM GDPR places a broad range of statutory duties on the IOMIC, including monitoring and enforcement of the IOM GDPR, promotion of good practice and adherence to the data protection obligations by those who process personal data in the Isle of Man.

I. Schedule 3 to the IOM GDPR also provides the IOMIC with the power to serve enforcement notices and issue monetary penalty notices as above to organisations who breach the UCR. This includes, but is not limited to, breaches in the form of unsolicited marketing which falls within the ambit of the UCR, including automated telephone calls made without consent, telephone calls which have not been screened against the Telephone Preference Service¹, and unsolicited electronic messages.

J. The IOMIC's regulatory and enforcement powers include:

¹ This service is provided by the UK Information Commissioner's Office, for fixed line and mobile subscribers who do not want to receive unsolicited direct marketing calls and/or faxes. This service is based on the provisions found in the Privacy Regs.

- a. conducting assessments of compliance with the IOM GDPR;
- b. issuing information notices requiring individuals, controllers, processors or other persons to provide information in relation to an investigation;
- c. issuing reprimands, warnings and enforcement notices requiring specific actions by a person to resolve infringements (including potential infringements) of Isle of Man data protection legislation and other information rights obligations;
- d. administering fines by way of penalty notices in the circumstances set out in Regulation 112 of the Implementing Regulations;
- e. issuing decision notices detailing the outcome of an investigation under the Isle of Man FOI; and
- f. prosecuting criminal offences relating to the protection of personal data before the Courts.

K. Article 50 of the IOM GDPR and Regulations 81 - 83 of the Implementing Regulations requires the IOMIC, in relation to third countries and organisations, take appropriate steps to, in an international role, inter alia:

- a. develop international cooperation mechanisms to facilitate the effective enforcement of legislation for the protection of personal data, including making agreements with the European Commission or any competent supervisory authority if appropriate,
- 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 the significant interests of data subjects,
- 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.

Purpose and Principles

1. This MoU establishes a framework for cooperation and information sharing between the Parties. It sets out the broad principles of collaboration and the legal framework governing the sharing of relevant information and intelligence between the parties. The shared aims of this MoU are to enable closer working between the Parties, including the exchange of appropriate information, to assist them in discharging their regulatory functions.
2. This MoU is a statement of intent that does not give rise to legally binding obligations on the part of DIFCA, the Commissioner or the IOMIC. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying in, the DIFC or the Isle of Man. This MoU does not affect any arrangements under other MoUs.
3. The Parties acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and/or requirements.
4. The Parties have determined that they do not exchange enough personal data to warrant entering into a separate data sharing agreement, but this will be kept under review.

Scope of co-operation

5. The Parties acknowledge that it is in their common interest to collaborate in accordance with this MoU in order to:
 - a. ensure the Parties are able to deliver the regulatory co-operation necessary to underpin their data-based economies and protect the fundamental rights of data subjects in DIFC and the Isle of Man respectively, in accordance with applicable laws of the Parties' respective jurisdictions;
 - b. co-operate with respect to the enforcement of their respective applicable data protection and privacy laws;
 - c. keep each other informed of developments in their respective jurisdictions having a bearing on this MoU;
 - d. recognise parallel or joint investigations or enforcement actions by the Parties as priority issues for co-operation.
6. The Parties may jointly identify one or more areas for co-operation. Such co-operation may include:
 - a. Sharing of experiences and exchange of best practices on data protection policies, education and training programmes;

- b. Implementation of joint research projects;
 - c. co-operation in relation to specific projects of interest, including regulation of children's privacy, regulatory sandboxes and artificial intelligence;
 - d. exchange of information involving potential or on-going investigations of organisations in the Parties' respective jurisdictions in relation to a contravention of data protection legislation;
 - e. joint investigations into cross-border personal data incidents involving organisations in both jurisdictions;
 - f. convening bilateral meetings annually or as mutually decided by the Parties;
 - g. any other areas of co-operation as mutually decided by the Parties.
7. Information exchange will normally be responsive and will specifically relate to concerns as they arise. The parties may also wish to proactively share emerging themes or trends.
8. There will be a two-way sharing of information, which may be volunteered by one regulator to the other or provided in response to a particular request.
9. This MoU does not impose on DIFCA, the Commissioner or the IOMIC any obligation to co-operate with each other or to share any information. Where a Party chooses to exercise its discretion to co-operate or to share information, it may limit or impose conditions on that request. This includes where a) it is outside the scope of the MoU, or b) compliance with the request would breach the Parties' legal responsibilities.

Legal basis for sharing information

Information shared by the IOMIC to Commissioner

10. The IOMIC, during the course of their activities, will receive information from a range of sources, including personal data. The IOMIC will process all personal data in accordance with the principles of the IOM GDPR and all other applicable legislation. The IOMIC may identify that information held, which may include personal data, ought to be shared with the Commissioner's Office as it would assist in performing the functions and responsibilities of the Commissioner.
11. Section 91 of the Isle of Man Implementing Regulations states that information obtained by the IOMIC in the course of, or for the purposes of, discharging their functions can only be shared with others if there is lawful authority to do so. Section 91 of the Isle of Man Implementing Regulations

sets out the circumstances in which the IOMIC will have lawful authority to share that personal data with the Commissioner's Office.

12. The IOMIC will be permitted to share information with the Commissioner's Office in circumstances where they have determined that it is reasonably necessary to do so in furtherance of one of the grounds outlined in para.18. In doing so, the IOMIC will identify the function of the Commissioner's Office with which that information may assist and assess whether that function could reasonably be achieved without access to the particular information in question. In particular, where the information proposed for sharing with the Commissioner's Office amounts to personal data, the IOMIC will consider whether it is necessary to provide it in an identifiable form in order for the Commissioner's Office to perform their functions, or whether disclosing it in an anonymised form would suffice. The IOMIC will also be permitted to share information in matters where the IOMIC and Commissioner's Office both have jurisdiction as a result of cross-border processing, where there has been a request for mutual assistance and where there is a joint investigation being conducted.

13. Where information is to be disclosed for law enforcement purposes under Article 1 of LED Order, then the IOMIC will only disclose such information in accordance with the appropriate policy document as outlined by section 42 of the UK DPA.

Information shared by the Commissioner's Office to the IOMIC

14. The DIFCA, during the course of its activities, will receive information from a range of sources, including personal data. It processes all personal data in accordance with the principles of the DPL 2020 and all other applicable legislation. The Commissioner's Office may consider that certain of the information it holds, which may include personal data, ought to be shared with the IOMIC as it would assist them in performing their functions and responsibilities and acting in the public interest.

15. Art. 25 of the DPL 2020 states that those processing Personal Data can only share confidential information with others if there is lawful authority to do so. In this context, the information will be considered confidential if it has been obtained, or provided to, the Commissioner's Office in the course of, or for the purposes of, discharging its functions, relates to an identifiable individual or business, and is not otherwise available to the public from other sources. This therefore includes, but is not limited to, personal data. Additionally, Art. 28 of the DPL2020 requires enhanced due diligence in order to share personal data with government authorities.

16. The Commissioner's Office will therefore be permitted to share information with the IOMIC in circumstances where it has determined that it is reasonably necessary to do so in furtherance of one of those grounds outlined at

paragraph 22 of this MoU. In doing so, the Commissioner's Office will identify the function of the IOMIC with which that information may assist and assess whether that function could reasonably be achieved without access to the information in question. Where the information proposed for sharing with the IOMIC amounts to personal data the Commissioner's Office will consider whether it is necessary to provide it in an identifiable form for the IOMIC to perform its functions, or whether disclosing it in an anonymised form would suffice. The Commissioner's Office will also be permitted to share information in matters where the Commissioner's Office has jurisdiction as a result of cross-border processing, where there has been a request for mutual assistance and where there is a joint investigation being conducted.

17. Unless otherwise stated, information exchanged between the Commissioner's Office, DIFCA and the IOMIC under the provisions of this MoU is for intelligence purposes only and should it be required formally as evidence or for use in an investigation then the appropriate formal request must be made.
18. Where a request for information is received by either party under data protection laws the recipient of the request will seek the views of the other party where the information being sought under the request includes information obtained from, or shared by, the other party. However, the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the party in receipt of the request as Controller in respect of that data.

Procedure for Assistance

19. Requests for the provision of information or other assistance will be made in writing or – in urgent cases – made orally and, unless otherwise agreed, confirmed in writing within five business days. To facilitate assistance, the Requesting Party should specify in any written request:
 - a. a description of the information or other assistance requested;
 - b. if information is provided by the Requesting Party for confirmation or verification, the information and the kind of confirmation or verification sought;
 - c. the purpose for which the information or other assistance is sought; and
 - d. to whom, if anyone, onward disclosure of information provided to the Requesting Party is likely to be necessary and the purpose such disclosure would serve.
20. The Parties will notify each other without delay, if they become aware that information shared under this MoU is not accurate, complete, and up-to-date.
21. The Parties will use their best efforts to resolve any disagreements related to co-operation that may arise under this MoU through the contacts designated

under this section and, failing resolution in a timely manner, by discussion between the Information Commissioner and the IOMIC.

Investigation and enforcement

22. The Parties recognise that there are areas in which they have complementary functions and powers. They will therefore endeavour to ensure that in these cases, the most appropriate body or bodies will commence and lead investigations. To the extent permitted by law and having regard to their respective powers, expertise, and resources, they will seek to ensure that in cases of investigations, the Parties will notify each other of significant developments where the other is likely to have an interest. Where appropriate, the parties will discuss the steps they propose to take and ensure co-ordination takes place in a timely manner, where possible, allowing for a proper exchange of views.
23. The Parties may refer a matter for action if the other body is considered more appropriate to deal with the matter. Any such referral will include the action sought and the legal powers it considers are available to the other. Where the other party determines not to proceed, an explanation will be provided, where possible.
24. Where the Parties agree that an investigation should be carried out by both of them, it will usually be appropriate that both investigations proceed in parallel. However, in appropriate circumstances, they will consider whether the particular facts of the matter, as they are known at that time, suggest that one party's investigation should proceed before the others.
25. Where information exchanged between the Commissioner's Office and the IOMIC indicates that the subject of the information is of interest to both parties (for example where regulatory breaches under both sets of regulatory laws are suspected) a case conference may be called to ensure that the maximum, and appropriate, use of the information is made. In relevant cases, the Commissioner's Office, and the IOMIC, may seek the involvement of a representative of their respective jurisdiction's prosecuting authority in the case conference.
26. Where either party carries out any subsequent investigation and proceedings alone, that party will keep the other regularly updated on material aspects of the progress of the investigation.
27. If a decision is made by either party to take action against a subject, the Commissioner and the IOMIC should consider whether it is possible and would be appropriate to co-ordinate publication of applicable enforcement announcements so that both parties publish the outcome of their

investigations simultaneously. In any event, the Commissioner and the IOMIC will endeavour to give the other appropriate notice of any press release or other public statement it intends to make relating to enforcement cases in which the other may have an interest, no later than 24 hours prior to publication unless there are overriding reasons which prevent or delay such notice.

28. Relevant Commissioner's Office and IOMIC staff will, where appropriate, seek to maintain general awareness and understanding of each other's functions and needs and will liaise with each other to ensure that issues are appropriately identified.

Assessing requests

29. Each request for assistance will be assessed on a case-by-case basis by the Receiving Party to determine whether assistance can be provided under the terms of this MoU. In any case where the request cannot be fulfilled in part or whole, the Receiving Party may be asked to provide the reasons for not granting the assistance and consider whether there may be other assistance which can be given by itself.

30. In deciding whether and to what extent to fulfil a request, the Requested Party may take into account:

- a. whether the request conforms with this MoU;
- b. whether the provision of assistance would be so burdensome as to disrupt the proper performance of the Receiving Party's functions;
- c. whether it would be otherwise contrary to the public interest to give the assistance sought;
- d. any other matters specified by applicable laws, regulations, and requirements (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness);
- e. whether complying with the request may otherwise be prejudicial to the performance by the Receiving Party of its functions; and
- f. the security arrangements, including cyber defences, that will apply to information disclosed under this MoU.

31. The Parties recognise that assistance may be denied in whole or in part for any of the reasons mentioned in clause 30 in the discretion of the Receiving Party.

Contact points

32. The Commissioner's Office and IOMIC will designate a primary contact for the purposes of any communications under the MoU. Those individuals will maintain an open dialogue between each other in order to ensure that the MoU remains effective and fit for purpose. They will also seek to identify any difficulties in the working relationship and proactively work to minimise same.

Costs

33. If the cost of fulfilling a request is likely to be substantial, the Receiving Party may, as a condition of agreeing to give assistance under this MoU, require the Requesting Party to make a contribution to costs, although the parties will work to ensure information is disclosed to the other in the public interest.

Confidentiality and breach reporting

34. Appropriate security measures shall be agreed to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the Sending Party.
35. All non-public information shared under this MoU will be marked as such by the Sending Party and marked with the appropriate security classification.
36. Where one party has received information from the other, it will consult (where permissible) with the other party before passing the information to a third party or using the information in an enforcement proceeding or court case and notify the Sending Party if it anticipates a legally enforceable demand for disclosure of the information.
37. Similarly, the Receiving Party will notify the Sending Party if any legally enforceable demand for disclosure of the information is received, unless this is not practicable because of urgency or prohibited by law.
38. If requested by the Sending Party in relation to a legally enforceable demand for disclosure of the information, the Receiving Party shall assert any legal exemptions or privileges against disclosure on behalf of the Sending Party.
39. If it is not practicable to notify the Sending Party of the receipt of a legally enforceable demand for disclosure of the information, assume the Sending Party will wish to assert any legal exemptions or privileges against disclosure.
40. Where confidential material obtained from, or shared by, the Sending Party is wrongfully disclosed by the Receiving Party holding the information, this party will bring this to the attention of the Sending Party immediately. This is in addition to obligations to report a personal data breach under the DPL 2020 where personal data is contained in the information disclosed.
41. In accordance with relevant legislation, the Commissioner's Office and IOMIC will protect the confidentiality and sensitivity of all unpublished and other confidential information received from the other, and maintain effective controls designed to minimise the risk of inappropriate disclosures.
42. The Commissioner's Office and IOMIC will liaise where relevant, to the extent permitted by law and having regard to their respective objectives, on responding to enquiries from the public, including freedom of information requests and will consult each other before releasing information originally belonging to the other.

Retention and disposal of information

43. The Commissioner's Office and IOMIC acknowledge that any information provided under this MoU must not be retained for longer than is reasonably required to fulfil the purpose for which it was sought or for longer than permitted under applicable data protection legislation. As soon as practicable after any information supplied under this MoU is no longer required, the relevant party will dispose of it in a secure manner.

Consultation

44. The Parties will keep the operation of this MoU under review and will consult where necessary with a view to improving its operation and resolving any matters,

45. Both Parties will consult in matters relating to any difficulties that may arise in relation to specific request made pursuant to this MoU (e.g., where a request may be denied, or if it appears that responding to a request will involve a substantial cost).

Commencement, and Termination

46. This MoU will take effect once both Parties have signed it.

47. This MoU will continue to have effect until terminated by either Party giving 30 days' advance written notice to the other Party. It may be amended by agreement, in writing.

48. In the event of the termination of this MoU, information shared under this MoU will remain subject to clauses 37 to 47.

Publication

49. Either, or both, or the parties may make a copy of this MoU or the text of it, publicly available.

**For DIFC Data Protection
Commissioner**



**Lori Baker
Director of Data Protection and
Commissioner's Delegate
[DATE]**

For IOMIC



**Alexandra Delaney-Bhattacharya
Information Commissioner**

[DATE]