



DLA PIPER

AFRICA

JURISTCONSULT
CHAMBERS

NEWS ALERT-**GDPR**



The European General Data Protection Regulation (“**GDPR**”) is effective as from 3.00 am (Mauritian time) today, 25 May 2018. The GDPR has extra-territorial applicability; it will apply to Mauritian controllers and processors who are processing personal data of data subjects in the European Union (“**EU**”).

In the event the GDPR is applicable, there are 2 options open to local controllers and processors: (i) apply the GDPR, or (ii) refrain from processing personal data of data subjects who are in the EU. It is clear that the first option is the more reasonable one as the second option would affect, to a large extent, our business ties with Europe.

Mauritius was among the first countries in the world to have enacted a data protection legislation which aims to be in line with the GDPR. The Data Protection Act 2017 (“**DPA 2017**”) which was promulgated in January this year, extends the scope of responsibilities for controllers and processors and gives enhanced rights to data subjects. If a controller/processor is compliant with the DPA 2017, then, it would be, to a large extent, also compliant with the GDPR.

Although it has a lot of similarities with the DPA 2017, the GDPR is however different to some extent.

The table below helps to summarise the main differences between the GDPR and the DPA 2017

Subject matter	DPA 2017	GDPR
Nationality	Mauritian legislation.	EU legislation.
Effective date	Effective as from 15 January 2018. Repeals and replaces the Data Protection Act 2004 (Act 13/2004).	Effective as from 25 May 2018. Replaces the 1995 Data Protection Directive (Directive 95/46/EC).
Territoriality	Local reach-applies only to controllers/processors established in Mauritius or which uses equipment in Mauritius for processing.	Global reach-applies to controllers/processors established both in and outside the EU (e.g. Mauritius).
Scope	Applies to all Mauritian controllers/processors of personal data.	Applies to Mauritian controllers/processors in relation to the offering of goods or services to data subjects in the EU.
Registration with regulatory authority	Mandatory for all controllers/processors and upon payment of a fee.	No such registration requirement with the regulatory authority.



Subject matter	DPA 2017	GDPR
Data Protection Officer (DPO)	<p>1. Mandatory designation for ALL controllers/processors.</p> <p>2. No expert knowledge of data protection laws required.</p>	<p>1. Mandatory designation for Mauritian controllers/processors ONLY in 3 specific cases, namely:</p> <ul style="list-style-type: none"> (i) where the controller/processor is processing personal data as a public entity; (ii) where the core activities of the controller/processor require the regular and systematic monitoring of data subjects on a large scale; (iii) where the core activities of the controller/processor consist of the processing of sensitive data on a large scale. <p>2. Expert knowledge of data protection laws and practices required.</p>
Data portability	Not specifically provided for in the DPA 2017.	Possibility of data subject, in specific cases, to transmit his personal data from one controller to another controller without hindrance.
Representative in EU	Not applicable.	Mandatory unless the Mauritian controller/processor is processing personal data from Europe occasionally and such data does not include, on a large scale, special categories of data.
Regulatory bodies	The Data Protection Office headed by the Data Protection Commissioner.	Supervisory authorities of each EU member state, the European Data Protection Board and the European Commission.
Administrative fines	No power to impose fines by the Data Protection Office. This can only be done by a court of law.	Power to impose fines by Supervisory authorities.
Penalty	Non-compliance with the DPA 2017 amounts to an offence and where no specific penalty is provided, punishable by a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.	A maximum fine of up to EUR 20 million or 4% of the global annual turnover of the organisation in the preceding year (whichever is the higher).



FOR MORE INFORMATION ON DATA PROTECTION MATTERS, PLEASE CONTACT:



Shalinee Dreepaul Halkhoree
Senior Associate
sdreepaul@juristconsult.com



Bhavish Sewraz
Associate
bsewraz@juristconsult.com

JURISTCONSULT CHAMBERS

www.juristconsult.com

T +(230) 465 0020 | **F** +(230) 465 0021

jurist@juristconsult.com

Level 12, NeXTeracom Tower II, Ebene, 72201, Mauritius.

www.dlapiper.com/africa

Juristconsult Chambers is a member of DLA Piper Africa, a Swiss Verein whose members are comprised of independent law firms in Africa working with DLA Piper.

DLA Piper is a global law firm operating through various separate and distinct legal entities.

Further information on DLA Piper Africa can be found at www.dlapiper.com/africa.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. Juristconsult Chambers will accept no responsibility for any actions taken or not taken on the basis of this publication. This may qualify as "Lawyer Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2018 Juristconsult Chambers. All rights reserved. | MAY18 | 3310561