

MOHARRAM
— & PARTNERS —

PUBLIC AFFAIRS & STRATEGIC
COMMUNICATIONS

DEVELOPMENT AND
ENFORCEMENT OF DATA
PRIVACY LEGISLATION IN THE
MENA REGION:

ISSUES & CHALLENGES

OUTLINE

- 1. Overview of Data Protection Legislation in MENA**
- 2. The Egyptian Experience in Developing a Data Privacy Legislation**
- 3. Lessons Learned**
- 4. Conclusions and the Way Forward**






DATA PRIVACY
FRAMEWORKS IN
MENA

DATA PRIVACY FRAMEWORKS IN MENA

- Generally, the position in most of the Middle East North Africa (MENA) jurisdictions is that the privacy of an individual and the safeguarding of their personal data are provided under general provisions of law rather than laws specifically focused on the issue of “data privacy” or “data protection”. There are, of course, some exceptions to this, as indicated in the report.
- With the General Data Protection Regulation (GDPR), the EU is leading the charge on data privacy and protection, and the feeling in the MENA region is that it would be a positive move for nations to introduce specific, local data protection laws to follow the GDPR.






DATA PRIVACY FRAMEWORKS IN MENA

DATA PRIVACY FRAMEWORKS IN MENA: EMERGING APPROACHES AND COMMON PRINCIPLES, GSMA, 2019



JURISDICTION	OVERVIEW
BAHRAIN 	Bahrain was one of the first of the GCC nations to adopt its own data privacy law in 2018 which will come into force on 1 August 2019. The law aims to be consistent with international best practices and is heavily based on the GDPR. It includes the protection of individuals' privacy and specific consent requirements for data Processing, as well as the creation of a Personal Data Protection Authority. The law is directly influenced by the country's ambitious plans to become a hub for data centres.
EGYPT 	Like many other MENA jurisdictions, Egypt does not currently have a specific data protection law. A draft law regulating the freedom of data exchange and data protection is currently under discussion but has not been published. A final version of the draft is expected in 2019. The new law purports to establish a Centre for Personal Data Protection that will make and formulate various policies and regulations, and will be tasked with monitoring compliance with, and enforcing the provisions of, the new law.
JORDAN 	There is currently no specific data protection law in Jordan however, a draft data protection bill is currently under consultation. The draft bill appears broadly based on the GDPR, with the incorporation of the main concepts of transparency, accuracy, storage limitation and data minimisation. However, the 2018 draft is generally accepted to suffer from issues around a lack of independence of the Jordanian Privacy Commission, a failure to incorporate international standards and best practices for data protection and insufficient consideration for modern forms of data processing.
KUWAIT 	There is currently no specific data protection law in Kuwait. There are limited provisions in cyber security and electronic transactions legislation however the jurisdiction lags behind other GCC nations. However, with the focus on cybersecurity, and the efforts of the Communication and Information Technology Regulatory Authority to improve the standards and practices of information security, and protect the IT infrastructure in Kuwait, it is expected that there will be developments in data protection in the near future.
LEBANON 	Data protection is governed in Lebanon by the E-Transactions and Personal Data Law, introduced in 2004 and updated in 2018. The framework has been criticised for being weak and somewhat outdated by not reflecting the reality of online data and that the substantive provisions include vague and open-ended requirements. Additionally, experts say that the law fails to adequately protect Lebanese citizens' and residents' data by putting in place weak safeguards and only granting authority to the executive branch of the Lebanese Government. Compared with the GDPR, the law is not as detailed or comprehensive, primarily as it fails to provide for the establishment of an independent regulatory body in charge of monitoring Personal Data protection.

DATA PRIVACY FRAMEWORKS IN MENA

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JURISDICTION	OVERVIEW
OMAN 	Oman does not currently have a specific privacy or data protection law, but the Oman Information Technology Authority announced in 2017 that it was developing a data protection law. There is, however, no clear indication of when it will be published. It was reported that if approved and signed into law, the law will grant powerful rights to individuals in Oman, enabling them to exercise GDPR-style levels of control over their Personal Data including the ability to object to the Processing of their Personal Data and demand access to any Personal Data about them held by any organisation in Oman.
QATAR 	Qatar was the first GCC nation to issue a generally applicable data protection law which took effect in 2017 and executive regulations further implementing it are expected to be passed in 2019. The law is modelled on and incorporates familiar concepts from other international privacy frameworks, such as the 1995 Directive (and by extension the GDPR) and mandates that any party who Processes Personal Data adhere to the principles of transparency, fairness and respect for human dignity. The Ministry of Transport and Communications is responsible for implementing and enforcing the law.
QATAR FINANCIAL CENTRE 	The QFC introduced its own Data Protection Regulations in 2005 and established a Data Protection Directorate responsible for implementing and enforcing the law, managing related disputes and applying GDPR standards. The regulations are largely modelled on, and inspired by, the privacy and data protection principles and guidelines contained in the 1995 Directive and the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.
SAUDI ARABIA 	While Saudi Arabia doesn't have a specific data protection law, media reports suggest that a new freedom of information and protection of private data law is currently under review. A novel and innovative regulatory framework for cloud computing exists; one of only a few examples of cloud-specific regulatory frameworks around the world. The framework is based on the best international practice and public consultation.
TURKEY 	Turkey's Data Protection Law is predominantly modelled on the 1995 Directive, with many of the terms and central provisions very closely mirroring their equivalents in the EU law. Enactment of the Data Protection Law marks a new era for data protection in Turkey. Although the Data Protection Law is still in its infancy and no enforcement actions have yet been taken, the Personal Data Protection Board (the national supervisory authority in Turkey) has published the draft versions of secondary legislation, as well as booklets providing guidance on the implementation of the law.

DATA PRIVACY FRAMEWORKS IN MENA

UAE 	<p>The UAE does not have a specific federal data protection law analogous to the GDPR. However, reports suggest that a draft federal law (or laws) are in the pipeline although there is no indication of when such may be published. Telecommunications and Cyber Crime laws provide some limited data protection rights and obligations in the UAE alongside the Constitution and Penal Code. Telecoms service providers have certain Personal Data protection obligations under the Consumer Protection Regulations.</p>
UAE FREE ZONES 	<p>Each of the DIFC and ADGM have enacted their own data protection laws based on international best practice, which apply to organisations in their jurisdiction. The DIFC and ADGM laws are generally consistent with data protection laws in other developed jurisdictions (specifically the 1995 Directive and the UK Data Protection Act 1998). Both have deliberately sought not to pre-empt the GDPR – rather they have adopted a “wait and see” approach before further aligning themselves with it.</p>

THE EGYPTIAN
EXPERIENCE IN
**DEVELOPING A DP
LEGISLATION**

THE EGYPTIAN EXPERIENCE IN DEVELOPING A DP LEGISLATION: TIMELINE

- **Protection of Personal Data Bill issued by the Cabinet of Ministers**, September 2018.
- **Informal Consultation Session with Regulators**, September 2018 – March 2019.
- **First Private Public Dialogue on DP Bill**, March 2019.
- **Industry Submission highlighting key concerns/ recommendations**, March 2019
- **Parliamentary Hearing Session for Private Sector on DP Bill**, April 2019
- **Deliberations on DP Bill at the ICT Parliamentary Committee**, April – June 2019.
- **DP Bill approved by ICT Parliamentary Committee**, July 2019.
- **Plenary Deliberation and Voting**, October 2019



**PRIVATE PUBLIC DIALOGUE ON ICT LEGISLATION
(CYBERCRIME EXECUTIVE REGULATIONS/
PROTECTION OF PERSONAL DATA)**





PARLIAMENTARY HEARING SESSION ON PROTECTION OF PERSONAL DATA BILL



EXAMPLES OF ISSUES OF CONTENTION BETWEEN MCIT & **PRIVATE SECTOR**

SHOWSTOPPERS

- Administrative and Criminal Sanctions.
- Obligation to Notify and Inform.
- Definition of Sensitive Data.
- Electronic Marketing.
- Licensing.
- National Security Privileges.

CRITICAL

- Right of Erasure
- Purpose Limitation
- Cross-border Movement of Data
- Data Protection Center Board
- Licensing Fee
- Safe Harbor Provision

EXAMPLES OF ISSUES OF CONTENTION BETWEEN MCIT AND OTHER **GOVERNMENT ENTITIES**

MINISTRY OF INTERIOR

- DP Center Board Composition.
- Right to Initiate Criminal Proceedings.

CENTRAL BANK OF EGYPT

- Exempting Financial Institutions from Scope of Applicability.

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LESSONS LEARNED

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1. Raising awareness of government stakeholders on key DP issues.
2. Participatory policy making for the effective development of DP frameworks.
3. Keeping enforcement in mind.

CONCLUSIONS

CONCLUSIONS: ON SOCIETAL READINESS FOR ENFORCEMENT

- Building the Capacity of Private Sector and Government.
- Investing in Public Awareness.
- Managing the transition?