

## The United Arab Emirates Federal Data Protection Law: Scope and Applicability

The United Arab Emirates (UAE) Federal Personal Data Protection (PDP) Law No. 45 of 2021 (UAE PDP Law), which came into effect on 2 January 2022, provides a legal framework to ensure the security and privacy of personal information.

It is designed to protect and empower UAE citizens' and residents' data privacy rights to reshape the way organizations address data security and privacy requirements. The UAE cabinet has established the UAE Data office as Competent Supervisory Authority to ensure federal law enforcement. Once the Executive Regulations are issued, organizations will need to comply with UAE PDP Law within a period of

6 months. Under UAE PDP Law, businesses (data controllers) and their suppliers (data processors) are required to demonstrate compliance. Though the penalties are yet to be released, under the UAE PDP Law, the appointed bureau can carry out investigations/audits against the organizations found violating the provision of the law and impose administrative penalties.

The UAE PDP Law has a territorial reach and applies to:

1

Individuals residing in or who have a place of business in the UAE that processes personal data.

2

Organizations established in the UAE that process personal data of individuals located within or outside the UAE.

3

Organizations established outside the UAE that process personal data of individuals located within the UAE.

# What or whom does it NOT apply to?

## Exclusions The provisions of the decree do not apply to the following:

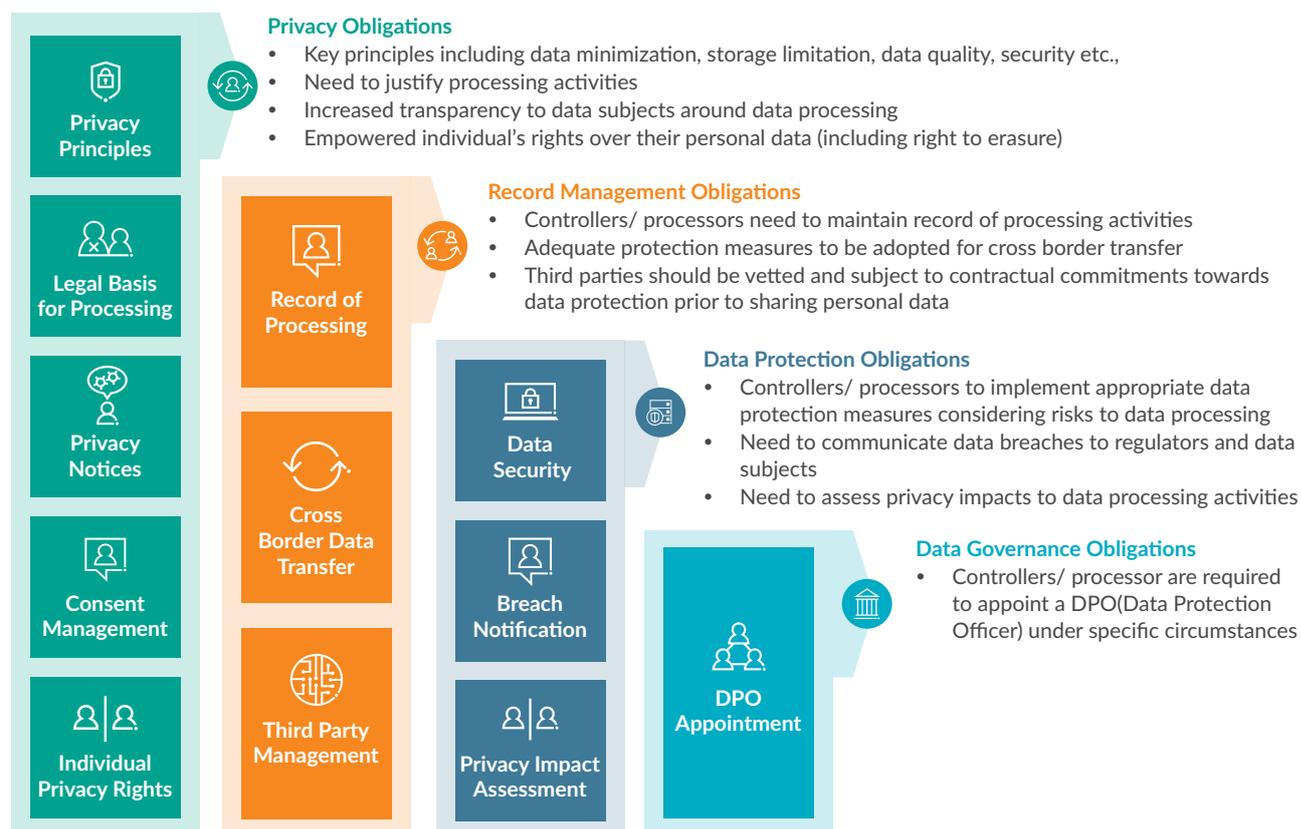
1. Data generated and managed by the Government sector
2. Government authorities that control or process personal data
3. Free-Zone companies which are already subject to data protection legislation
4. Security and judicial authorities who process personal data
5. Health personal data that is already subjected to data protection legislation
6. Banking and credit personal data subject to legislation regulating data processing and protection
7. Individuals that process data related to them for personal purposes

## Core elements of the law

The UAE PDP Law combines the leading practices from a variety of current, world-class data protection laws, such as the General Data Protection Regulation (GDPR), California Consumer Privacy Act (CCPA), and other forward-thinking technology-agnostic concepts. The key requirements of the UAE PDP Law cut across various areas incorporating aspects of risk

management, compliance, legal obligations, data protection, data governance, and record management. The PDP Law requires organizations to adopt a holistic, structured, and collaborative approach to establish a privacy program that aims to uphold the privacy rights of individuals in the UAE.

### The section below provides a high-level overview of the key obligations:



# What should companies do?

The UAE PDP Law brings about a paradigm shift in the way businesses view the collection and processing of personal data impacting businesses across industries involved in processing personal data. The section below illustrates certain key considerations for businesses to navigate the UAE PDP Law Compliance journey:



## Visibility over personal data

Over the last few decades, technological advancements and business transformations have resulted in collecting and processing large volumes of data, including personal data. However, the need for greater visibility and control, specifically for personal data, arises with large volumes considering the UAE PDP Law requirements. Multiple requirements under the UAE PDP Law, such as providing privacy notices, maintaining a special record of processing activities, fulfilling data subject requests, and ensuring confidentiality and integrity, raise a key question that businesses must address – "Do I know what personal data my business collects/ process?" Therefore, it is pertinent for businesses to carry out a data discovery exercise to identify and map out the collection, storage, processing, and transfer of personal data within their environment to tackle this issue.



## Ensuring processing is fair and legitimate

Today, personal data and its associated processing activities are an essential and often unavoidable part of business operations. While the UAE PDP Law does not stop businesses from collecting or processing personal data, it expects businesses to ensure that personal data is processed legally, fairly, and transparently. Therefore, it is important for businesses to retrospect their business processes to ensure the processing of personal data is legitimate and aligned to the acceptable lawful basis identified under the UAE PDP Law. Further, businesses should review and update their privacy policies/ notices to increase transparency over their processing activities concerning collecting and using personal data. Additionally, businesses should establish/ update mechanisms to obtain and record consent (where necessary) from Data Subjects to continue processing their personal data.



## Upholding individuals privacy rights

Under the UAE PDP Law, Data Subjects have rights over their personal data, including the "right to information and access", "right to rectification/ blocking/ erasure", "right to data portability", and the "right to object". For example, this would mean that the data subject can request organizations for a copy of all personal data or request for correction/ deletion of certain personal data that the organization is expected to fulfil subject to certain allowed exemptions. This would require businesses to enforce better control over personal data and establish standard operating procedures to manage the lifecycle of such requests received from Data Subjects.



## Addressing cross-border concerns

The UAE PDP Law prohibits the transfer of personal data outside the UAE, barring certain exemptions factored under the law. This may impact businesses with a global presence, utilize cloud hosting (outside UAE), or leverage outsourcing arrangements. As a result, they may need to re-assess the data hosting/ transfers and implement necessary measures to ensure compliance.



## Use of third parties

Businesses constantly engage third-party service providers to support their business processes. With the advent of the UAE PDP Law, the traditional approach towards vendor onboarding and management should be accordingly assessed and redefined. The UAE PDP Law requires businesses to implement additional measures prior to sharing personal data with third-party vendors ("Data Processors"), such as conducting data privacy and security due diligence before engaging with third parties, incorporating contractual obligations around data privacy and security and monitoring compliance.



### Consent management

The UAE PDP Law recognizes 'Consent' as one of the lawful basis to justify processing activities. The PDP Law further clarifies requirements around the use and management of consent like GDPR, which requires **businesses to evaluate the traditional practices and assess the validity of consent collection**. For consent to be valid, it should be freely given, explicit, unconditional, specific, and informed. Additionally, mechanisms to facilitate consent withdrawal should be established, which should be as seamless as the process followed for obtaining consent.



### Assessment of the impact of personal data protection

The UAE PDP Law requires businesses to assess the privacy impact of processing activities that meet specific criteria to ensure data privacy risks are proactively identified/mitigated, enable maximum privacy, and **ensure adequate measures are implemented to minimize impacts on data subjects**.



### Specific obligations for Data Processors

The UAE PDP Law recognizes specific obligations for data processors that process personal data upon specific instructions from data controllers. This means that **processing activities concerning data subjects in the region, carried out by service providers**

**within the region or outside, are regulated under the UAE PDP Law**. These obligations include ensuring the purpose of **processing is aligned to the written instructions of the data controller, implementing appropriate technical and organizational safeguards, and following appropriate data retention/disposal procedures**.



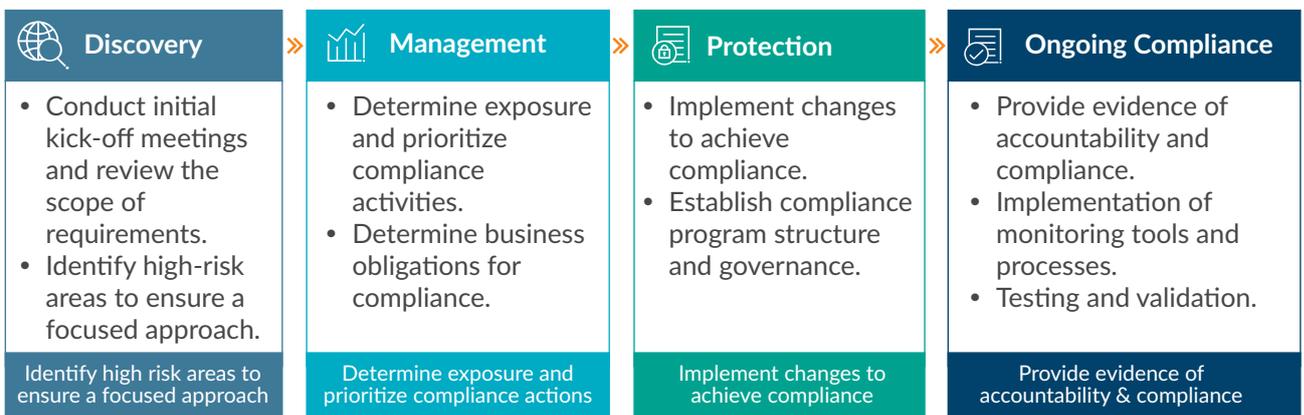
### Breach Notification

The UAE PDP Law requires businesses to **report data breaches or violations of personal data** that may impact its privacy, confidentiality, or security **within specific time periods (as required under executive regulations that are expected to be published shortly) to the bureau and in certain circumstances to data subjects as well**.

While the above list highlights some of the key obligations for businesses, it is key for businesses to establish a **formalized Data Privacy Program** to successfully **govern, manage, operate, and monitor business processes to ensure compliance with the UAE PDP Law requirements**. This would necessitate businesses to develop policies & procedures, assign roles and responsibilities, formalize a risk management program, and establish mechanisms for effective governance and compliance to effectively manage Data Privacy risks and ensure compliance with the UAE PDP Law requirements

## How Protiviti can support?

Protiviti has developed the following phased approach to help clients comply with the UAE PDP Law requirements. Our approach is flexible and identifies the following four key phases to support clients with their privacy compliance obligations. This aligns with many privacy programs and how we have helped other clients.



*Phase duration and level of effort is highly dependent on personal data processed, the size and scope of your environment and process complexity and maturity.*

## About Protiviti

Protiviti ([www.protiviti.com](http://www.protiviti.com)) is a global consulting firm that delivers deep expertise, objective insights, a tailored approach, and unparalleled collaboration to help leaders confidently face the future. Protiviti and its independent and locally owned Member Firms provide clients with consulting and managed solutions in finance, technology, operations, data, digital, legal, governance, risk and internal audit through its network of more than 85 offices in over 25 countries.

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