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TECHNOLOGY MARATHON

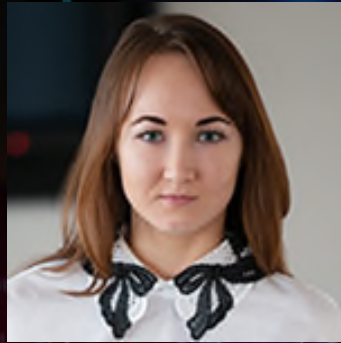
Privacy in the Middle East

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- Highlights of privacy regulations
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Regional outlook

The GCC and the Middle East

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The Gulf Cooperation Council

Kuwait

- Population of 4.5 million, including expats
- Silk City megaproject
- Vision 2035 "New Kuwait"

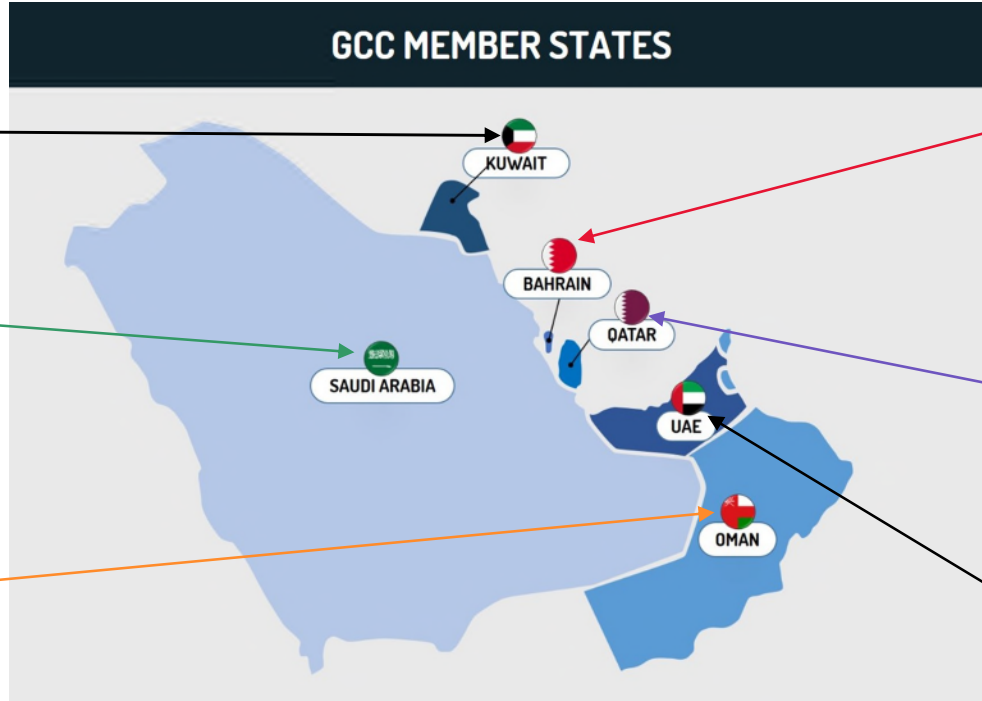
Saudi Arabia

- Population of 35 million, 1/3 expats
- Largest economy in MENA
- ICT market estimated at \$40bn and growing
- "Vision 2030"

Oman

- Population of 5 million, 89% below 50
- Lowest unemployment rate
- Digital transformation program 2021-2025
- "Vision 2040"

GCC MEMBER STATES



Bahrain

- Population of 1.5 million
- 2nd top diversified economy in MENA
- Cloud-first, "Data Embassy" regime for US cloud providers

Qatar

- Small (3 million) but cash rich population
- FIFA World Cup 2022
- Almost 100% urbanized
- GCC / Qatar embargo lifted in January 2021

UAE

- Population of 10 million
- +/- 1 million UAE Citizens
- 4.2% GDP growth in 2023
- "Vision 2021" and "We the UAE 2031"

Source: Public data, Global Economic Diversification Index 2023 (MBRSG), trade.gov

Business Environment

Key factors:

- Optimistic economic growth forecast
- Changing regulatory landscape and developing enforcement practice
- World Bank "Doing Business" high rankings:

UAE	Bahrain	Saudi Arabia	Oman	Qatar	Kuwait
16 (!)	43	62	68	77	83

Trends in the privacy regulations

- **Data protection laws and enforcement practice rapidly develop**
- General approach is based on best international practices such as GDPR
- **Severe penalties for violations including criminal charges**
- Trend to cover new technologies
- Attention to privacy rights of data subjects, but practice is uneven
- Control over cross-border data transfers + extra-territorial reach



The United Arab Emirates

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General Framework

Federal Decree Law No. 45 of 2021 on the Personal Data Protection

- **Status:** formally, in force since January 2022, but no Executive Regulations + grace period for compliance (6 months)
- **Regulator:** the UAE Data Office
- **Enforcement:** N/A
- **Liability:** unknown yet

Privacy legislation of free economic zones (DIFC and ADGM)

- **Status:** in force since 2020 (DIFC) and since 2021 (ADGM)
- **Regulator(s):** the DIFC Commissioner of Data Protection and the ADGM Office of Data Protection
- **Enforcement:** slowly but steadily developing
- **Liability:** restrictions and fines

Federal Decree Law No. 45 – Scope

- **Extra-territorial reach**, where the law applies to:
 - processing of personal data of people residing in the UAE, or people having a business within the UAE
 - each organization in the UAE, irrespective of whether the personal data they process is of individuals inside or outside the UAE
 - each organization located outside the UAE, who carries out processing activities of data subjects that are inside the UAE
- **Exemptions:**
 - government data and government authorities (companies) that process data
 - data held with security and judicial authorities
 - health data; banking and credit data



Federal Decree Law No. 45 – Grounds for processing



- **Primary basis for data processing: consent**
 - given in a clear, simple, unambiguous and easily accessible manner in writing or electronic form
 - can be withdrawn at any point
 - to fulfill obligations of a data controller or a data subject under specific UAE laws
- **No concept or analogue of “legitimate interest” (yet?)**
- No consent required, if processing is necessary (among others):
 - to fulfill obligations of a data controller or a data subject under specific UAE laws
 - to perform a contract to which individual is a party

Federal Decree Law No. 45 – Other issues

- Cross-border data transfers to adequate and non-adequate countries are generally allowed
- Maintaining of record of processing activities (**RoPA**) is mandatory
- Data Protection Impact Assessment (**DPIA**) required in certain cases
- Appointment of data protection officer (**DPO**) required in certain cases, the DPO could be either employed or outsourced but should have sufficient skills and knowledge in the sphere
- Security measures to be based on best international practices
- **Immediate reporting on data breaches to the UAE Data Office**

DIFC: Data Protection Regulation – Scope

- Applies to companies registered in the DIFC and those registered elsewhere, if they processes data in the DIFC as a part of stable arrangements (i.e., personnel used for processing physically located in the DIFC)
- Might be amended to cover the use of data in AI systems, digital and communications services (e.g., SMS, MMS, email, in-app messaging)



DIFC: Data Protection Regulation – Grounds



- **Applicable legal grounds for processing:**
 - consent (freely given affirmative act; can be given electronically)
 - performance of contract to which a data subject is a party
 - compliance with laws
 - **legitimate interests of a data controller or a third party to whom personal data has been made available** (unless are overridden by interests of a data subject) and such legitimate interests may be relied upon transferring of data within its group for internal administrative purposes

DIFC: Data Protection Regulation – Other issues

- Cross-border data transfers to adequate and non-adequate countries are generally allowed
- **Risk-based approach when implementing appropriate technical and organizational measures for data protection:**
 - adopt a program to demonstrate compliance with the DIFC regulations, conduct DPIA, maintain RoPA
 - register with the Commissioner by filing notification of processing operations as soon as possible (and in any event within **14 days**) of commencing the processing activity (+ renew and pay fee on a yearly basis)
- Appointment of DPO is required in certain cases, the DPO must be resident in the UAE or employed on a group level to act as the DPO for group
- **Liability:** refrain from processing, warnings, public reprimands, fines up to USD 100,000

ADGM: Data Protection Regulation – Scope and grounds

- Applies to data processing in the context of activities of an establishment of a controller or a processor in ADGM, regardless of where the processing takes place
- **Applicable legal grounds for processing**
 - consent (freely given specific, informed and unambiguous indication of wishes, may be made in writing, electronically or orally (**NB!** silence, pre-ticked boxes or inactivity do not constitute consent)
 - performance of contract to which a data subject is a party
 - compliance with laws
 - **legitimate interests of a data controller or a third party** (unless are overridden by interests of a data subject)



ADGM: Data Protection Regulation – Other issues



- Data controllers must notify the Commissioner and pay a data protection fee (+ renew on a yearly basis)
- Risk-based approach when implementing appropriate technical and organizational measures for data protection
- Appointment of DPO is required in certain cases, the DPO must be resident in the UAE or employed on a group level to act as the DPO for group
- Cross-border data transfers to adequate and non-adequate countries are generally allowed
- **Significant fines for non-compliance (up to USD 28 mln)**

The Kingdom of Saudi Arabia

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General Framework



- **The Personal Data Protection Law**

- **Status:** recently amended, will be effective as of 14 September 2023 (the Executive Regulations published, but will be amended)
- Grace period **until 14 September 2024** to comply with requirements
- **Regulator:** the Saudi Data & Artificial Intelligence Authority (SDAIA) for 2 years, afterwards – the National Data Management Office
- **Enforcement:** N/A
- **Liability:** significant fines (up to USD 1,3 mln and more!)

The Personal Data Protection Law – Scope

- **Extra-territorial reach**, where the law applies to:
 - all personal data processing in the KSA
 - personal data processing undertaken outside the KSA in respect of data subjects in the KSA
- Personal data processing in respect of **deceased persons** is covered by the law, if such processing could lead to the identification of that person or his or her family
- Matters related by the National Cybersecurity Authority (“**NCA**”) are allegedly exempted



The Personal Data Protection Law – Legal Grounds



- **Applicable grounds for data processing:**
 - consent
 - publicly available data
 - **legitimate interest**, which cannot apply to sensitive personal data, or processing that contravenes with the rights granted under the law and its executive regulations
- **Special rules on processing of health and credit data** (to be further determined in the Executive Regulations)

The Personal Data Protection Law – Other issues

- Strict prohibition on transfers of personal data outside Saudi Arabia has been amended, and international transfers **may no longer require exceptional approval from SDAIA** (will transfers to the non-adequate countries permitted?)
- No registration required, but SDAIA will issue the requirements for practicing activities related to data protection and will license auditors and accreditation entities, as well as maintain national register (if necessary)
- Requirement to appoint a person (or several persons) as DPO
- Maintaining of record of processing activities (**RoPA**) is mandatory
- Data Protection Impact Assessment (**DPIA**) required in certain cases

The Sultanate of Oman

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General Framework



- **Personal Data Protection Law (Decree No. 6/2022 of February 9, 2022):**
 - **Status:** in force **since 13 February 2023**
 - **Regulator:** the Ministry of Transport, Communications, and Information Technology
 - **Enforcement:** N/A
 - **Liability:** significant fines (up to USD 1,3 mln), confiscation of tools

Personal Data Protection Law – Scope

- **Does not apply for processing, if necessary (among others):**
 - for performance of obligations under the laws
 - for execution of an existing contract to which a data subject is a party
- **Primary basis for data processing: consent**
 - express consent
 - a written “request for data processing”
- **No concept of legitimate interest**



Personal Data Protection Law – Other Issues



- **Prohibition** to process genetic, biometric, health data or data relating to ethnic origin, sexual life, political or religious opinions, beliefs, criminal convictions or security measures **without permit from the authority**
- Obligation to appoint **DPO and external auditor** (be clarified in the Executive Regulations)
- **Cross-border data transfers allowed** (controls and procedures to be clarified in the Executive Regulations)

The Kingdom of Bahrain

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General Framework



- **Personal Data Protection Law (Law No. 30 of July 12, 2018):**
 - **Status:** in force **since** 1 August 2019
 - **Regulator:** the Data Protection Authority (DPA)
 - **Enforcement:** developing
 - **Variety of liability for violations:**
 - withdrawal of the DPA's authorization, publication of statement of violation, suspension of data processing, fines (for up to USD 53,000), or imprisonment

Personal Data Protection Law – Scope

- **Extra-territorial reach**, where the law applies to:
 - individuals and legal entities located in Bahrain
 - individuals and entities processing personal data **using means in Bahrain, regardless of their place of residence**
- Mandatory notification to the DPA, in case of automated data processing
- Primary basis for data processing: consent
- No consent required, if **processing is necessary** (among others):
 - for execution of contract to which a data subject is a party
 - for **legitimate interests of the data controller or any third party**, to whom the data is disclosed



Data Protection Law – Other issues

- **By default, appointment of the DPO is not required**
 - the DPA maintains the registry of DPOs (for a fee)
 - data controller may employ the DPO or outsource the role
 - the DPA must be informed of such appointment within 3 working days
- **General prohibition on cross-border data transfers**, unless expressly allowed by law:
 - 83 countries including the GCC countries, the UK and the USA
 - when transfer is necessary for execution of contract with a third party for the benefit of a data subject
- Breach notification requirements (72 hours)

The State of Qatar

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General Framework

Law No. 13/2016 On Data Protection

- **Status:** in force since 2016
- **Regulator:** National Cyber Governance and Assurance Affairs of the National Cyber Security Agency
- **Enforcement:** developing
- **Liability:** significant fines

Privacy legislation of the Financial Center Free Zone (QFC Data Protection Regulations and Rules 2021)

- **Status:** in force since 19 June 2022
- **Regulator(s):** Data Protection Office and Data Commissioner
- **Enforcement:** developing
- **Liability:** restrictions and fines

General Framework



- Data controller's obligation to provide information on processing before it starts
- **Online privacy:**
 - additional obligations for operators/owners of websites addressed to children
 - posting a detailed notice
 - obtaining an express approval of a legal tutor
 - provide information, per tutor's request
 - participation of a child in any activities must not be conditional

Personal Data Protection Law – Other Issues

- Appointment of the DPO is not mandatory
- Primary basis for data processing: consent (or a limited number of other legal grounds)
- **Legitimate interests of a data controller or a third party**
- Processing of data related to children, criminal activities, health, ethnicity, religion, and marital relations **requires the DPA's permit**
- Cross-border transfer is generally allowed



Personal Data Protection Law – Security

- Data controllers must create **personal data management system**:
 - review **protection measures before implementing new protection operations** (data protection impact assessments)
 - set up **internal systems** to obtain and investigate requests;
 - consent management
 - **maintenance of RoPA is mandatory**
 - verify that a data processor abide by instructions
 - **breach notification requirements** (up to 72 hours)

The State of Kuwait

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General Framework



- **Resolution No. 42 of 2021 On the Data Privacy Protection Regulation:**
 - **Status:** in force **since April 4, 2021**
 - **Regulator:** the Communications and Telecommunications Regulatory Authority (CITRA)
 - **Enforcement:** developing
 - **Liability:** fines (for up to USD 65,000)

Data Privacy Protection Regulation – Scope

- **Extra-territorial reach**, the law applies to:
 - persons providing communication and information technology services and operating websites, smart applications or cloud computing services **targeting users in Kuwait** (services providers)
- A service provider must notify the user of all information and service conditions **in both English and Arabic**, including on the alleged cross-border transfer of the data
- Primary basis for data processing: consent (or a limited number of other legal grounds)
- Cross-border data transfers are subject to classification (4 tiers); tier 3 and 4 data **cannot be transferred outside Kuwait**



Biography



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Ksenia Andreeva counsels clients on intellectual property, information technology, and cybersecurity the context of their business transactions.

Ksenia is experienced in drafting and negotiating a broad range of IP and technology-related agreements and commercial contracts, including complex software licenses, technology transfer and development agreements, and e-commerce agreements, service level agreements (SLA), franchise agreements, IP licenses and assignments and other. Her clients include companies in media, technology, telecommunications, consumer products, financial services, insurance and many other industries.

As a complement to her transactional practice, Ksenia advises clients on data protection compliance, including with respect to the General Data Protection Regulation (GDPR) and GCC privacy laws.

The foremost IP publications recognize Ksenia as a leading individual, including *Chambers Global* and *Legal 500*.

Biography



Alena Neskoromyuk

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Alena Neskoromyuk advises clients on a wide range of issues related to the processing and protection of personal data, including those related to the necessary organizational and administrative documents, requirements for consent forms, data processing contracts, as well as issues of localization and cross-border transfer of personal data.

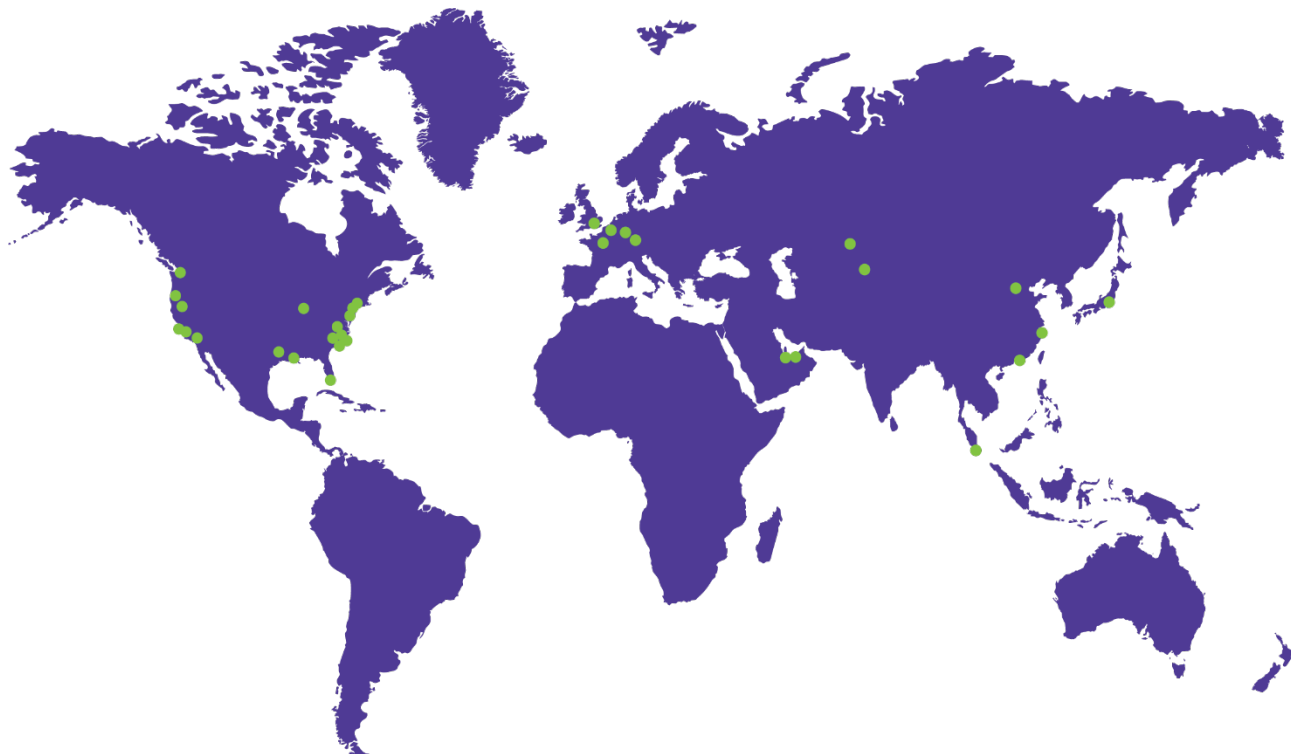
Alena also helps clients on all aspects of regulation in the sphere of protection of confidential information, trade secrets, and intellectual property protection.

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