

Data Protection for Cayman Islands investment funds

The Cayman Islands Data Protection Act (the **DP Act**) governs how a data controller may process, use and retain personal data. Anyone who falls within the definition of a “data controller” (such as a Cayman Islands investment fund) must now comply with eight data protection principles in relation to any personal data processed by the data controller. Where a data controller engages a third party (such as an administrator or investment manager) to process personal data on its behalf, the data controller must ensure the third party complies with the eight data protection principles.

Overview

In addition to governing how a data controller processes, uses and retains personal data, the DP Act also sets out the rights of individuals to control their personal data and implements a system to protect against the misuse of personal data. The DP Act is similar to the General Data Protection Regulation (**GDPR**) with which many clients will be familiar.

For a general overview of the Cayman Islands DP Act please see our [Guide to Data Protection in the Cayman Islands](#).

Application of DP Act to investment funds

In order for investors to invest in an investment fund they must provide certain personal identifying information to the investment fund. Even where the investor is a corporate entity, personal identifying information of contact persons, beneficial owners, directors or members of that entity will be provided to the investment fund. This personal information will be considered personal data under the DP Act.

The individual to which the personal data relates does not need to be in the Cayman Islands or a citizen of the Cayman Islands in order for the DP Act to apply.

Any investment fund structured as a Cayman Islands company or partnership, or any foreign company registered in the Cayman Islands that acts as a general partner of an investment fund will be subject to the DP Act and will be a data controller.

What must an investment fund do to comply with the DP Act?

As a data controller, an investment fund must ensure that it complies with the eight data protection principles when it processes any personal data. It must also ensure that any third party that processes personal data on its behalf also complies with the eight data protection principles.

Cayman Islands investment funds must:

- Send a privacy notice to existing investors
- Update their subscription documents to include a privacy notice for new investors as well as obtain certain acknowledgements, representations and warranties
- Update offering documents to reflect the new requirements under the DP Act

- Update agreements with any third parties that process personal data on behalf of the investment fund to ensure such processing is undertaken in compliance with the DP Act especially where there is transfer of data outside of the Cayman Islands

Privacy notices

If the investment fund is already subject to GDPR then the investment fund may have already adopted a GDPR compliant privacy notice. If that is the case, then a few minor amendments to the privacy notice to reflect the DP Act are all that are needed.

If the investment fund has not yet adopted a privacy notice then it should prepare one in order to communicate the required information to its investors.

In either case the privacy notice should be sent to existing investors and/or made available on an investor or fund administration portal.

Subscription documents

The subscription agreement of the investment fund will also need to be updated to include the privacy notice and certain acknowledgements from the investor. It should also contain representations and warranties from investors that they have provided the privacy notice to any person whose data is given to the investment fund (eg beneficial owners, directors etc) and may need to also contain consent provisions for specific activities prescribed under the DP Act, such as the processing of sensitive personal data if applicable.

Offering documents

Offering documents should be updated to include a brief disclosure and overview of the DP Act. If no update to the offering documents is scheduled or the investment fund is closed then an investor circular with the privacy notice should be prepared and sent to investors or made available on an investor or fund administration portal.

Third party agreements

It is important for the investment fund to update each of their service agreements with third parties who process personal data at the request and under the instructions of the investment fund. The investment fund, as a data controller, must ensure that those third parties process the personal data according to the data protection principles, even if the third party is outside of the Cayman Islands.

Service agreements with the fund administrator and the investment manager will be of key importance to update. Depending on the structure and operations of the investment fund, if there are other service providers, such as distributors, then those agreements will also need to be updated.

Assistance with the necessary updates

Your usual Harneys contact is able to assist the investment fund with these necessary updates and provide advice on compliance with the DP Act.

The Office of the Ombudsman has issued a [Guide for Data Controllers](#) to explain how the Office of the Ombudsman will likely interpret various provisions of the DP Act. The guide is largely based on the United Kingdom's Information Commissioner's Office's Guide to the GDPR and is a very useful starting point for information

© Harneys, February 2021

Harneys is a leading international offshore law firm. From locations around the globe, Harneys advises the world's top law firms, financial institutions and corporations on the laws of British Virgin Islands, Cayman Islands, Cyprus, Luxembourg, Bermuda, and Anguilla. For more information about Harneys please visit [harneys.com](https://www.harneys.com) or contact us at marketing@harneys.com.

The foregoing is for general information only and not intended to be relied upon for legal advice in any specific or individual situation. Bermuda legal services are provided through an association with Zuill & Co which is an independently owned and controlled Bermudian law firm