

## **Information on Data Protection & GDPR Regulation 2016/679**

Barak Fund Management Ltd ('BFML') is committed towards its clients and employees in protecting and keeping clients' and employees' personal data confidential.

### **Data Protection Act ("DPA")**

The DPA was first enacted in 2004 by Parliament pursuant to the right to privacy as expressly provided in section 3 and 9 of the Constitution of Mauritius and Article 22 of the Mauritian Civil Code.

The DPA 2004 was repealed and replaced by the Data Protection Act 2017 (the "Act") which came into force on the 15<sup>th</sup> of January 2018. The prime objective is to strengthen the control and personal autonomy of data subjects over their personal data. It also seeks to bring Mauritius data protection framework in line with the international standards, namely the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679).

### **Registration with the Data Protection Office**

BFML needs to be registered with the Data Protection Officer and the registration fee is payable yearly.

### **General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) ("GDPR")**

The objective of GDPR is to strengthen and unify data protection for all individuals within the European Union (EU) and addresses the export of personal data outside the EU. It provides for the harmonisation of the data protection regulations throughout the EU, thus making it easier for non-European companies to comply with these regulations.

### **How is GDPR and DPA relevant to BFML?**

Since BFML has a global outreach, GDPR is of relevance as it has extra-territorial applicability. It means that:

- (i) the GDPR will apply to every data controller/processor, regardless of location, that processes EU citizens' and residents' personal data;
- (ii) the GDPR will apply if the data controller, processor or subject is based in the EU; and
- (iii) EU citizens' personal data will not be transferable to a country not having similar regulations as the GDPR.

The benefit of aligning the data protection framework with GDPR are mainly to attract foreign investment through the facilitation of businesses working with European countries.

The Act enhances the 'ease of doing business' requirements and build trust in Mauritius as a financial service centre.

The major changes brought in the new data protection legislation is to modernise the existing data protection principles and key definitions as follows:-

### **Principles relating to Processing of Personal Data**

Every controller or processor shall ensure that personal data is:

- (a) processed lawfully, fairly and in a transparent manner in relation to any data subject;
- (b) collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes;
- (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
- (d) accurate and, where necessary, kept up to date, with every reasonable step being taken to ensure that any inaccurate personal data are erased or rectified without delay;
- (e) kept in a form which permits identification of data subjects for no longer than necessary for the purposes for which the personal data are processed; and
- (f) processed in accordance with the rights of data subjects.

### **Meaning of Personal data**

Personal data refers to all information that has been provided by the client relating to his personal needs.

### **Right to access your personal data**

As a client, you will have the right to request access to your personal data submitted by you to BFML and to review the data we hold on you.

### **Keeping of your personal data**

BFML shall keep your data until such time your personal data is required as part of business relationship for legal and regulatory purposes.

### **Consent**

As a client, your consent will be required by BFML prior to processing your personal data during the course of business operations.

All application forms will include a specific clause regarding your consent which shall be in clear and unambiguous terms or an affirmative action authorising BFML to process your personal data.

Your explicit consent will be required prior to sharing your personal data to third parties other than to regulatory authorities.

### **Withdrawal of consent**

You may withdraw your consent to BFML at any time and should inform BFML in writing of your decision.

If you withdraw your consent, BFML might not be able to provide you certain services and you will be informed accordingly.

Nonetheless, irrespective the withdrawal of your consent, BFML may still process your personal data in the performance of its statutory duties.

### **Your right to complain**

As data subject, you have the right to lodge a complaint with the Data Commissioner through the Data Protection Office.

### **Data Breaches**

A data breach occurs when there is an unauthorised disclosure or a loss of personal data. Any breach must be reported to the Data Protection Officer as soon as the breach is noted.

### **Lawful Processing**

When the data is mandatory under another law, there is no need to follow DPA meaning that consent of the data subject is not required before processing the personal data.

### **Exceptions and restrictions**

No exception to the Act shall be allowed except where it constitutes a necessary and proportionate measure in a democratic society for –

- (a) the protection of national security, defence or public security;
- (b) the prevention, investigation, detection or prosecution of an offence;
- (c) an objective of general public interest, including an economic or financial interest of the State;
- (d) the protection of judicial independence and judicial proceedings; or
- (e) the protection of data subject or the rights and freedoms of others.

### **Compliance Audit**

The Data Protection Commissioner may carry out periodical audits of the systems of controllers or processors to ensure compliance with the Act.

***For more information under the new Data Protection legislation, please consult the following websites:***

***Data Protection Office website: [dataprotection.govmu.org](http://dataprotection.govmu.org)***

***GDPR Official website: [eugdpr.org](http://eugdpr.org)***