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GDPR
GENERAL
DATA PROTECTION
REGULATION




COMPLIANCE WITH THE DATA PROTECTION ACT, 2019



**DID YOU
KNOW**

DATA CONTROLLERS AND PROCESSORS MUST BE REGISTERED WITH THE OFFICE OF THE DATA PROTECTION COMMISSIONER ("ODPC") FROM 14TH JULY, 2022?



REMEMBER

YOU CANNOT ACT AS A DATA CONTROLLER OR PROCESSOR IN KENYA IF YOU HAVE NOT REGISTERED WITH THE ODPC UNLESS EXEMPTED FROM REGISTRATION.

1.0 Purpose

The Data Protection Act was enacted in 2019 to accentuate and enliven Article 31 (c) and (d) of the Constitution of Kenya (2010) which recognizes a person's Right to Privacy ("data subjects").

Despite its early enactment, various stages of its implementation had not commenced since the appointment of various office holders was required to oversee the implementation process and enactment of supporting regulations.

In January 2022, the office of the data protection officer (ODPC) published three key regulations among them the Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021 which came into force on 14th July 2022.

These Regulations give effect to Section 18 of the Act which provides that "**No person shall act as a data processor or controller unless registered with the data commissioner.**"

A data Controller is one who determines the means and purpose of processing personal data while a data processor processes the data on behalf of the data controller.

The data Processor must have a contractual relationship with the data controller and is dependent on the controller on the means and manner in which the data shall be processed. In some instances, the data processor and data controller is the same person.

2.0 Eligibility for Registration

All data controllers and processors as defined above in entities with;

- a.) *Annual turnover or revenue Kes. 5 million and above; and*
- b.) *at least 10 employees*

must register under the Act.

It is important to note that the entities listed below ("non-exempt mandatory registration Entities") must comply with registration despite their annual Turnover/ Revenue or number of employees:

- Political canvassing
- Crime prevention
- Gambling
- Education
- Health administration and provision of patient care
- Hospitality
- Property management
- Financial services
- Telecommunications
- Direct marketing
- Transports and
- Entities Processing of genetic data

3.0 Compliance Strategy

The purpose of the registration is to satisfy the ODPC that one has taken appropriate measures to protect and safeguard the privacy and personal data of its data subjects. We have provided below

the steps an entity must take in order to be considered compliant with the provisions of the Act and Regulations thereof;



Once all the required information and documentation is submitted to the ODPC and prescribed fee is paid, the data Commissioner shall carry out a verification process and if satisfied that the entity has met the requirements of the Law, enter the name of the entity into the register and issue the entity with a registration certificate. The registration certificate must be displayed in a conspicuous place (website included), at the main

office and certified copies thereof displayed at the branches of the entity.

A certificate of registration so issued shall be valid for a period of two years. The renewal application should be filed at least thirty days before expiry.

It is important as part of the compliance process that entities undergo training on data protection.

4.0 Penalties for Non- Compliance

The Act prescribes fines for non- registration and breach of obligations as presented in the table below.

OFFENCE		PENALTY
1.	Failure to register with the Commissioner.	Fine not exceeding KES 3 million (approx. €24,180) or imprisonment for a term not exceeding ten years, or both is applicable
2.	Unlawful disclosure.	
3.	Processing of personal data without lawful purpose.	
4.	Sale of personal data .	
5.	Publication false or misleading information to the Commissioner.	
6.	Obstruction of a Commissioner in exercising its functions.	Fine not exceeding KES 5 million (approx. €40,300) (or imprisonment for a term not exceeding two years, or both;
7.	Failure to comply with an enforcement notice.	Upon conviction, a person is liable to a fine not exceeding KES 5 million (approx. €40,300) or imprisonment for a term not exceeding two years, or both;

In addition, a data subject is entitled to compensation for damage from the data controller or data processor for any violation of their rights resulting both from financial and non-financial losses.

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