



MMLP

MULENGA MUNDASHI
LEGAL PRACTITIONERS

COMPLIANCE UPDATE – ENFORCEMENT ROADMAP OF THE DATA PROTECTION ACT NO. 3 OF 2021

2ND DECEMBER 2023

Dear Esteemed Client,

We trust this communication finds you in good health and high spirits.

1. Background

- 1.1 As part of our ongoing commitment to keeping you abreast of pivotal legal developments, we write to apprise you of a critical update pertaining to the Data Protection Act No. 3 of 2021 (the “DPA”) which was enacted by the Parliament on 24 March 2021, and came into effect on 1 April 2021. This legislative framework addresses the processing of personal data and introduces compulsory registration obligations for both data controllers and processors.
- 1.2 Your compliance with these provisions is crucial in ensuring the lawful and responsible handling of personal information under the purview of this newly enacted legislation.

2. Key Points

- 2.1 **Definition of Data Controller** – As outlined in the DPA, a data controller, either alone or jointly with others, is responsible for keeping and using personal data. Your organisation, given its role in managing and utilising personal data of employees and customers, is categorised as a data controller.
- 2.2 **Data Processor Classification** - The DPA defines a data processor as an entity processing personal data on behalf of a data controller. Your organisation may also qualify as a data processor if engaged in processing data on behalf of another data controller.
- 2.3 **Scope of Applicability** – The DPA extends its reach to the processing of personal data, whether conducted through automated means or non-electronic methods. This includes information obtained from employees and customers.
- 2.4 **Enforcement and Compliance Timeline** – Although the DPA has been in effect since 1 April 2021, its actual enforcement was contingent upon the appointment of the Data Protection Commissioner. We are pleased to announce that the Commissioner officially assumed office on 9 June 2023. Nevertheless, it is important to note that the full implementation of enforcement and compliance measures is scheduled to commence in March 2024.
- 2.5 **Regulatory Action Plan** – To facilitate your compliance journey, we have attached a regulatory action plan which outlines specific timelines for mandatory registration, providing a structured approach to ensure adherence to DPA requirements.
- 2.6 **Immediate Action Required** – In light of these developments, we strongly advise a thorough review of your organisation’s data processing practices. The attached action plan has been designed to guide you through the intricacies of the registration process.

Please do not hesitate to get in touch with us should you require further clarifications.

Yours faithfully,

Mulenga Mundashi Legal Practitioners

Disclaimer:

The information provided in this article is intended for general informational purposes only and does not constitute legal advice. Readers should not act upon this information without seeking professional counsel.

Data Protection Act Action Plan/Compliance Schedule

Provision of the Act	Procedure for Registration	Period for compliance	Comments/Recommendation												
Part V – Regulation of Data Controllers, Data Processors and Data Auditors															
Section 19	<p>The registration as a data controller or data processor will have to be made to the Data Protection Commissioner.</p> <p>The application for registration is prescribed in Form I as set out in the First Schedule to the Data Protection (Registration and Licensing) Regulations 2021, Statutory Instrument 58 of 2021 (the “Regulations”) and upon paying the prescribed fee.</p> <p>The Second Schedule of the Regulations sets out the prescribed fees to be paid as follows:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="background-color: #0056b3; color: white;">Category</th> <th style="background-color: #0056b3; color: white;">Application ZMW</th> <th style="background-color: #0056b3; color: white;">Certificate of Registration ZMW</th> </tr> </thead> <tbody> <tr> <td>Micro Organisation (entity with a maximum of ten (10) employees)</td> <td style="text-align: center;">50.10</td> <td style="text-align: center;">500.10</td> </tr> <tr> <td>Medium Organisation (entity with more than ten (10) employees but not more than fifty (50) employees)</td> <td style="text-align: center;">99.9</td> <td style="text-align: center;">1000.20</td> </tr> <tr> <td>Large Organisation (entity with more than fifty (50) employees)</td> <td style="text-align: center;">300</td> <td style="text-align: center;">3,000</td> </tr> </tbody> </table> <p>The Certificate of Registration once issued by the Data Protection Commissioner, is valid for a period of one (1) year.</p> <p>You can apply for renewal of the Certificate of Registration through a prescribed renewal application in Form V as set out in the First Schedule to the Regulations.</p>	Category	Application ZMW	Certificate of Registration ZMW	Micro Organisation (entity with a maximum of ten (10) employees)	50.10	500.10	Medium Organisation (entity with more than ten (10) employees but not more than fifty (50) employees)	99.9	1000.20	Large Organisation (entity with more than fifty (50) employees)	300	3,000	<p>The Data Protection Commissioner will begin registration of Data Controllers and Data Processors in February 2024.</p> <p>Enforcement and compliance takes effect in March 2024, which means that you will be required to have registered data controllers and processors by 1st March 2024.</p>	<p>A person is proscribed from controlling or processing of personal data without registering as a data controller or a data processor under the Act.</p> <p>It therefore follows that you will be required to register as a data controller or data processor by applying to the Data Protection Commissioner for a certificate of registration.</p> <p>Failure to comply with this requirement is an offence and on conviction, you would be liable to a fine not exceeding five hundred thousand penalty units (ZMW150,000.00 or otherwise US\$7800.85 at US\$1.00: ZMW23.07) or to imprisonment for a term not exceeding five years or both.</p>
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Section 23	<p>The notification to the Data Protection Commissioner must be made in Form VI as set out in the First Schedule to the Regulations.</p> <p>The Act does not create an offence for breaching this provision, however, it provides that the Data Protection Commissioner may suspend or cancel the registration of a data controller or data processor if the registered data controller or data processor fails to comply with any term or condition of the certificate of registration or operates the registered business activity in contravention of the Act or the Regulations.</p>	<p>The Data Protection Commissioner should be notified within seven (7) days of any particulars relating to the registration by a registered data controller or data processor.</p>	<p>In order to avoid suspension or cancellation of the registration the entity should notify the Data Protection Commissioner within the prescribed time as the entity will be proscribed from processing personal data if it is not registered to do so.</p>												

Section 30

The registration of any person who intends to provide data audit services is made by application to the Data Protection Commissioner for a licence in the manner set out by Form I in the First Schedule of the Regulations.
The Second Schedule of the Regulations sets out the prescribed fees to be paid as follows:

Category	Application ZMW	Certificate of Registration ZMW
Data auditor-public critical information	999.90 entity 500.10 individual	3,000 entity 5000.10 individual
Data auditor-private critical information	Entity/Individual 999.90	9999.90 entity 5000.10 individual
Data auditor-general	999.90 entity 500.10 individual	9999.90 entity 5000.10 individual
Register Inspection Fee		99.90

The Data Protection Commissioner began to license data auditors in the categories of Data and Systems and Security and Infrastructure at the beginning of November 2023. However, for data auditors who do not fall within the scope mentioned, they can make applications for licences in February 2024 at the same point as the data controllers and auditors.

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