



TANZANIA HIGHLIGHT – REGISTRATION WITH PERSONAL DATA PROTECTION COMMISSION IN TANZANIA

In the manifestation of the fundamental right to privacy and personal security under Article 16 of the Constitution of the United Republic of Tanzania, the Personal Data Protection Act, 2022 was passed, which ensures personal data protection and sets out principles of personal data protection. The purpose of the Law is to establish a legal and institutional mechanism to protect personal data, regulate the collection and processing of personal data, and provide data subjects with rights and remedies while collecting and processing personal data.

The governing laws in Tanzania are:

- i) The Personal Data Protection Act, 2022 (the PDPA);
- ii) The Personal Data Protection (Personal Data Collection and Processing) Regulations, 2023; and
- iii) The Personal Data Protection (Complaints Settlements Procedures) Regulations, 2023.

The Regulatory body

The PDPA established the Personal Data Protection Commission (the Commission), which was launched on 19 January 2024 and inaugurated on 3 April 2024. The Commission is a corporate body vested with various functions, including monitoring the compliance of the PDPA, educating the public on the compliance of the PDPA and registering data controllers and data processors in accordance with the PDPA.

In exercising its functions of registering the data controllers and processors, the Commission has commenced registering data controllers and data processors from 10 April 2024.



Definitions of key terms

"Personal data" is any data about an identifiable person (data subject) that is recorded in any form, including personal data relating to race, national or ethnic origin, religion, age, or marital status, education, the medical, criminal, or employment history, address, fingerprints or blood type, and correspondences sent to a data controller.

"Sensitive personal data" is

- a) genetic data, data related to children, data related to offences, financial transactions of the individual, security measure or biometric data;
- b) if they are processed for what they reveal, personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, affiliation, trade-union membership, gender and data concerning health or sex life; and
- c) any personal data otherwise considered under the laws of the country as presenting a major risk to the rights and interests of the data subject.

"Data Subject" is the subject of personal data processed under the PDPA.

"Data Controller" is a natural person, legal person or public body which, alone or jointly with others, determines the purpose and means of processing personal data. Where the purpose and means of processing are determined by Law, the Data Controller is the natural person, legal person or public body designated as such by that Law, and it includes his representative.

"Data Processor" is a natural person, legal person or public body which processes personal data for and on behalf of the controller and under the data controller's instruction, except for the persons who, under the direct authority of the controller, are authorized to process the data and it includes his representative. A data processor collects data from controllers for different purposes, such as conducting commercial or non-commercial activities, education or research, and implementing various IT processes.

The requirements for registration with the Commission

Registering with the Commission requires the following:

- i) Assess and identify whether the entity is a data controller and/or processor. This is tested by the who determines the purpose of the collected data and who is given instructions to process the collected data.
- ii) Identify the nature of personal data/ sensitive personal data received by the entity, for example, from employees, clients, suppliers, vendors, etc.; this will depend on who the entity interacts with.
- iii) Identify the security measures and safeguards. The security used by the entity will differ depending on the personal data collected and/or processed, potential risks and state of technological advancement. As a result, the measures should prevent negligent loss, unauthorized destruction, alteration, access or processing of personal data.
- iv) Appointment of a Data Protection Officer (DPO). A DPO is an individual who ensures compliance with the PDPA. The DPO can be an accounting/executive Director, Director General/Managing Director or anyone who will operate on behalf of the entity. The duties of the DPO include:
 - Ensuring compliance with the PDPA and its Regulations;
 - Educating and training employees/staff about data compliance and handling personal data while collecting and processing personal data;
 - Ensuring that the control and security measures protecting personal data are in place;
 - Provide information on violations of the PDPA and its Regulations committed in the processing by the Controller /processor and advise the rectification measures;

- Prepare and submit quarterly reports on the compliance of the PDPA to the Commission;
 - Handling the application/complaints made by the data subject/his representative/ another person to the data controller or processor in relation to the collection or processing of personal data;
 - Prepare Data Protection Impact Assessment Report (DPIA); and
 - Keep a record of data protection matters of the organization.
- v) Identify whether the entity transfers personal data collected outside Tanzania.
 - vi) Ensure the internal controls are in place. These are the entity's policies and manuals, ensuring the protection and security of personal data and laying out the path of complaints in case of a breach.

Legal implications of registration with the Commission

- It gives data controllers and processors the legitimacy to collect and process personal data.
- Impose an obligation to uphold data protection principles, i.e., ensuring the collection and processing of data for the intended purpose, non-disclosure of data, obtaining consent from the data subject, and ensuring the security of personal data collected or processed.
- Submit quarterly reports on compliance with the PDPA to the Commission.
- Keep records of data protection matters of the entity.
- Impose a duty to report to the Commission on the violation of the PDPA and Regulations.

Conclusion

All existing entities that collect and process personal data are required to register with the Commission. Failure to register with the Commission would attract a fine, where upon conviction, the fine is not less than one hundred thousand shillings but not exceeding five million shillings, or imprisonment for a term not exceeding five years, or both.

Should you need any assistance/clarifications in respect of the above, please reach out to our team or your usual RSM contact.

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