

# **Shah Patel & Company**

ASSURANCE • TAXATION • ADVISORY

THE DATA  
PROTECTION ACT,  
2019

# DATA PROTECTION ACT, 2019

The Data Protection Act is the law governing the processing of personal data. It came into effect on 25<sup>th</sup> November 2019. Subsequently, the Government issued three Regulations, namely The Data Protection (General) Regulations, 2021; The Data Protection (Complaints Handling and Enforcement Procedures) Regulations, 2021; and The Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021. In this alert we focus on the latter and its implications to individuals and entities operating in Kenya.

The Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021 require that all public organizations, private organizations and individuals that process personal data to register with the Office of the Data Protection Commissioner (ODPC). Registration began on 14<sup>th</sup> July 2022, and entities have a six-month grace period to adhere to the registration process, which can be done through their website by clicking [here](#). The registration fees vary depending on the category of business in which the applicant falls under.

Entities must register with the ODPC in order to act as a Data Controller or Data Processor in Kenya and to ensure the upholding and safeguarding of privacy rights of persons in Kenya.

A **Data Controller** is defined as a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purpose and means of processing of Personal Data. They are responsible for the compliance of Data Processors contracted to process Personal Data on their behalf.

A **Data Processor** is a natural or legal person, public authority, agency or other body which processes Personal Data on behalf of the Data Controller. There must be a contract between the Data Processor and the Data Controller that clearly defines this relationship. The Data Processor has no decision-making power on the Personal Data that they are processing.

**Personal Data** is defined as any information relating to an identified or identifiable natural person. For example, a person's full name, identity card number, date of birth, gender, physical and postal address, phone number, location data, an online identifier.

A data controller or processor that is not resident in Kenya but processes personal data of persons resident in Kenya will also be required to register. Once the applicant has fulfilled the requirements for registration they shall be issued with a Certificate of Registration within 14 days.

The charges for registration as data controller or data processor are indicated in the schedule below:

<b>Category</b>	<b>Registration fee per Data Controller/Processor (payable Once)</b>	<b>Renewal fee per Data Controller/Processor (after every 2 years)</b>
Micro and Small Data Controllers/Processors - with between 1 and 50 employees and an annual Turnover of a maximum of Kshs. 5 Million	KShs. 4,000	KShs. 2,000

<b>Category</b>	<b>Registration fee per Data Controller/Processor (payable Once)</b>	<b>Renewal fee per Data Controller/Processor (after every 2 years)</b>
Medium Data Controllers /Processors - with between 51 and 99 employees and an annual Turnover/ Revenue of between KShs. 5,000,001 and KShs. 50,000,000	KShs. 16,000	KShs. 9,000
Large Data Controllers /Processors – with more than 99 employees and an annual Turnover/ Revenue of more than KShs. 50 Million	KShs. 40,000	KShs. 25,000
Charities and Religious entities – offering charity or religious functions (Regardless of revenue/turnover)	KShs. 4,000	KShs. 2,000

Entities can register both as a Data Controller and a Data Processor; however they will be required to pay the fees for an application as Data Controller and an application as a Data Processor.

Entities that are exempt from mandatory registration are those that have an annual turnover of less than KShs. 5 Million and have a workforce of less than 10 employees. However, there are certain categories of business which may not be exempt from registration regardless of the turnover and size of their workforce, e.g. gaming and betting operators, Provision of education, private security service providers, Health administration, Property management including the selling of land, Public sector bodies, financial services providers, Internet access providers, Debt administration and hospitality industry firms.

The ODPC has also recently published guidelines on the registration of data controllers and data handlers, which can be accessed [on their website](#). Considering the initial registration date and the timelines given for registration, we advise our clients to visit the ODPC website to determine eligibility of registration and comply with the guidelines set out.

**Disclaimer:** This SPC publication provides information and comments on tax issues and developments of interest to our clients. The above is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek specific tax advice before taking any action with respect to the matters discussed herein.