



GENERAL NOTICE NO. 6/2023

ESWATINI COMMUNICATIONS COMMISSION (DATA PROTECTION AUTHORITY) PROPOSED DECISION ON THE REGISTRATION OF DATA CONTROLLERS AND DATA PROCESSORS - INVITATION FOR WRITTEN REPRESENTATIONS

In March 2022 the Data Protection Act was passed to provide for the collection, processing, disclosure, and protection of personal information. The Act designates the Eswatini Communications Commission as the Eswatini Data Protection Authority (EDPA) charged with the mandate to administer and foster compliance to the Act. Section 5 of the Act enjoins the Commission to maintain a register of all Data controllers and Data processors.

Pursuant to this provision, the Commission shall establish a data protection register and register every organisation, business, institution, government Ministries, NGOs, public bodies, religious institutions, and any other entities who in their ordinary business are collecting or processing personal information. By registering, entities are fulfilling the Notification Requirement under Section 46 (2) (a-f) and it is a process by which the Data Controllers and Data Processors inform the Commission of the following:

- I. Who they are.
- II. The type(s) of personal data they holds.
- III. The nature of processing of personal information they engage in.
- IV. The purpose of the processing
- V. A description of the categories of data subjects
- VI. Who they share the personal information with.
- VII. Whether or not they transfer personal information outside Eswatini.
- VIII. How they ensure the protection of the personal information they collect or process; and
- IX. Who their contact person is for data protection issues (Data Protection Officer).

In terms of Section 7(8) of the Act, **“A data controller shall process personal information only upon notification to the Commission”**.

In this regard, the Commission in the exercise of its mandate as the Data protection Authority is hereby issuing a proposed decision on the registration of data controllers and data processors and invites comments from interested stakeholders.

Representations must be submitted to the Commission no later than **17h00 on 31 October 2023** by post to Eswatini Communications Commission, P.O. Box 7811 Mbabane, hand delivered or electronically to **dataprotection@esccom.org.sz**.

The proposed decision is available on the Commission’s website **www.esccom.org.sz** and **www.edpa.org.sz** and also available at the Commission’s offices on the 4th Floor, North Wing, Sibekelo Building, Mhlambanyatsi Road, Mbabane.



**ESWATINI
COMMUNICATIONS
COMMISSION**



**ESWATINI
DATA PROTECTION
AUTHORITY**

**[ESWATINI COMMUNICATIONS COMMISSION (DATA PROTECTION
AUTHORITY) PROPOSED DECISION ON THE REGISTRATION OF DATA
CONTROLLERS AND DATA PROCESSORS, 2023]**

Introduction

The Data Protection Act was passed in March 2022 to provide for the collection, processing, disclosure, and protection of personal information. The Act designates the Eswatini Communications Commission as the Eswatini Data Protection Authority (EDPA) charged with the mandate to administer and foster compliance to the Act. Section 5 of the Act enjoins the Commission to maintain a register of all Data controllers and Data processors. Pursuant to this provision, the Commission shall establish a data protection register and register every organisation, business, institution, government Ministries, NGOs, public bodies, religious institutions, and any other entities who in their ordinary business are collecting or processing personal information. By registering, Entities are fulfilling the Notification Requirement under Section 46 (2) (a-f) and it's a process by which the Data Controllers and Data Processors inform the Commission of the following:

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- IX. Who their contact person is for data protection issues (Data Protection Officer).

In terms of Section 7(8) of the Act, ***“A data controller shall process personal information only upon notification to the Commission”***.

Power to issue Decisions.

- I. This Decision is made in accordance with Section 5(1)(y) of the Data Protection Act 2022 which empowers the Commission to *“make such decisions and authorizations as may be necessary in carrying out the functions of the Commission”*.

Citation and Commencement

2. (1) This Decision may be cited as the Eswatini Data Protection Authority Decision on Registration of Data Controllers and Data Processors, 2023.

(2) This Decision shall come into force on a date to be specified by the Commission.

Scope and Purpose of the Decision

3. (1) The Act provides a statutory obligation for all Entities that process Personal Data to register with the Commission. The Act further places an obligation on the Commission to maintain a register of Entities registered as either Data Controllers or Data Processors.

(2) This Decision is premised on:

- I. The Data Protection Act, 2022
- II. International best practice.

Interpretation

4. In this Decision, unless the context otherwise requires-

“Act” means the Data Protection Act, No 5. of 2022.

“Annual Turnover” refers to the total income made by an entity over a year.

“Commission” means the Eswatini Communications Commission, established by the Eswatini Communications Commission Act No. 10 of 2013.

“Data Controller” means 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.

“Data Processor” means a natural or legal person, public authority, agency or other body which processes Personal Data on behalf of the Data Controller.

“Eswatini Data Protection Authority” means the Eswatini Communications Commission

“Data Subject” means an identified or identifiable natural person who is the subject of Personal data.

“Entity” or “Entities” means a natural (individual) or legal person, public authority, agency or other body that processes (handles) Personal Data.

“Non-exempt mandatory registration Entities” means Entities that are required to register regardless of their Turnover.

“Personal data or information” means information about an identifiable individual that is recorded in any form, including without restricting the generality of the foregoing -

- (a) information relating to the race, national or ethnic origin, religion, age or marital

status of the individual;

(b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) any unique identifying number, symbol or other assigned to the individual;

(d) the address, fingerprints or blood type of the individual;

(e) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;

(f) correspondence sent to a data controller by the individual that is explicitly or implicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence; and

(g) the views or opinions of any other person about the individual.

“Processing” means any operation or sets of operations which is performed on Personal Data or on sets of Personal Data whether or not by automated means, such as:

(a) collection, recording, organisation, structuring;

(b) storage, adaptation or alteration;

(c) retrieval, consultation or use;

(d) disclosure by transmission, dissemination, or otherwise making available; or

(e) alignment or combination, restriction, erasure or destruction.

“Register of Data Controllers and Data Processors” means the list of registered Entities maintained and published by the Commission in terms of Section 5(1)(K) read together with Section 5(1)(y).

“Sensitive Personal Data” means –

(a) genetic data, data related to children, data related to offences, criminal sentences or security measure, biometric data as well as, if it is processed for what it reveals, personal information revealing racial or ethnic origin, political opinions or affiliations, religious or philosophical beliefs, affiliation, trade-union membership, gender and data concerning health or sex life; or

- (b) any personal information otherwise considered by the laws of Eswatini as presenting a major risk to the rights and interests of the data subject, in particular unlawful or arbitrary discrimination.

Types of Entities

5. (1) The Act defines two types of Entities that process Personal Data, namely: Data Controllers and Data Processors. The Act confers similar obligations upon the Data Controller and Data Processor, with only slight variations such as in instances of notification of data breaches.
- (2) An Entity can register as both a Data Controller and a Data Processor with regards to any Processing operation. Where an Entity registers as both, they will be required to pay only registration fees as a Data Controller.

Data Controllers

6. (1) The Act defines a Data Controller 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.
- (2) Data Controllers must comply and demonstrate compliance with all the data protection principles and meet all obligations under the Act and all regulatory frameworks that may be in place from time to time. Data Controllers are also responsible for the compliance of Data Processors contracted to process Personal Data on their behalf.
- (3) The Commission may take enforcement action against a Data Controller when there is a breach of its obligations. This may be occasioned by a complaint from a Data Subject, following an audit of the Data Controller or following an investigation at the Commission's own instance.
- (4) Data Controllers established or resident in Eswatini and Data Controllers outside Eswatini that process the Personal Data of individuals located in Eswatini must register with the Commission.

Checklist: Are you a Data Controller?

- You decide to collect or process the Personal Data.
- You decide what the purpose or outcome of the Processing was to be.
- You decide what Personal Data should be collected.

- You decide which individuals to collect Personal Data about.
- You obtain a commercial gain or other benefit from the Processing, except for any payment for services from another controller.
- You are Processing the Personal Data as a result of a contract between you and the Data Subject.
- The Data Subjects are your employees.
- You make decisions about the individuals concerned as part of or as a result of the Processing.
- You exercise professional judgement in the Processing of the Personal Data.
- You have a direct relationship with the Data Subjects.
- You have complete autonomy as to how the Personal Data is processed.
- You have appointed the processors to process the Personal Data on your behalf.

Data Processors

7. (1) The Act defines a Data Processor as a natural or legal person, public authority, agency or other body which processes Personal Data on behalf of the Data Controller.
- (2) There must be a contractual relationship between the Data Processor and the Data Controller that clearly defines the relationship.
- (3) The Data Processor has no decision-making power on the Personal Data that they are Processing.

Checklist: Are you a Data Processor?

- You have a contract to handle Personal Data on behalf of another Entity.
- You are following instructions from someone else regarding the Processing of Personal Data.
- You do not decide to collect Personal Data from individuals.
- You do not decide what Personal Data should be collected from individuals.

- You do not decide the lawful basis for the use of that data.
- You do not decide what purpose or purposes the data will be used for.
- You do not decide whether to disclose the data, or to whom.
- You do not decide how long to retain the data.
- You may make some decisions on how data is processed but implement these decisions under a contract with another Entity.

Registration

8. (1) No person shall act as a Data Controller or Data Processor unless registered with the Commission.
- (2) All Data Controllers and Data Processors must register unless Exempted by the Commission.
- (3) A registration certificate issued by the Commission under the Act shall be valid for a period of Three (3) years and shall be renewable annually upon payment of annual renewal fees.

Threshold for Registration

9. (1) Where a Data Controller or Data Processor processes personal information of more than Ten (10) data subjects, registration shall be mandatory.
- (2) Where a Data Controller or Data Processor processes sensitive personal information of more than Five (5) data subjects, registration shall be mandatory.

(3) Registration of Entities in the following sectors is mandatory and the Commission reserves the right to update the sectors from time to time.

Entities Processing Personal Data in the following sectors **shall register**.

- Political canvassing, or trade unions
- Crime prevention (including operation of public CCTV systems)
- Processing, handling and keeping of criminal records
- Credit Bureaus
- Travel agencies
- Advertising, marketing and public relations for others
- Pensions administration
- Provision of childcare
- Businesses that process genetic data
- Gambling
- Education (schools and institutions of higher learning)
- Health administration and provision of patient care
- Hospitality and hotel industry
- Private investigation
- Real estate / Property management (including the selling of property)
- Credit reference agencies
- Provision of financial services and advice
- Provision of Insurance services
- Businesses and employers
- Businesses that offer higher purchase
- Social security
- Telecommunications industry
- Businesses that wholly or mainly in collect debts
- Debt administration
- Vehicle hire services.
- Internet Service Providers
- Collection of tax
- Mobile money services
- Utilities companies
- State owned enterprises
- Government Ministries and departments
- NGOs
- Religious institutions
- Pharmacies
- Provision of Aviation services
- Accounting and Audit firms
- Professional bodies
- Funeral Parlors

Registration Fees

10. (1) The fees prescribed in this Decision are based on a number of considerations including:

- a) Annual Turnover for private and state-owned entities
- b) Whether your Entity is a public Entity or Government ministry
- c) Whether your organisation is a non-profit making Entity or religious institution.

Registration Fees schedule and categories

	Annual Turnover		Registration Fee	Data Protection Fee
	Exceeds	Does not Exceed		
Category A	E0	E1,000,000	E10,000	E10,000
Category B	E1,000,000	E25,000,000	E20,000	E20,000.00 + 0.015% of excess over E1,000,000
Category C	E25,000,000	E50,000,000	E30,000	E30,000.00 + 0.020% of excess over E25,000,000
Category D	E50,000,000	E75,000,000	E40,000	E40,000.00 + 0.025% of excess over E50,000,000
Category E	E75,000,000	E100,000,000	E50,000	E50,000.00 + 0.030% of excess over E75,000,000
Category F	E100,000,000	No Limit	E60,000	E60,000.00 + 0.035% of excess over E100,000,000

Government Entities

11. Government entities

Government Ministries shall register as data controllers and pay registration on behalf of their respective departments that process personal information.

Category	Registration fee in Emalangenzi per Data Controller/Processor	Annual Renewal fee in Emalangenzi per Data Controller/Processor

Government Entities - offering government services including government hospitals and clinics (Regardless of Annual Turnover)	E5,000	E5,000
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State owned Enterprises

12. All Public Enterprises within the meaning of the PEU Act, who in their line of business process personal data shall be required to register as a Data Controller or a Data Processor and pay registration fees in accordance with their annual turnover.

Schools

13. Schools process personal information and some fall within sensitive data as defined by the Act. The Ministry for Education shall be registered as data controller for schools and pay the registration fees payable by government Ministries.

Institutions of Higher education

14. *Institutions* of Higher education fall within the ambit of the Act and shall be registered as a Data Processors or Data Controllers in accordance with the annual turnover threshold.

Non-profit Entities and Religious institutions

15. (1) A standard registration fee of E500. and annual renewal fee of E500 will be payable by religious institutions.

(2) Non-profit making Data Controllers and Data Processors are Entities whose core mandate **excludes the generation of profit** and includes non-governmental organizations, charities, multi-lateral agencies or civil society organizations.

Category	Registration fee in Emalangen. per Data Controller/Process	Annual Renewal fee in Emalangen. per Data Controller/Processor
Religious institutions – servicing or offering religious functions	E500	E500

Non-Profit making data controllers and data processors including NGOs	E1000	E1000
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Change in Particulars

16. Where there is a change in any of the particulars, the Entity must, within 14 days of the date of the change, notify the Commission in writing or electronically of the nature of the change through dataprotection@esccom.org.sz

Registration Certificate

17. (1) The Commission shall issue a registration certificate to a Data Controller or a Data Processor who meets the requirements for registration within fourteen days (14) days from the date of receipt of payment.
- (2) The registration certificate will be valid for a period of Three (3) years renewable annually unless revoked or varied by the Commission.
- (3) A data Controller or Data Processor shall apply for renewal of certificate 3 months before expiry date.
- (4) An annual renewal fee shall be payable within one (1) month of issue of renewal certificate.
- (5) A Data Controller or Data Processor who fails to make an application for renewal and/or fails to pay an annual renewal fee shall cease to process personal information.

Cancellation or Variation of Registration Certificate

18. (1) The Commission may vary the certificate of registration where a data controller or data processor applies for the variation or where the Commission deems the variation necessary.
- (2) The Commission may cancel the registration certificate before its date of expiry where the registration certificate holder:
- (i) applies for the cancellation.
 - (ii) has ceased to process personal information.
 - (iii) has submitted false or misleading information.
 - (iv) fails to make application for renewal within the specified period.
 - (v) fails to pay for the annual renewal fee as stipulated.
 - (vi) fails to comply with requirements of the Act or terms and conditions specified in the certificate.

Offences

19. A Data Controller or a Data Processor who: -

- (a) processes Personal Data without registering in accordance with the Act and this Decision;
- (b) provides false or misleading information for the purpose of registration;
- (c) fails to renew a certificate of registration and continues to process Personal Data after the expiry of the certificate;

commits an Offence and shall be dealt with in accordance with the enforcement measures provided for under the Act.

Review of Decision

20. The Commission may review the Decision from time to time.

ANNEX I - practical guide on registration

I. HOW TO REGISTER AND OTHER CONSIDERATIONS (separate online registration forms available on Data Protection

Website registration: <https://edpa.org.sz>)

STEP 1: IDENTIFY IF YOU ARE A DATA CONTROLLER OR DATA PROCESSER (OR BOTH)

If you are a both a Data Controller and a Data Processor, you will be required to register only as a Data Controller

STEP 2: PROVIDE BASIC INFORMATION

- Provide details of your Entity in the registration form
- Provide contact details of the appointed data protection Office. This could be a Data Protection Officer that acts for many Entities, including a group of companies; or a Data Protection Officer that acts only for your Entity.
- If you have not appointed a Data Protection Officer, you can provide a contact person of an individual the Commission can liaise with.

STEP 3: IDENTIFY THE CLASSES AND CATEGORIES PERSONAL DATA PROCESSED

- For 'description of Personal Data', you should provide only the kinds/ types of Personal Data you process. For example, if an organization collects names and identification numbers of clients, you should write only the **classes of information** processed, which are "names" and "ID numbers". **Do not write the actual names and telephone numbers of all your clients.**
- For 'category of Data Subjects', you should list the categories of individuals which relate to the list of data that you have stated. For example, employees, customers, patients, shareholders, directors, suppliers, students, participants are categories of individuals.
- For 'purpose of Processing', you should state the reasons for the Processing. For example, payroll, invoicing, patient care, know your client, due diligence, etc.

STEP 4: LIST THE SENSITIVE PERSONAL DATA PROCESSED

- Please tick the box applicable or not applicable.
- If applicable, state the purposes for which you are Processing the relevant sensitive Personal Data.
- If not applicable, please proceed to the next step.

STEP 5: TRANSFER OF PERSONAL DATA OUTSIDE ESWATINI

- If you transfer Personal Data outside Eswatini, list all the countries where your Entity transfers or will transfer Personal Data to. (Also fill in the Transfer Data Form)

- If not applicable, please proceed to the next step.

STEP 6: RISKS AND SAFEGUARDS FOR PROTECTION OF PERSONAL DATA

- You should list the risk(s) to Personal Data, for example, unauthorized access, unlawful disclosure, theft amongst others.
- You should also describe the safeguards and security measures in place to protect the Personal Data. For example, physical access control, fine grained access control, visitors' logbook, privacy notice, information security policy (firewall, antivirus amongst others), email policy amongst others.

STEP 7: PAYMENT OF REGISTRATION FEE

- Upon completion of the registration process an invoice will be issued for payment of the registration fees.
- Payment shall be made by:
 - i. EFT

STEP 8: REGISTRATION CERTIFICATE

- The Commission shall issue a registration certificate to an applicant for registration as a Data Controller or a Data Processor who meets the requirements for registration within fourteen days (14) days from the date of receipt of payment.
- The registration certificate will be valid for a period of (3) years renewable annually unless revoked or varied by the Commission.