

# LEGAL ALERT

## CONSTITUTION OF THE OFFICE OF THE DATA PROTECTION COMMISSIONER ON THE HORIZON



**DATA PROTECTION**

### Introduction

On 9 June 2023, the Zambia National Broadcasting Corporation, the national news broadcaster, issued a press release announcing the appointment of Mr. Likando Lyuwa as Data Protection Commissioner (“**Commissioner**”) under the Data Protection Act No. 3 of 2021 (the “**DPA**”). Following this announcement, we await appointment of the two Deputy Data Protection Commissioners and other staff as may be necessary for the performance of the functions of the office of the Commissioner.

### What this means

Once the office of the Commissioner is fully constituted, various provisions in the DPA which required the intervention of the Commissioner to be operationalized and enforceable will take effect. Below is a summary of some of these provisions.

### Key provisions

#### **Registration of data controllers and data processors**

Persons who meet the criteria for registration as data controllers (i.e., a person who, either alone or jointly with other persons, controls and is responsible for keeping and using personal data on a computer, or in structured manual files, and requests, collects, collates, processes or stores personal data from or in respect of a data subject) and data processors (i.e., a person, or a private or public body that processes personal data for and on behalf of and under the instruction of a data controller) will be required to apply to the Commissioner for registration as such.

#### **Exemption from registration and power to forbear**

The Commissioner has discretion, by way of declaration, to exempt persons for a limited or unlimited amount of time from holding a certificate of registration.

The Commissioner may also forbear from applying to a data controller any provisions relating to registration where the Commissioner considers that forbearance is consistent with the objects of the DPA. Where the Commissioner decides to forbear from applying any provision, a notice of forbearance must immediately be published in the Government Gazette, setting out the details of, and the reasons for, the decision.

#### **Licensing of data auditors**

Persons intending to carry out the functions of data auditors will be required to register as such with the Commissioner. Some functions of a data auditor include the following:

- (a) promote adherence to principles of data protection by controllers and processors of data;
- (b) ensure that data controllers and data processors implement adequate policies and procedures to regulate the processing of personal data;
- (c) enhance public and stakeholder awareness of data protection principles and rights; and

(d) check that data controllers implement adequate safeguards to prevent data leaks and data breaches from data controllers and data processors.

### **Appointment of data protection officers**

Data controllers and data processors are required to appoint a data protection officer following guidelines to be issued by the Commissioner in that respect.

### **Notification of security breach**

Data controllers are required to notify the Commissioner within 24 hours of any security breach affecting personal data processed.

### **Notification**

Data controllers or data processors are required to notify the Commissioner of any third-party agreement that allows the third party to trade on the profile of a data subject.

### **Cross-border transfer of personal data**

The DPA requires data controllers to process and store personal data on servers or data centres located in Zambia. However, such data may equally be transferred and stored outside Zambia where the following conditions are met:

(a) the data subject has consented and the transfer is made subject to standard contracts or intragroup schemes that have been approved by the Commissioner; or

(b) the data subject has consented and the Minister of Technology and Science has prescribed that transfers outside Zambia are permissible; or

(c) the Commissioner approves a particular transfer or set of transfers as permissible due to a situation of necessity.

Following appointment of the Commissioner, the foregoing entails that, before any data can be transferred and/or stored outside Zambia, a data controller would need to ensure that, in addition to the consent of the data subject, such transfer is being made pursuant to a standard contract or an intragroup scheme that has been approved by the Commissioner. Where a transfer is required due to a situation of necessity, such transfer is not automatic but equally subject to the approval of the Commissioner.

### **Auditing of data controller**

The DPA empowers the Commissioner on an annual basis, to audit the policies of data controllers and the conduct of processing personal data.

### **Conclusion**

We await to see the office of the Commissioner fully functional and engaging the office on various compliance issues under the Act. We further anticipate that following appointment of the Commissioner, he may issue a code of conduct or guidelines which will aid data controllers in ensuring compliance with some of the obligations listed above.

We hope you found this alert useful. Please contact our Corporate Advisory Partner and Associate, Jacqueline Jhala at [JJhala@corpus.co.zm](mailto:JJhala@corpus.co.zm) and Coleen Namuyamba at [CNamuyamba@corpus.co.zm](mailto:CNamuyamba@corpus.co.zm) respectively, if you have any questions relating to the appointment of the Data Protection Commissioner.

#### **Jacqueline Jhala**

Partner  
Corporate Advisory Department  
Corpus Legal Practitioners  
Email: [JJhala@corpus.co.zm](mailto:JJhala@corpus.co.zm)  
Tel: +2602 11 372300 / 01 / 04



#### **Coleen Namuyamba**

Associate  
Corporate Advisory Department  
Corpus Legal Practitioners  
Email: [CNamuyamba@corpus.co.zm](mailto:CNamuyamba@corpus.co.zm)  
Tel: +2602 11 372300 / 01 / 04



*This alert contains general information and should not be construed as legal advice or opinion or as a substitute for the advice of counsel. Stay Updated.*

Follow us:



[www.corpus.co.zm](http://www.corpus.co.zm)



Corpus Legal Practitioners



@corpus\_legal