

THE DATA PROTECTION BILL : THE ROLE OF A DATA PROCESSOR

Last week, we distinguished between a data processor, data controller and data subjects. We learnt that the data processor is someone who handles personal data on behalf of a data controller. While data controllers determine the purpose and means of processing, data processors handle data on behalf of the controller. However, data processors are not merely passive entities—they have legally binding obligations under the Bill. This week, we shift our focus to the responsibilities of data processors, especially in light of contractual requirements and the recording of processing activities.

Key Responsibilities of Data Processors

1. Contractual Obligations

A data processor must operate under a contract or law that binds it to the data controller. This contract must specify the following:

- Scope and duration of processing
- Nature and purpose of processing
- Categories of personal data and data subjects involved
- Obligations and rights of the data controller

The contract ensures that the processor only processes personal data under the explicit instructions of the controller, unless legal obligations under Section 50 apply.

2. Engaging Sub-Processors

A data processor cannot engage another processor without the prior written consent of the data controller. If they do, the initial processor remains fully liable for ensuring the sub-processor's compliance with the data protection obligations.

3. Standard Contractual Clauses

The Bill allows the Data Protection Commission to develop standard contractual clauses that data controllers and processors can adopt. These clauses ensure that data processing activities remain compliant with the law. When adopted, these clauses provide a straightforward way to ensure legal compliance while mitigating risks associated with complex or custom contracts.

4. Maintaining Records of Processing Activities

Data processors must keep detailed records, including:

- **Contact details** of the processor, controller, and representatives.
- **Categories of processing activities** carried out.
- **Technical and organizational measures** implemented for data security.

These records must be in writing and available to the Data Protection Commission upon request. Small enterprises with fewer than 250 employees are exempt unless they process high-risk or sensitive personal data.

5. Assisting the Data Controller

Processors are required to assist controllers in meeting their obligations, such as data security measures, handling data subject requests, and conducting impact assessments. They must also delete or return personal data after processing, as directed by the controller.

6. Cooperation with the Data Protection Commission

The Bill mandates that data processors must cooperate with the Data Protection Commission when requested. This could involve providing records, offering

offering clarification on data processing activities, or undergoing audits to ensure compliance with the law.

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If you have interest in an in-depth discussion on this subject matter or any Data Protection issues, feel free to contact us at info@gobhozalegalpractice.co.bw Tel: 3116371

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