

# **Impact of Data Protection Act 2019 on dotKE Registry**

# BACKGROUND DATA PROTECTION ACT 2019

## Aim?

- create an institutional framework and legal guidelines for the processing of personal data in Kenya or personal data belonging to Kenyans

## How?

- Gives effect to the right to privacy
- Sets out the procedures and obligations for data controllers and data processors in the processing and handling personal data
- Enumerates the rights of data subjects

## Governed by

- Constitution of Kenya, 2010
- Data Protection Act, 2019
- Kenya Information and Communication Act CAP 411A
- Laws of Kenya and Regulations

# LINKAGE TO GDPR

Follows the May 2018 European Union's **General Data Protection Regulation** (Regulation (EU)2016/679):

harmonization privacy and data protection laws across the European Union.

GDPR controls the processing and storage of personal data belonging to data subjects who are in the European Union

- by a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.
- where the processing activities are related to:
  - the offering of good or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
  - the monitoring of their behavior as far as their behavior takes place within the Union

# OTHER REGULATIONS IN KENYA

To govern the collection, storage, use of personal data (prior to the Data Protection Act, 2019):

The Constitution of Kenya, 2010;

The Access to Information Act No. 31 of 2016 (the "AIA");

The Kenya Information and Communications (Registration of Sim-Cards) Regulations, 2015

The National Payment System Act No. 39 of 2011 ("NPSA") and its subsidiary regulations.

# BREAKDOWN OF TERMINOLOGIES

## **Personal data**

any information relating to an identified or unidentifiable natural person;

## **Data controller**

a natural or legal person, public authority, agency or other body which, or jointly with others, determines the purpose and means of processing of personal data;

## **Data processor**

a natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller;

## **Data subject**

an identified or identifiable natural person who is the subject of personal data;

## **Sensitive personal data**

revealing the natural person's race, health status, ethnic social origin, conscience, belief, genetic data, biometric data, property details, marital status, family details including names of the person's children, parents, spouse or spouses, sex or the sexual orientation of the data subject.

# IMPLICATIONS TO THE REGISTRY

KeNIC collects and processes personal data belonging to domain owners/ applicants through third parties (Registrars) .



KeNIC stores, uses and may sometimes be required to share the collected personal data.

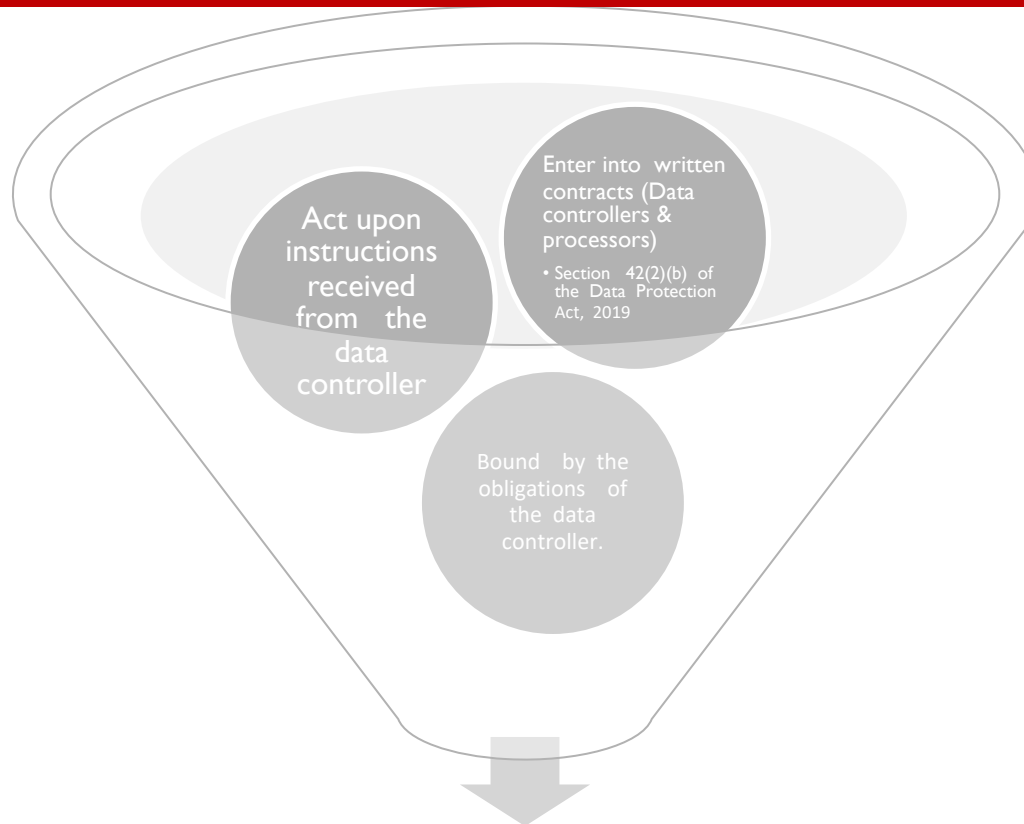
As such, depending on each context, KeNIC may be considered as a data processor and / or a data controller.

Annual fee applies!

- Turnovers: > USD 5,000
- Employees: > 10

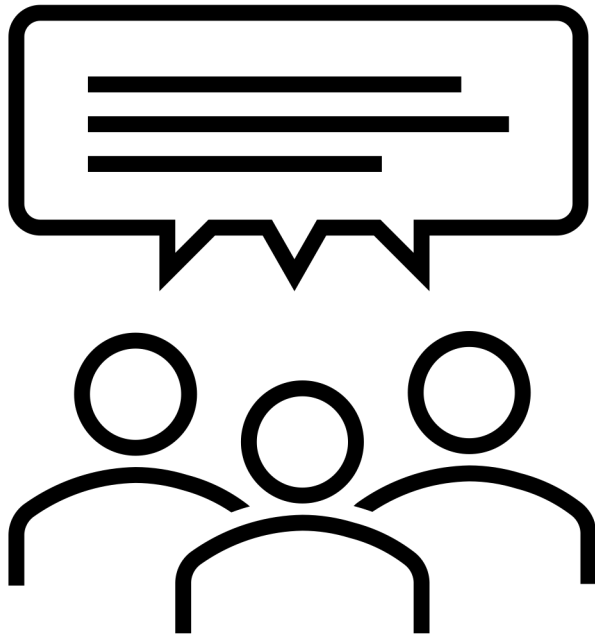
Also applies to registrars who are under the same conditions of business

## IMPLICATIONS Cont.



KeNIC to formalize and regularize its engagement with the Registrars in compliance with the Data Protection laws, since registrars will be collecting data on behalf of KeNIC

## IMPLICATIONS Cont.



Transparency about use of personal data, when obtaining the consent (Regulation 4 | Data Protection Regulations 2021)

- Nature?
- Scope?
- Reasons?
- Shared with third parties?



# ACTIONS TO THE REGISTRY

KeNIC required to **revise its guidelines, application forms and policies**

- to make sure the registrars abide by the principles of meaningful user consent before processing personal data from data subjects.

How?

- **reducing automation** especially on the online platforms;
- **limiting collection of personal data** to specific purposes and to use data for only the intended purposes;
- **minimizing personal data collection** to only necessary information and putting up mechanisms to secure collected data to avoid leakage of personal data.

## NOTE!

- processing of personal data outside the ambit of the Data Protection Act will attract sanctions.
- Guidelines needed for sharing personal data with third parties

# ACTIONS TO THE REGISTRY

- KeNIC to put in place measures to ensure that it is compliant with the Data Protection laws.
  - E.g. tweaking policies
  - relating to all departments where personal data is collected, held, accessed or hosted.
- KeNIC to review the engagements with the Registrars as data processors
  - to ensure safeguard measures are implemented and to guarantee data integrity.

# POINTS TO NOTE

Since:

- the Data Protection Act is substantively informed by the GDPR
- the extra-territorial applicability of the GDPR

Therefore, entities and persons handling personal data to ensure:

- **Requests for Consents** are clear and distinguishable and are provided in a clear, easily accessible form, using clear and plain language;
- They do not re-use or disclose personal information for purposes that do not link back to its original intended purpose and to be transparent with individuals about how their data will be used, under a lawful basis;
- Take steps to ensure that personal information is **kept secure and backed up** and technical security measures implemented;
- Personal Data must only be kept **for as long as it is needed**;
- Personal data should **be accurate**. In cases where it is not, corrections must be made. Individuals have the right to update any of their personal information that is incorrect; and
- The collection and storage of any data must **be kept at a minimal**; collecting only what is adequate and relevant for the intended purpose.

**THANKS**  
**DANKIE**  
**GRACIAS**  
**BEDANKT**  
**SHUKRAN**  
谢谢  
**TAK**  
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