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LEGAL AND COMPLIANCE DYNAMICS: DATA PROTECTION ACT & THE GOOD GOVERNANCE GUIDELINES

Executive Summary

Clean me, trust me, and your future is clear

What am I?

Answer: DATA

In this session you will learn the following

- The data protection Act
  - Purpose
  - Some definitions
  - The role of a Trustee under the Act
  - The dont's under the Act
  - Recent case law

Definition

"data" means information which—

(a) is processed by means of equipment operating automatically in response to instructions given for that purpose.

Definition

"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.

Definition

- **“Data processor"** means
- A natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller.

- **“Data subject"** means
- An identified or identifiable natural person who is the subject of personal data.

Executive Summary

- Data protection is a fiduciary duty, not optional compliance
- Trustees are legally accountable as data controllers
- Regulatory enforcement is increasing in kenya
- Failure exposes institutions to financial & reputational risk

The Role of a Trustee under the Data Protection Act

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1. Oversight of Data Processing
2. Data Responsibility and Governance
3. Data Security and Risk Management
4. Member Rights and Transparency
5. Confidentiality and Record Keeping

Why This Matters

- Data breaches = loss of trust + liability
- ODPC actively enforcing compliance
- Governance failures attract penalties and litigation

Legal & Regulatory Framework

- Article 31of the Constitution – Constitutional right to privacy
- Data Protection Act, 2019
- Data Protection (General) Regulations, 2021

Trustees as Data Controllers

- Determine purpose & means of processing
- Ultimate accountability for data governance
- Responsible for compliance and breaches

Risk Exposure (High Impact Areas)

- Unlawful processing (No consent)
- Unauthorized publication of personal data
- Weak IT and security systems
- Third-party (processor) failures

Case Law Insight: Omwenga v CJ's

- Unsolicited marketing messages sent without consent
- ODPC: unlawful processing
- Award: KES 75,000

Case Law Insight: Muema v Think Twice

- Minor's images used without parental consent
- Serious breach of child data protection
- Award: KES 700,000

Case Law Insight: Ocholla v NSSF

- Video published without consent
- Processor acted outside instructions → liable
- Award: KES 450,000

Governance Best Practice

- Strong board oversight and accountability
- Clear policies and code of conduct
- Independent audit and risk committees

Board Compliance Checklist

- ✓ Lawful basis for all data processing
- ✓ Consent obtained before publication
- ✓ Data minimization enforced
- ✓ Security controls implemented
- ✓ Third-party compliance monitored

Technology & Data Security

- Secure systems and restricted access
- Data breach response plans
- Continuous monitoring and audits

Final Takeaway

- Protecting data protects institutional trust
- Compliance is a leadership responsibility
- Failure is costly—financially and reputationally

GOOD GOVERNANCE GUIDELINES

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1. Board Structure and Governance
2. Member Rights and Participation
3. Service Providers and Scheme Administration
4. Risk Management, Audit, and Internal Controls
5. Technology and Information Management
6. Transparency and Disclosure

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8. Corporate Citizenship

Trustees are responsible for ensuring ethical, lawful, socially responsible operations and may adopt ESG-based investment

QUOTE


It takes less time
to do things right
than to explain why
you did it wrong.
~Henry Wadsworth Longfellow

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