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Draft: **Data Protection (Registration and Fees) Rules,
2022**

(Subject to Change)

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**DATA PROTECTION (REGISTRATION AND ANNUAL
FEES) RULES, 2022**

Government Notice No.: of 2022

[DATA PROTECTION ACT, 2022]

(Cap.[74:05])

DATA PROTECTION (REGISTRATION AND ANNUAL FEES) RULES, 2022

under ss 12, 37 and 38

IN EXERCISE of the powers conferred by sections 12, 37 and 38 of the [Data Protection Act, 2022], the Authority makes the following Rules —

- Citation **1.** These Rules may be cited as the Data Protection (Registration and Annual Fees) Rules, 2022.
- Interpretation **2.** In these Rules, unless the context otherwise requires—
“annual registration period” means each 12-month beginning (a) on date of submission of a registration to the Authority by a data controller or data processor of major importance or (b) on the anniversary of such date;
“register” means the register of duly registered data controllers or data processors of major importance maintained by the Authority in accordance with section 37(4) of the Act.
- Scope of rules **3.** These rules provide the procedures for data controllers and data processors of major importance to register with the Authority, calculate the amount of annual fees due, and make payment to the Authority.
- Registration requirement **4.** A data controller or data processor is only required to register with the Authority as a data processor of major importance if it meets all of the following requirements:
(a) it is a data controller or a data processor;
(b) it is domiciled, ordinarily resident, or ordinarily operating in Malawi; and
(c) it is currently processing or intends to process within the next 12 months personal data of more than 10,000 data subjects who are within Malawi.

5. (1) Each data controller or data processor of major importance shall complete and submit the registration form prescribed in Schedule 1 through any electronic submission system provided by the Authority, or in the absence of which by email to an address that the Authority shall publish on its website.

(2) The data controller or data processor of major importance shall certify that the information provided in the registration submission is true and complete.

(3) If the data controller or data processor of major importance is not a natural person, the Secretary or another duly authorized officer of the data controller or data processor shall make the required certification on its behalf.

6. (1) Subject to subrule (2), a data controller or data processor of major importance shall pay an annual fee to the Authority in accordance with rule 7(1) within the first 90 days after its initial registration and each anniversary thereof. Payment shall be made in advance to cover the upcoming registration period.

(2) A data controller or data processor of major importance is exempt from paying annual fees (but not from registration requirements) if it is a ministry, department, or agency of the Government or a statutory body.

(3) The Authority shall specify the bank account to which payment shall be made.

(4) In this rule, “agency of the Government” means a body other than a ministry, department or statutory body providing a service for the Government involving or requiring the processing of personal data.

7. (1) A data controller or data processor of major importance—

(a) with annual turnover less than or equal to [K100,000,000] for the most recent financial year shall pay an annual fee of [K50,000];

(b) with annual turnover greater than [K100,000,000] but less than or equal to [K5,000,000,000] for the most recent financial year shall pay an annual fee of [K500,000]; and

(c) with annual turnover greater than [K5,000,000,000] shall pay an annual fee of [K1,500,000].

(2) If a data controller or data processor of major importance qualifies as both a data controller and a data processor, it is not required to pay duplicative annual fees for each such qualification.

(3) The Authority may modify the annual turnover and annual fee amounts set out in subrule (1) and will post any such modifications on its website.

(4) Prior to making the modifications described in subrule (3), the Authority will comply with the procedures otherwise applicable to the making of rules, as set out in section 12 of the Act.

(5) The Authority may request that any data controller or data processor of major importance provide documentary evidence supporting its calculation of annual turnover provided as part of a registration submission or notification to the Authority of significant changes.

8. (1) Prior to the third, sixth, ninth (etc.) anniversary of its initial registration submission, a data controller or data processor of major importance shall submit a fully updated registration submission in accordance with rule 5.

(2) A data controller or data processor of major importance shall notify the Authority of any significant change to the information submitted in its most recent registration submission within 90 days after such change by providing the information required in Schedule 2 through any electronic submission system provided by the Authority, or in the absence of which by email to an address that the Authority shall publish on its website.

(3) Any increase or reduction in the annual fees due as a result from a significant change notified to the Authority shall take effect in the subsequent annual period.

(4) If a data controller or data processor no longer qualifies as a data controller or data processor of major importance, it may request removal from the register by providing the information required in Schedule 3 through any electronic submission system provided by the Authority, or in the absence of which by email to an address that the Authority shall publish on its website.

(5) Upon notification of removal from the register by the Authority, a former data controller or data processor of major importance will not be responsible for payment of further annual fees but shall remain responsible for payment of any outstanding annual fees from the then current and any prior annual registration periods.

(6) A former data controller or data processor of major importance will not be eligible for a refund of any portion of the annual fees paid for the annual registration period in which it was removed from the register.

9. The Authority shall publish on its website the register of data controllers and data processors of major importance that have duly registered with it and shall update the register at least every three months.

Ongoing registration requirements, updates and removal from the register

Publication of the register

SCHEDULE 1 – Registration Form

Name and address of registrant (or name and address of any representative)	
Date of initial registration	
Indicate whether the registrant is a data controller, data processor or both	Data controller <input type="checkbox"/> Data processor <input type="checkbox"/>
Explain the basis for the determination above	
Indicate if the registrant is claiming exemption from payment of annual fees	Claiming exemption <input type="checkbox"/>
Explain the basis for the exemption claim above	
If no exemption applies, provide annual turnover for the most recent financial year and indicate the corresponding amount of annual fees to be paid	
Describe the category of data subjects to which the personal data relate. Examples could include, without limitation, employees, customers, members, shareholders, directors, suppliers, students and participants	
Provide the approximate number of data subjects whose personal data is processed	

<p>Describe the type(s) of personal data processed. Examples could include, without limitation, contact information, date of birth, age, sex, address, religion, ethnicity, health condition, transactions, memberships, subscriptions, online browsing history, social media content, inferences, profiling data</p>	
<p>Describe the purposes for which the personal data are processed. Examples could include without limitation payroll, invoicing, know-your-customer, due diligence, membership management, attendance, examination</p>	
<p>Indicate categories of recipients to whom the data controller or data processor intends or is likely to disclose the personal data</p>	
<p>Provide the name and address (or name and address of any representative) of any data processor that will process personal data directly or indirectly on behalf of the registrant</p>	
<p>Describe in general terms the risks, safeguards, security measures and mechanisms the registrant has established to protect the personal data</p>	
<p>Indicate if the data controller or data processor intends that the personal data will be transferred outside Malawi</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>

Indicate any country to which the data controller or data processor intends, directly or indirectly, that the personal data will be transferred	
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Certification (by Secretary or another duly authorized officer of the data controller or data processor, if the registrant is not a natural person):

I hereby certify that, to the best of my knowledge, the provided information is true and accurate.

First name:

Middle name/initial:

Surname:

Title:

Date:

Signature:

SCHEDULE 2 – Updates to Registration Form

	<u>Information provided in last full registration submission</u>	<u>Please indicate in this column any significant change to the information submitted in the last full registration submission.</u>
<u>Name and address of registrant (or name and address of any representative)</u>		
<u>Date of initial registration</u>		
<u>Indicate whether the registrant is a data controller, data processor or both</u>	<u>Data controller</u> <input type="checkbox"/> <u>Data processor</u> <input type="checkbox"/>	
<u>Explain the basis for the determination above</u>		
<u>Indicate if the registrant is claiming exemption from payment of annual fees</u>	<u>Claiming exemption</u> <input type="checkbox"/>	
<u>Explain the basis for the exemption claim above</u>		
<u>If no exemption applies, provide annual turnover for the most recent financial year and indicate the corresponding amount of annual fees to be paid</u>		

<p><u>Describe the category of data subjects to which the personal data relate. Examples could include, without limitation, employees, customers, members, shareholders, directors, suppliers, students and participants</u></p>		
<p><u>Provide the approximate number of data subjects whose personal data is processed</u></p>		
<p><u>Describe the type(s) of personal data processed. Examples could include, without limitation, contact information, date of birth, age, sex, address, religion, ethnicity, health condition, transactions, memberships, subscriptions, online browsing history, social media content, inferences, profiling data</u></p>		
<p><u>Describe the purposes for which the personal data are processed. Examples could include without limitation payroll, invoicing, know-your-customer, due diligence, membership management, attendance, examination</u></p>		

<p><u>Indicate categories of recipients to whom the data controller or data processor intends or is likely to disclose the personal data</u></p>		
<p><u>Provide the name and address (or name and address of any representative) of any data processor that will process personal data directly or indirectly on behalf of the registrant</u></p>		
<p><u>Describe in general terms the risks, safeguards, security measures and mechanisms the registrant has established to protect the personal data</u></p>		
<p><u>Indicate if the data controller or data processor intends that the personal data will be transferred outside Malawi</u></p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	
<p><u>Indicate any country to which the data controller or data processor intends, directly or indirectly, that the personal data will be transferred</u></p>		
<p><u>If applicable, indicate any change to the annual fees due and the basis for such change</u></p>		

<p>Indicate any significant change to the information submitted in the last full registration submission</p>	
<p>If applicable, indicate any change to the annual fees due and the basis for such change</p>	

Certification (by Secretary or another duly authorized officer of the data controller or data processor, if the registrant is not a natural person):

I hereby certify that, to the best of my knowledge, the provided information is true and accurate.

First name:

Middle name/initial:

Surname:

Title:

Date:

Signature:

SCHEDULE 3 – Request for Removal from Register

<u>Name and address of registrant (or name and address of any representative)</u>	
<u>Date of initial registration</u>	
Explain why registration is no longer required	

Certification (by Secretary or other duly authorized officers of the data controller or data processor, if registrant is not a natural person):

I hereby certify that, to the best of my knowledge, the provided information is true and accurate.

First name:

Middle name/initial:

Surname:

Title:

Date:

Signature: