

- (ii) for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another person;
- (iii) for any matter of public interest;
- (iv) for the establishment, exercise or defence of a legal claim;
- (v) in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent; or
- (vi) for the purpose of compelling legitimate interests pursued by the data controller or data processor which are not overridden by the interests, rights and freedoms of the data subjects.

**49. Safeguards prior to transfer of personal data out of Kenya**

(1) The processing of sensitive personal data out of Kenya shall only be effected upon obtaining consent of a data subject and on obtaining confirmation of appropriate safeguards.

(2) The Data Commissioner may request a person who transfers data to another country to demonstrate the effectiveness of the security safeguards or the existence of compelling legitimate interests.

(3) The Data Commissioner may, in order to protect the rights and fundamental freedoms of data subjects, prohibit, suspend or subject the transfer to such

**50. Processing through a data server or data centre in Kenya**

The Cabinet Secretary may prescribe, based on grounds of strategic interests of the state or protection of revenue, certain nature of processing that shall only be effected through a server or a data centre located in Kenya.

**PART VI – TRANSFER OF PERSONAL DATA OUTSIDE KENYA**

**48. Conditions for transfer out of Kenya**

A data controller or data processor may transfer personal data to another country only where—

- (a) the data controller or data processor has given proof to the Data Commissioner on the appropriate safeguards with respect to the security and protection of the personal data;
- (b) the data controller or data processor has given proof to the Data Commissioner of the appropriate safeguards with respect to the security and protection of personal data, and the appropriate safeguards including jurisdictions with commensurate data protection laws;
- (c) the transfer is necessary—
  - (i) for the performance of a contract between the data subject and the data controller or data processor or implementation of pre-contractual measures taken at the data subject's request;