



OFFICE OF THE DATA PROTECTION COMMISSIONER

When replying, please quote

Ref: ODPC/DPC/CON/5 VOL II (17)

Britam Towers

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NAIROBI

Email: compliance@odpc.go.ke

2nd July 2025

Ian Olwana

Group Data Protection Officer

ROAM

Westend Towers, 6th Floor

NAIROBI.

By email: iano@roam.africa

Dear Ian,

RE: GUIDANCE ON CROSS-BORDER TRANSFER COMPLIANCE

Reference is made to your email dated 5th June 2025, requesting guidance on the cross-border transfer compliance. The Office of the Data Protection Commissioner ("the Office") has considered your request and it provides the following advice pursuant to the Data Protection Act, 2019 ("the Act") and the Data Protection (General) Regulations, 2021 ("the Regulations").

According to Regulation 40 of the General Regulations, consent is recognised as one of the lawful bases for cross-border transfers of personal data. However, relying solely on consent does not exempt the receiving country from its broader obligation to ensure an adequate level of data protection. This is particularly important where transfers are ongoing, large-scale, or involve sensitive personal data.

An organisation may conduct an internal adequacy assessment as part of its due diligence. This involves reviewing the legal and regulatory framework of the destination

jurisdiction. While helpful in informing decision-making, such internal assessments are not, on their own, sufficient where the Office has not issued an adequacy determination.

In such cases, a Transfer Impact Assessment (TIA) is mandatory. The TIA should assess:

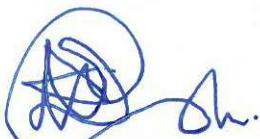
- i) The legal, technical, and organisational safeguards in place in the receiving jurisdiction;
- ii) The nature, scope, and sensitivity of the personal data;
- iii) The potential risks to data subjects, and
- iv) The enforceability of data subject rights in that jurisdiction.

Where the organisation relies on mechanisms such as consent or contractual safeguards (e.g., standard contractual clauses or binding corporate rules), the TIA becomes a crucial risk-based compliance tool.

In summary:

- i) An internal adequacy assessment can form part of an organisation's due diligence process. However, in the absence of an adequacy determination by the Data Commissioner, such an assessment alone does not meet the requirements under the Regulations.
- ii) A formal Transfer Impact Assessment (TIA) is required unless an adequacy determination has been issued by the Office. The TIA must be submitted to the Office for review.
- iii) All assessments and supporting documentation should be retained for compliance and audit purposes and transfer records maintained for scrutiny by the Data Commissioner upon request as per Regulation 41(2) of the General Regulations.

In the event that you require further assistance or guidance on this matter, please do not hesitate to contact our Office by email through compliance@odpc.go.ke.



John Walubengo, CISA, CDPSE, OGW
For: DATA COMMISSIONER

