

Advice to Management Companies (MCs) on Registration

1. Kindly be informed that with the entry into force of the Data Protection (Fees) Regulations 2020, registration as a processor is now possible.
2. The following sections 3(5), 3(6) and 3(7) of the Data Protection Act 2017 (DPA) applies depending on the specific cases and read as follows:

“3 (5) Subject to section 44, this Act shall apply to a controller or processor who –

- a. is established in Mauritius and processes personal data in the context of that establishment; and*
- b. is not established in Mauritius but uses equipment in Mauritius for processing personal data, other than for the purpose of transit through Mauritius.”*

“3(6) Every controller or processor referred to in subsection (5)(b) shall nominate a representative established in Mauritius.”

“3(7) For the purpose of subsection (5)(a), any person who –

- a. is ordinarily resident in Mauritius; or*
- b. carries out data processing operations through an office, branch or agency in Mauritius,*
shall be treated as being established in Mauritius.”

3. Definitions

- a. A controller is a person who or an organisation which, **alone** or **jointly** with others (emphasis added) determines the purposes and means of the processing of personal data and has decision making power with respect to the processing.

Therefore, if a company/organisation decides ‘why’ and ‘how’ the personal data should be processed it is a controller.

Note: *All public and private organisations, sociétés, partnerships, professionals such as doctors, lawyers, engineers, architects, notaries and sole traders such as jewellers, bookmakers and any other organisations processing or keeping personal data of living individuals, are required to register themselves as a controller with the Data Protection Office. The list is non-exhaustive.*

- b. A processor is a person who, or an organisation which, processes personal data **on behalf of a controller** (emphasis added).

The processor is usually a third party external to the company.

Note:

A processor has no decision making power on the personal data that he is processing. An example of a processor is a company that prepares the payroll of the employees of other companies (controllers) and performs all the functions of payroll as defined in the contract between the processor and the controllers. If some of your departments are processing the personal data of customers or employees for example packing, printing, embroidery, transport, payroll amongst others, these departments are not to be considered as processors as they form part of the controller (i.e. your organisation).

The duties of the processor towards the controller must be specified in a contract. For example, the contract must indicate what happens to the personal data once the contract is terminated. A typical activity of processors is offering IT solutions, including cloud storage.

4. Should a Management Company (MC) register as a controller or processor or both?

- a. MC must register as a controller when it decides 'why' and 'how' the personal data are processed i.e. when it falls within the definition of a controller as provided above.

For example, a MC is a controller when it is processing personal data of its own employees, shareholders, directors amongst others.

- b. MC must register as a processor when it is acting on behalf of a controller (e.g.clients) and has no decision-making power on the personal data.

For example: When the MC is undertaking transactions or any processing on behalf of its clients/managed entities.

5. Should all managed entities/GBCs register separately?

The GBC/managed entity will need to register separately when it determines the purposes and means of the processing and has any decision-making power with respect to the processing of personal data.

Note: If any of those entities determine the purposes and means of the processing of personal data and has decision making power **jointly** with the MC/Company Secretary/Administrator, then those entities will need to register **separately**.

Scenario 1: The GBC operates independently and the management company is merely acting as company secretary.

If the GBC makes a decision with regard to the purposes for which and in the manner in which any personal data (employees or non-employees) are, or are to be, processed, then the GBC is a controller and must register.

In addition, if a single commercial operation is being carried out by the global business entity in Mauritius then it is assumed that personal data are not centralised and the global business entity should thus be registered separately

If the MC acting as company secretary processes personal data on behalf of the GBC, then the MC will have to register as a processor.

Scenario 2: A management company administering a GBC. The GBC has employees and/or office in Mauritius.

Same answer as scenario 1 above.

6. When, can a management company register as a controller on behalf of the managed entities/GBCs register separately?

As per sections 3 (5) (b) and 3 (6) of the DPA and when the MC

- (i) solely determines the purposes and means of the processing of personal data of the managed entities/GBCs and has the decision making power with respect to their processing; and
- (ii) takes all the 'Legal responsibilities' under the DPA as controller of the managed entities' activities, in relation to personal information of individuals under its control; and
- (iii) where the personal data collected for and on behalf of the managed entities/GBCs are centralised at the MC,

then the MC can act as a controller on behalf of the GBC.

If this is the case, the MC is required to clearly indicate the above by way of letter at the time of registration or by way of a subsequent letter should registration have already been effected and list all relevant details as required in the registration form for controllers.

A list of managed entities for which the management company is acting as a controller should be provided to this office.

Example: A management company is administering a GBC. The MC has decision making power with regard to the processing of the personal data and all the data are centralised at the MC. The GBC does not have an office or employee.

The principles at point 6 will apply and therefore, the MC can act as a controller on behalf of the GBC.

7. For Authorised company incorporated in Mauritius who is processing any personal data in Mauritius, sections 3(5)(a) and 3(7) of the DPA will apply. The Authorised company will need to abide by the DPA and register accordingly with this office.

For example, when an authorised company is established in Mauritius but does not process personal data in the context of that establishment and does not have an office in Mauritius then point 6 above applies.

8. Management companies will thus need to determine whether in their context, they are acting as controller or processor (processing personal data on behalf of their clients i.e. GBCs, authorised companies, domestic companies amongst others) and then register accordingly.