

# Corporate solutions for personal data processing

Personal data protection generates a large number of difficulties in the day-to-day activity of service centres. This results from the complicated processes surrounding the processing of personal data in international corporations and the unique nature of the BPO/SSC industry, but also from the restrictive requirements of Polish law regarding personal data.

## Corporate solutions regarding personal data processing vs. Polish law.

A common problem affecting large international service centres is the absence of regulation addressing the processing of personal data in their Polish subsidiaries. The lack of solutions and documents required under Polish regulations, particularly under the Personal Data Protection Act of 29 August 1997 ("PDPA") and regulations issued pursuant to the Act's provisions, present a particularly vexing problem.

It is often the case that Polish service centres apply international standards of personal data protection developed by the head office of their parent corporations, unaware that from the perspective of the relevant Polish authority – the Inspector General for Personal Data Protection ("IGPDP") – these solutions are inadequate.

In spite of the existence and the use of restrictive procedures concerning personal data that are in place in a given corporation, situations can arise in which the requirements set forth under Polish law are not met, even if the corporate solutions are compliant with those effective in other EU Member States and EU law. When this is the case, it is recommended to introduce solutions foreseen under Polish regulations at the Polish centre in conjunction with solutions developed at the corporate level, particularly when the policies and documents in force at the central level ensure a higher level of protection than that provided for under Polish law.

## Primary obligations of the personal data controller set forth in Polish regulations

Every such centre processes at a minimum the personal data of its own employees, and the majority process data associated with the centre's activities (data of suppliers, clients, etc.). In its capacity as a personal data controller, a centre must adhere to the obligation to process personal data in compliance with the general regulations contained in Polish law (this includes the principles of legality, adequacy, substantive accuracy of data, limitation of time and transparency). A controller of personal data is also under a range of detailed obligations related to ensuring the safety of personal data and the obligation to register data filing systems.



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It should also be kept in mind that under Polish law entities comprising elements of a single capital group are treated as separate legal organizations, and thus as individual controllers of personal data. As a consequence, these entities are not permitted to freely transfer personal data within the corporation – there must be a clear legal basis for every such transfer, as established in PDPA. This also concerns the transfer of personal data between a Polish centre and the group's head office.

## Ensuring the security of data

In accordance with PDPA, a controller of personal data is obliged to implement technical and organizational measures ensuring the security of processed personal data adequate to threats and the category of data under protection, and in particular should protect data against being made available to unauthorized persons, against processing in violation of legal regulations, and against alteration, loss, damage or destruction.

The Personal Data Protection Act obliges controllers to maintain documentation describing the manner in which data is processed and measures taken to ensure the protection of data.

Under secondary legislation linked to PDPA, this documentation is composed of the following documents:

- a "security policy", and
- "instructions for management of computer systems used in the processing of personal data".

The content of the aforementioned documents is defined in secondary legislation under PDPA, but these provisions are imprecise and give rise to a range of doubts. Not only is the preparation of such documents a complicated procedure from the formal and legal perspective, but it also requires support from the IT department in order to capture the technical information required by the law.

Apart from developing these documents, a controller should also remember to prepare other documentation associated with processing personal data, such as a register of individuals authorized to participate in such processing and authorizations issued to those persons. It should be kept in mind that the group of individuals processing personal data may be quite large in some centres, making the management of documentation associated with authorizations for employees engaged in processing of personal data a difficult challenge.

## Registration of data filing systems

Lastly, unless a given data filing systems is covered by a statutory exemption, a shared service centre as a controller of personal data should register its data filing systems of personal data with the IGPDP. This submission should be made in cases such as data filing systems containing the personal data of clients, or - in some cases - data gathered from CCTV. However, there is no obligation to register data filing systems which contain only personal data of a controller's employees.

Adherence to obligations associated with the processing of personal data outlined in PDPA and related secondary legislation is monitored by IGPDP. If any violations are ascertained, IGPDP takes legally-defined measures pursuant to administrative procedures. Serious violations of PDPA provisions may even result in criminal liability.

Having the foregoing in mind, it is worth ensuring that appropriate procedures are developed and implemented before inspectors from the Office of IGPDP come knocking at the door. ■

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