DATA PROTECTION LAWS OF THE WORLD

Angola vs Lesotho

DLA PIPER

ANGOLA

Last modified 30 December 2021

LAW

Angola regulates data privacy and protection issues under the Data Protection Law (Law no. 22/11, 17 June 2011), the Electronic Communications and Information Society Services Law (Law no. 23/11, 20 June 2011) and the Protection of Information Systems and Networks Law (Law no. 7/17, 16 February 2017).

DEFINITIONS

Definition of personal data

The Data Protection Law defines personal data as any given information, regardless of its nature, including images and sounds related to a specific or identifiable individual.

An identifiable person is an individual directly or indirectly identified, notably, by reference to his or her identification number or to the combination of specific elements of his or her physical, physiological, mental, economic, cultural or social identity.

Definition of sensitive personal data

The Data Protection Law defines sensitive personal data as personal data related to:

- Philosophical or political beliefs
- Political affiliations or trade union membership
- Religion
- Private life
- Racial or ethnic origin
- Health or sex life (including genetic data)

LESOTHO

Last modified 20 December 2021

LAW

The right to privacy is recognized and protected under the Constitution of the Kingdom of Lesotho.

Lesotho has established a Data Protection Act, 2013 (the DP Act). The DP Act provides principles for the regulation of the processing of any personal information in order to protect and reconcile the fundamental and competing values of personal information privacy.

DEFINITIONS

Definition of personal data

The DP Act defines personal data or information as being information about an identifiable individual that is recorded in any form, including:

- Information relating to the race, national or ethnic origin, religion, age or marital status of the individual
- Information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved
- Any identifying number, symbol or other particular assigned to the individual
- The address, fingerprints or blood type of the individual
- The name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual
- Correspondence sent to a data controller by the individual that is explicitly or implicitly of a private or confidential nature, and replies to such

correspondence that would reveal the contents of the original correspondence

- The views or opinions of any other person about the individual

Definition of sensitive personal data

The DP Act defines sensitive personal information as any of the following:

- Genetic data, data related to children, data related to offenses, criminal sentences or security measure, biometric data as well as, if they are processed for what they reveal, personal information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, affiliation, trade-union membership, gender and data concerning health or sex life
- Any personal information otherwise considered by Lesotho law as presenting a major risk to the rights and interests of the data subject, in particular unlawful or arbitrary discrimination.

Section 29 prohibits a data controller from processing sensitive personal information, unless specifically permitted under the DP Act.

Section 36 contains general exemptions to the prohibition on processing sensitive personal information. These include instances where:

- Processing is carried out with prior parental consent where the data subject is a child and is subject to parental control in terms of the law
- The processing is necessary for the establishment, exercise or defense of a right or obligation in law
- Processing is necessary to comply with an obligation of international public law
- The Commission has granted authority in terms of section 37 for processing in the public interest, and appropriate guarantees have been put in place in law to protect the data subject’s privacy
- Processing is carried out with the consent of the data subject
- The information has deliberately been made public by the data subject

NATIONAL DATA PROTECTION AUTHORITY

The Data Protection Law establishes the *Agência de Proteção de Dados* (APD) as Angola’s data protection authority. APD’s Organic Statute was stablished by the Presidential Decree 214/2016 of October 10, and it’s board currently in office was nominated by the Presidential Decree 277/2019 September 6.

REGISTRATION

As provided by Law, entities shall provide prior notice to, or obtain prior authorization from, APD (depending on the type of personal data and purpose of processing) to process personal data. Please note that in the case of authorization, compliance with specific legal conditions is mandatory. APD has authority to exempt certain processing from notification requirements.

Generally, notification and authorization requests should include the following:

- The name and address of the controller and of its representative (if applicable)
- The purposes of the processing
- A description of the data subject categories and the personal data related to those categories
- The recipients or under which categories of recipient to whom the personal data may be communicated and respective conditions
- Details of any third party entities responsible for the processing
- The possible combinations of personal data
- The duration of personal data retention
- The process and conditions for data subjects to exercise their rights
- Any predicted transfers of personal data to third countries
- A general description (to allow APD to assess whether security measures adopted are suitable to protect personal data in its processing)

DATA PROTECTION OFFICERS

There is no requirement to appoint a data protection officer.

NATIONAL DATA PROTECTION AUTHORITY

The Data Protection Commission (Commission).

Part 2 of the DP Act provides for the establishment of a Data Protection Commission, an independent and administrative authority established to have oversight and control over the DP Act and the respective rights of information privacy.

The powers and duties of the Commission are set out in section 8 of the DP Act.

REGISTRATION

The DP Act (section 25(5)) requires that a data controller process personal information only upon notification to the Commission.

DATA PROTECTION OFFICERS

The DP Act (section 58) authorizes the head of a data controller to designate, by order, one or more officers or employees to be Data Protection Officers of that

COLLECTION & PROCESSING

Generally, entities must obtain prior express consent from data subjects and provide prior notice to the APD to lawfully collect and process personal data. However, data subject consent is not required in certain circumstances provided by law.

To lawfully collect and process sensitive personal data, a legal provision must allow for processing and entities must obtain prior authorization from APD (please note that the authorization may only be granted in specific cases provided by law). If sensitive personal data processing results from a legal provision, APD must be provided with notice.

All data processing must follow these general principles: transparency, legality, good faith, proportionality, truthfulness and respect to private life as well as to legal and constitutional guarantees.

It is also mandatory that data processing is limited to the purpose for which the data is collected and that personal data is not held for longer than is necessary for that purpose.

There are specific rules applicable to the processing of personal data related to the following:

- Sensitive data on health and sexual life
- Illicit activities, crimes and administrative offenses
- Solvency and credit data
- Video surveillance and other electronic means of control
- Advertising by email
- Advertising by electronic means (direct marketing)
- Call recording

Specific rules for the processing of personal data within the public sector also apply.

controller. In terms of that order, the Data Protection Officers may exercise, discharge or perform any of the power, duties or functions of the head of the data controller under this Act.

COLLECTION & PROCESSING

The DP Act defines processing as an operation or activity or any set of operations, whether or not by automatic means relating to any of the following:

- The collection, receipt, recording, organization, collation, storage, updating or modification, retrieval, alteration, consultation or use
- Dissemination by means of transmission, distribution or making available in any other form
- Merging, linking, as well as blocking, degradation, erasure, or destruction, of information

Under the DP Act (section 15(2)), personal information may only be processed where one of the following applies:

- The data subject provides explicit consent to the processing
- Processing is necessary for the conclusion or performance of a contract to which the data subject is a party
- Processing is necessary for compliance with a legal obligation to which the data controller is subject
- Processing is necessary to protect the legitimate interests of the data subject
- Processing is necessary for the proper performance of public law duty by a public body
- Processing is necessary for pursuing the legitimate interests of the data controller or of a third party to whom the information is supplied

Regarding the collection of data, the DP Act requires that a person shall collect personal information directly from the data subject, except where:

- The information is contained in a public record or has deliberately been made public by the data subject
- The data subject has consented to the collection of the information from another source
- Collection of the information from another

source would not prejudice a legitimate interest of the data subject

- Collection of the information from another source is necessary:
    - To avoid prejudice to the maintenance or enforcement of the law and order
    - For the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated
    - In the legitimate interests of national security
    - To maintain the legitimate interests of the data controller or of a third party to whom the information is supplied
- Compliance would prejudice a lawful purpose of the collection
- Compliance is not reasonably practicable in the circumstances of the particular case

TRANSFER

International transfers of personal data to countries with an adequate level of protection require prior notification to the APD. An adequate level of protection is understood as a level of protection equal to the Angolan Data Protection Law. APD decides which countries ensure an adequate level of protection by issuing an opinion to this respect.

International transfers of personal data to countries that do not ensure an adequate level of protection are subject to prior authorization from the APD, which will only be granted if specific requirements are met. For transfers between companies in the same group, the requirement of an adequate level of protection may be reached through the adoption of harmonized and mandatory internal rules on data protection and privacy.

Please note that the communication of personal data to a recipient, a third party or a subcontracted entity is subject to specific legal conditions and requirements.

TRANSFER

The DP Act distinguishes between the transfer of personal information to a recipient in a Member State of the South African Development Community (SADC) that has transposed the SADC data protection requirements and the transfer of personal information to a Member state that has not transposed the SADC data protection requirements or to a non-Member State.

Personal information shall only be transferred to recipients in a Member State that has transposed the SADC data protection requirements:

- Where the recipient establishes that the data is necessary for the performance of a task carried out in the public interest or pursuant to the lawful functions of a data controller, or
- Where the recipient establishes the necessity of having the data transferred and there is no reason to assume that the data subject's legitimate interests might be prejudiced by the transfer or the processing in the Member State

Further to the above, the DP Act requires that the controller make a provisional evaluation of the necessity for the transfer of the data. The recipient shall ensure that the necessity for the transfer of the data can be

SECURITY

Data controllers must implement appropriate technical and organizational measures and adopt adequate security levels to protect personal data from accidental or unlawful total or partial destruction, accidental loss, total or partial alteration, unauthorized disclosure or access (in particular where the processing involves the transmission of data over a network) and against all other unlawful forms of processing.

Such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, relative to the entities facilities and implementation costs. Specific security measures shall be adopted regarding certain type of personal data and purposes (notably, sensitive data, call recording and video surveillance).

Under the Protection of Information Systems and Networks Law, service providers, operators and companies offering information society services must: (i) guarantee the security of any device or set of devices used in the storage, processing, recovery or transmission of computer data on execution of a computer program and (ii) promote the registration of users as well as the implementation of technical measures in order to anticipate, detect and respond to risk situations. The Law requires an accident and incident management plan in case of a computer emergency.

subsequently verified. The data controller shall ensure that the recipient shall process the personal information only for the purposes for which they were transferred.

Personal information may only be transferred to recipients, not SADC Member States subject to national law adopted pursuant to the SADC data protection requirements, if an adequate level of protection is ensured in the country of the recipient and the data is transferred solely to permit processing otherwise authorized to be undertaken by the controller.

The adequacy of the level of protection afforded by the relevant third country in question shall be assessed in the light of all the circumstances surrounding the relevant data transfer(s), particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing, the recipient’s country, the relevant laws in force in the third country and the professional rules and security measures which are complied with in that recipient’s country.

SECURITY

The DP Act regulates security measures on integrity of personal information processed by a data controller and security measures regarding information processed by an agent.

The DP Act (section 20) gives the data controller the duty to secure the integrity of personal information in its possession by taking appropriate measures to prevent the loss, damage to or unauthorised destruction of personal information and prevent the unlawful access to or processing of personal information. In order to give effect to this, the data controller should take the following reasonable measures:

- Identify all reasonably foreseeable internal and external risks to personal information in its possession or under its control;
- Establish and maintain appropriate safeguards against the identified risks;
- Regularly verify that the safeguards are effectively implemented; and
- Ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

The DP Act (section 21) states that any personal information processed by an agent should only be done with the knowledge and authorization of the data controller. Secondly the personal information should be

BREACH NOTIFICATION

There is no mandatory breach notification requirement under the Data Protection Law.

However, pursuant to the Electronic Communications and Information Society Services Law, companies offering electronic communications services accessible to the public shall, without undue delay, notify the APD and the Electronic Communications Authority, *Instituto Angolano das Comunicações*, (INACOM) of any breach of security committed with intent or that recklessly leads to destruction, loss, partial or total modification or non-authorized access to personal data transmitted, stored, retained or in any way processed under the offer of electronic communications services.

Companies offering electronic communications services accessible to the public shall also keep an accurate register of data breaches, indicating the concrete facts and consequences of each breach and the measures put in place to repair or prevent the breach.

The same applies under Protection of Information Systems and Networks Law.

treated as confidential unless the law or the performance of their duties requires disclosure. The following security measures are in place for information processed by an agent:

- A data controller should ensure that the agent processing the personal information establishes and maintains the security measures referred to in the DP Act.
- A written contract between the data controller and agent governs the processing of personal information by the agent.
- If the agent is not domiciled or does not have its principal place of business in Lesotho, the data controller should take reasonable steps to ensure that the agent complies with the laws relating to the protection of personal information of the territory in which the agent is domiciled.

BREACH NOTIFICATION

Where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by an authorized person, the data controller, or any other third party processing personal information under the authority of a data controller, shall notify:

- The Commission, and
- The data subject, unless the identity of such data subject cannot be established

The notification shall be made as soon as reasonably possible after the discovery of the compromise, taking into account the legitimate needs of law enforcement or any measures reasonably necessary to determine the scope of the compromise and to restore the integrity of the data controller’s information system.

The data controller, in terms of section 23(3), shall delay notification to the data subject where the Lesotho Mounted Police Service, the National Security Service or the Commission determines that notification will impede a criminal investigation.

The breach notification to a data subject shall be in writing and communicated to the data subject in one of the following ways:

- Mailed to the data subject’s last known physical or postal address
- Sent by email to the data subject’s last known email address

- Placed in a prominent position on the website of the party responsible for notification
- Published in the news media
- As may be directed by the commission

The notification is required to provide sufficient information to allow the data subject to take protective measures against potential consequences of the compromise, including, if known to the data controller, the identity of the unauthorized person who may have accessed or acquired the personal information.

Mandatory breach notification

See above.

ENFORCEMENT

Data protection

As mentioned above, the competent authority for the enforcement of Data Protection Law is the APD. However, considering that the APD was recently created, the level of enforcement is not significant at this stage.

Electronic communications

INACOM regulates and monitors compliance with the Electronic Communications and Information Society Services Law, and issues penalties for its violation. Presently, INACOM’s level of enforcement is not yet significant.

ELECTRONIC MARKETING

The dissemination of electronic communications for advertising purposes is generally subject to the prior express consent of its recipient (opt-in) and to prior notification to APD.

Entities may process personal data for electronic marketing purposes without data subject consent in specific circumstances, notably:

- When advertising is addressed to the data subject as representative employee of a corporate person, and
- When advertising communications are sent to an individual with whom the product or service supplier has already concluded a transaction,

ENFORCEMENT

The Commission is responsible for the enforcement of the DP Act.

The DP Act (section 49) also permits a data subject to institute a civil action for damages in a court having jurisdiction against a data controller for breach of any provision of this Act.

ELECTRONIC MARKETING

Under section 50 of the DP Act, direct marketing is defined in as a communication by whatever means of any advertising or marketing material which is directed to particular data subjects.

A data subject is entitled any time to require the data controller to cease, or not to begin, processing of personal data in respect of which he is the data subject for the purposes of direct marketing.

provided an opportunity to refuse consent was expressly provided to the customer at the time of the transaction at no additional cost.

ONLINE PRIVACY

The Electronic Communications and Information Society Services Law establishes the right of all Citizens to enjoy protection against abuse or violations of their rights through the Internet or other electronics means, such as:

- The right to confidentiality of communications and to privacy and non-disclosure of their data
- The right to security of their information by improvement of quality, reliability and integrity of the information systems
- The right to security on the Internet, specifically for minors
- The right not to receive spam
- The right to the protection and safeguarding of their consumer rights and as users of networks or electronic communications services

In view of the above, entities are generally prohibited from storing any kind of personal data without prior consent of the user. This does not prevent technical storage or access for the sole purpose of carrying out the transmission of a communication over an e-communication network or if strictly necessary in order for the provider of an information society service to provide a service expressly requested by the subscriber or user.

Traffic data

The processing of traffic data is allowed when required for billing and payment purposes, but processing is only permitted until the end of the period during which the bill may lawfully be challenged or payment pursued. Traffic data must be eliminated or made anonymous when no longer needed for the transmission of the communication.

The storage of specific information and access to that information is only allowed on the condition that the subscriber or user has provided his or her prior consent. The consent must be based on accurate, clear and comprehensive information, namely about the type of data processed, the purposes and duration of the processing and the availability of data to third parties in order to provide value added services.

Electronic communications operators may store traffic data only to the extent required and for the time necessary to market electronic communications services

ONLINE PRIVACY

There are no sections of the DP Act which regulate privacy in relation to cookies and location data. These issues may be dealt with in future regulations, which the DP Act permits the Minister to make on the recommendations of the Commission.

or provide value added services. Prior express consent is required and such consent may be withdrawn at any time.

Processing should be limited to those employees in charge of:

- Billing or traffic management
- Customer inquiries
- Fraud detection
- Marketing of electronic communications
- Services accessible to the public
- The provision of value added services

Notwithstanding the above, electronic communication operators should keep in an autonomous file all traffic and localization data exclusively for the purpose of:

- Investigation
- Detection, or
- Prosecution of criminal offenses on Information and Communication Technologies (ICT)

Location data

Location Data processing is only allowed if the data is made anonymous or to the extent and for the duration necessary for the provision of value added services, provided prior express consent is obtained. In this case, prior complete and accurate information must be provided on the type of data being processed, as well as the purposes and duration of processing and any possibility of disclosure to third parties for the provision of value added services.

Electronic communication operators must ensure that data subjects have the opportunity to withdraw consent, or temporarily refuse the processing of such data for each connection to the network or for each transmission of a communication, at any time. The withdrawal mechanism must be provided through simple means, free of charge to the user. Processing should be limited to those employees in charge of electronic communications services accessible to the public.

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DATA PRIVACY TOOL

You may also be interested in our Data Privacy Scorebox to assess your organization's level of data protection maturity.

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