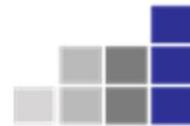




A LOOK AT DATA PROTECTION AND PRIVACY LAW IN GHANA

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Newsletter

Editor's Note

Integrated Legal Consultants (ILC) was founded in April 2007, in Accra, Ghana, to offer dedicated and innovative corporate legal services while ensuring that the Ghanaian and West African business community and our network of international clients benefit from the highest quality of corporate and commercial legal services that the Practice provides.

As part of this vision, the firm has introduced the publication of newsletters on legal and economic issues that would be of interest to clients and equally affect their transactions. This is our 19th edition.

Several countries have extensive legislation which regulate data protection and privacy in their various jurisdictions, and mandate entities who collect and process personal data of their citizens to uphold certain strict privacy related standards or risk facing penalties for breach of such privacy laws. Ghana is no exception in this regard.

In this issue, we take a look at the data protection and privacy law in Ghana, particularly some key provisions of the Data Protection Act, 2012 (Act 843) and how they apply in relation to protecting data in Ghana.

We hope you find it informative and educative. Your feedback is welcome.

Esohe Olajide
Editor

Olusola Ogundimu
Editor-In-Chief



A look at Data Protection and Privacy Law in Ghana

Introduction

The advent of several AI tools, social media websites, prevalence of electronic forms, payment, and application processing platforms online, have awakened many people to the risk of their sensitive or personal data being used unlawfully or in an unauthorized manner across the globe.

Privacy in Ghana is regulated by the 1992 Constitution of the Republic of Ghana and Acts of Parliament, including the Data Protection Act, 2012 (Act 843).

There are other laws which are sector-specific and impact data protection/privacy in Ghana. These include:

- i. The Electronic Communications Act, 2008 Act 775 as amended by the Electronic Communications (Amendment) Act, (Act 786);
- ii. The Electronic Communications Regulations, 2011 (LI 1991) ("Electronic Communications Regulations and
- iii. The Credit Reporting Act, 2007 (Act 726)
- iv. The Cybersecurity Act, 2020 (Act 1038)

The focus of this article will however be on the Data Protection Act, 2012 (Act 843).



Data Protection Act 2012 (Act 843)

The primary legislation which protects data privacy in Ghana is the Data Protection Act, 2012 (Act 843) (herein after referred to as the DPA). The purpose of the DPA is the establishment of a Data Protection Commission (DPC), which is to protect the privacy of individuals and their personal data by regulating the processing of such information, outlining the process to obtain, hold, use, or disclose personal information, defining the rights of data subjects, as well as prohibited conducts of processing data amongst others.

Section 45 of the DPA provides specifically for the scope of application of the DPA.

The section states as follows:

“(1) Except as otherwise provided, this Act applies to a data controller in respect of data where

(a) the data controller is established in this country and the data is processed in this country,

(b) the data controller is not established in this country but uses equipment or a data processor carrying on business in this country to process the data, or

(c) processing is in respect of information which originates partly or wholly from this country. “

Section 3 of Act 843 states thus:

“ For the purposes of this Act the following are to be treated as established in this country:

(a) an individual who is ordinarily resident in this country;

(b) a body incorporated under the laws of this country;

(c) a partnership, persons registered under the Registration of Business Names Act, 1962 (Act 151) and the Trustees (Incorporation) Act, 1962 (Act 106);

(d) an unincorporated joint venture or association operating in part or in whole in this country; and

(e) any person who does not fall within paragraphs (a),(b), (c) or (d) but maintains an office, branch or agency

through which business activities are carried out in this country.

(4) This Act does not apply to data which originates externally and merely transits through this country."

From the above, it can be inferred that any entity which carries on business in Ghana or is established in Ghana and processes information in Ghana would be subject to the provisions of the Act 843.

Now that we have established who is subject to the provisions of the DPA, it is important to take a look at some key definitions under the DPA.



Key Definitions

Some definitions as provided in section 96 of the DPA include the following:

"data" means information which

(a) is processed by means of equipment operating automatically in response to instructions given for that purpose,

(b) is recorded with the intention that it should be processed by means of such equipment,

(c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or

(d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record;

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"data controller" means a person who either alone, jointly with other persons or in common with other persons or as a statutory duty determines the purposes for and the manner in which personal data is processed or is to be processed; "

"data processor" in relation to personal data means any person other than an employee of the data controller who processes the data on behalf of the data controller;"

Thus, anyone processing data in Ghana, or data which originates from Ghana is required to do so in line with the provisions of the DPA.

Key Provisions

Section 19 of Act 843 provides that anyone processing the data of foreign data subjects shall ensure that the processing is done in a manner consistent with the data protection laws of the foreign jurisdiction of the subject where the personal data originating from that jurisdiction is sent to Ghana for processing.

A data controller or processor shall in respect of foreign data subjects ensure that personal data is processed in compliance with the data protection legislation of the foreign jurisdiction of that subject where personal data originating from that jurisdiction is sent to this country for processing.

Therefore, data processors and controllers have an obligation to process and handle data even of foreign subject in line with the data protection laws in the foreign jurisdiction where the data originates. The essence of this section is to ensure that data privacy is ensured irrespective of the source of the data as long as it is being processed in Ghana.

Act 843 requires a data controller to register with the DPC before processing data and failure to do so will result in a violation of section 58 which makes it an offence to process personal data without registering with the DPC. Persons who offend the provisions of section 58 are *"liable on summary conviction to a fine of not more than*

two hundred and fifty penalty units or a term of imprisonment of not more than two years or to both”.

The DPA also provides that personal data must be fairly and lawfully processed, processed for purposes which are specified, and such processing must be adequate and relevant. In addition, the DPA requires data processing should be done with the consent of the data subject, so as not to infringe on the privacy rights of the data subject, amongst other requirements. (See sections 17-20) Importantly, the DPA provides that personal data must not be transferred to countries outside Ghana unless the information is adequately protected.

The data subject must be made aware of the purpose of gathering the data and has a right to object to the gathering of his personal data.

Furthermore, section 28 places a responsibility on the data controller to take all necessary steps to secure the integrity of personal data to prevent loss, unauthorized access, or processing of data.

Section 28 states thus:

“A data controller shall take the necessary steps to secure the integrity of personal data in the possession or control of a person through the adoption of appropriate, reasonable, technical and organisational measures to prevent

- (a) loss of, damage to, or unauthorised destruction; and*
- (b) unlawful access to or unauthorised processing of personal data...”*

Exclusions

The DPA excludes certain data from being subject to the provisions of the Act. Per Section 3(4) of the DPA, where the data originates externally and is merely transiting through Ghana, it would not be subject to the provisions of this Act. Likewise, per section 67 personal data which is processed by any individual solely for the purpose of the individual’s family, personal or household affairs is excluded from the data protection principles under the DPA.

In addition, section 63 of Act 843 also exempts the application of the Act to processing of data for the protection of members of the public against loss or malpractice in the provision of banking, insurance and financial services, secure health and safety of workers, and data processed in discharge of functions conferred by an enactment of parliament or local government authority.

Section 66 exempts personal data from the provisions on non-disclosure which such disclosure is necessary by law or under an enactment, or by an order of a court. Another exemption is in respect of the subject information provisions where the application of the provisions is likely to prejudice the combat effectiveness of the Armed Forces of the Republic (see section 69). While according to section 70 personal data which is processed to assess a person’s suitability for judicial office, or to confer a national honour, is also exempt from the subject information provisions of the Act.



Enforcement/ Sanctions

The DPA, in a bid to protect the privacy of citizens, provides for sanctions in the event of breaches of its provisions. For instance, section 88 prohibits the purchase obtaining or disclosure of personal data and offenders of this section shall be liable upon summary conviction to a fine of not more than two hundred and fifty penalty units or to a term of imprisonment of not more than two years or to both.

This obligation is also placed on employees of the DPC, thus per section 85, any employee of the DPC that knowingly or recklessly discloses information obtained by or provided to the DPC for the purposes of the DPA commits an offence and is liable on summary conviction to a fine of not more than two thousand five hundred penalty units or to a term of imprisonment of not more than five years or to both.

Likewise, sections 75 - 80 lay down the steps to be taken in respect of enforcement where a data controller breaches the provisions of the Act. Where the DPC is satisfied that a data controller has breached any of its data protection principles the DPC shall serve the data controller with an enforcement notice which may require the data controller to take certain steps, to refrain from take certain steps within a specified period, refrain from processing personal data for a specified period or in a specified manner or block, erase or destroy personal data.

Where a person fails to comply with an enforcement notice issued by the DPC, he commits an offence and is liable upon summary conviction to a fine of not more than one hundred and fifty penalty units or to a term of imprisonment of not more than one year or to both.

Furthermore, where a person commits an offence under the DPA in respect of which a penalty is not specified, the person is liable on summary conviction to a fine of not more than five thousand penalty units or a term of imprisonment of not more than ten years or to both.



Conclusion

It is clear from the above that the issue of data privacy and protection is taken seriously in Ghana given the extensive legal provisions in place to deal with privacy issues. The DPC as the regulator takes active steps to ensure that relevant parties comply with the provisions of the DPA and to ensure protection of personal data in Ghana. Thus, all businesses operating in Ghana, and everyone involved in processing data that originates from Ghana are advised to comply accordingly.

By Esohe Olajide
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If you require further information or assistance with respect to data protection and privacy, kindly send an email to ilc@integratedlegalconsultants.com

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