

Data protection in Mozambique: overview

Fabricia de Almeida Henriques and Mara Rupia Lopes
Henriques, Rocha & Associados

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REGULATION

Legislation

1. What national laws regulate the collection and use of personal data?

General laws

The general overarching laws which regulate the collection and use of personal data are the:

- Constitution of the Republic of Mozambique (Constitution).
- Civil Code (approved by Administrative Ordinance No 22869 of 4 September 1967).

Sectoral laws

Data protection is regulated by the following sectorial legislation:

- **Labour Law (approved by Law No 23/2007 of 1 August)**. This sets out the general principles and establishes the legal regime applicable to individual and collective relationships of subordinate work.
- **Electronic Transactions Law (approved by Law No 3/2017 of 9 January)**. This establishes the principles, general rules and legal regime for electronic transactions and electronic commerce in order to guarantee the protection and use of information and communication technologies. The Electronic Transactions Law applies to all persons and entities (whether public or private) that use information and communication technologies in their activities.

Scope of legislation

2. To whom do the laws apply?

The Constitution and Civil Code apply to every person, whether a natural or legal person, and to both public and private entities.

The data protection provisions set out in the Labour Law apply to all employers and employees.

The Electronic Transactions Law applies to all processors and controllers of personal data who apply information and communication technologies in their activities (whether public or private). The related rights are granted to all personal data subjects (for details of rights, see *Question 13*).

3. What data is regulated?

The Constitution and the Labour Law protect all information of a personal nature, with special relevance to data relating to political, philosophical and ideological convictions, religious faith, party or trade union membership and private life.

The Civil Code broadly provides for the protection of all privacy.

The Electronic Transactions Law defines personal data as "any information relating to a natural person that can be identified directly or indirectly by reference to an identification number or to one or more specific factors".

There is not a specific definition of sensitive information.

4. What acts are regulated?

Regulated acts include the registry, collection, treatment, processing, disclosure, access and transfer of personal data.

5. What is the jurisdictional scope of the rules?

The jurisdictional scope of the data protection rules is the Mozambique civil jurisdictional courts.

6. What are the main exemptions (if any)?

The provisions relating to personal data protection in the Electronic Transactions Law do not apply to the electronic processing, collection or disclosure of personal data for the purposes of journalism, artistic or literary expression or, when decided by the competent authorities, for the safeguarding of public security and national defence.

Notification

7. Is notification or registration required before processing data?

There are no mandatory notification or registration requirements before processing data.

MAIN DATA PROTECTION RULES AND PRINCIPLES

Main obligations and processing requirements

8. What are the main obligations imposed on data controllers to ensure data is processed properly?

In general, data controllers are prohibited from using computerised means for the recording and processing of individually identifiable data relating to:

- Political, philosophical or ideological beliefs.
- Religious belief.
- Party or trade union affiliation.
- Private life.

Both the access to files and computer records or databases for the knowledge of personal data relating to third parties and the transfer of personal data from one computer file belonging to different departments or institutions is also prohibited, unless specifically allowed by law or court order.

Under the Labour Law, personal data of an employee obtained by the employer that is subject to confidentiality (as well as any information whose disclosure would violate the privacy of the latter) cannot be provided to third parties without the consent of the employee, unless there are sufficient legal reasons.

Under the Electronic Transactions Law, any collection, processing or electronic disclosure of personal data by a data controller must be accurate, complete and up-to-date, without prejudice to its confidentiality.

Data controllers must specify:

- The objectives for which the personal data is being collected.
- The identity of the data processor.
- That the collected data is to be used in accordance with the limited stated objectives.

Where personal data is not collected directly from the data subject, the data processor must, upon registry, or in the event of disclosure to third parties, inform the data subject of:

- The grounds on which its personal data was collected.
- The identity of the data processor.

9. Is the consent of data subjects required before processing personal data?

Generally, the consent of the data subject is not required before processing personal data.

10. If consent is not given, on what other grounds (if any) can processing be justified?

Not applicable.

Special rules

11. Do special rules apply for certain types of personal data, such as sensitive data?

There are no special rules for determined types of personal data.

RIGHTS OF INDIVIDUALS

12. What information should be provided to data subjects at the point of collection of the personal data?

Under the Electronic Transactions Law, the data subjects should be informed about the following prior to collection:

- The objectives for which the personal data is being collected.
- The identity of the data processor.

13. What other specific rights are granted to data subjects?

Under the Constitution, everyone has the right to access the collected data concerning them and to rectify such data.

According to the provisions of the Electronic Transactions Law, everyone has the right to:

- Obtain confirmation from the data controller as to whether or not his/her data is being processed and information about the controller's data.
- Be communicated about in relation to his/her personal data within a reasonable time frame, on the payment of a fee.
- Obtain an adequate justification for the refusal by the controller following a request regarding the points above.
- Oppose data concerning him/her being processed and, in the event of acceptance, to later request the removal, rectification, completion or alteration of such data.

14. Do data subjects have a right to request the deletion of their data?

Data subjects have the right to request the deletion of their data under the Electronic Transactions Law.

SECURITY REQUIREMENTS

15. What security requirements are imposed in relation to personal data?

No security requirements are imposed in relation to personal data under the applicable legislation.

16. Is there a requirement to notify personal data security breaches to data subjects or the national regulator?

There are no notification requirements for personal data security breaches.

PROCESSING BY THIRD PARTIES

17. What additional requirements (if any) apply where a third party processes the data on behalf of the data controller?

There are no additional requirements for processing by third parties.

ELECTRONIC COMMUNICATIONS

18. Under what conditions can data controllers store cookies or equivalent devices on the data subject's terminal equipment?

Mozambican law does not regulate the storing of cookies or equivalent.

19. What requirements are imposed on the sending of unsolicited electronic commercial communications (spam)?

The use of automated call systems without human intervention, such as automatic machines, fax machines or electronic mail, for the purposes of direct marketing, can only occur with the prior consent of the subscribers.

Generally, the transmission or promotion of unsolicited communications for direct marketing purposes by electronic mail (spam) is prohibited, unless the sender of the electronic mail

notifies the recipient in advance and obtains their consent. However, a person can send or promote the sending of electronic mail for the purpose of direct marketing when:

- The person has obtained the contact details of the recipient during the sale or negotiations for the sale of a product or service to the recipient.
- The direct marketing is in relation to products or services that are similar to those already sold to the recipient.
- When the data was originally collected, the recipient was offered the option to object to the use of his contact details for the purposes of such direct marketing and the recipient did not object.
- The recipient has not objected to the use of his data in any subsequent communication.

The receiver of spam must be provided with a data message containing the following information regarding:

- The option to unsubscribe from the mailing list.
- The details of the identity of the source from which the consumer's personal information was obtained.

The following are prohibited in relation to spam messages:

- The sending of data messages for the purposes of direct marketing which cover or conceal the identity of the sender in the representation of the communication made.
- The sending of data messages for the purposes of direct marketing which do not have a valid address to which the recipient can send a request for termination of the communication.

Anyone who communicates by data messages for direct marketing purposes should consult regularly and respect the negative option records, through which the person who does not wish to receive the commercial communication in question can register.

INTERNATIONAL TRANSFER OF DATA

Transfer of data outside the jurisdiction

20. What rules regulate the transfer of data outside your jurisdiction?

Mozambican law does not regulate the transfer of data outside the jurisdiction.

21. Is there a requirement to store any type of personal data inside the jurisdiction?

There is no requirement to store personal data inside the jurisdiction.

Data transfer agreements

22. Are data transfer agreements contemplated or in use? Have any standard forms or precedents been approved by national authorities?

Mozambican law does not contemplate data transfer agreements and such agreements are not in use.

23. Is a data transfer agreement sufficient to legitimise transfer, or must additional requirements (such as the need to obtain consent) be satisfied?

Mozambican law does not regulate the transfer of data outside the jurisdiction.

24. Does the relevant national regulator need to approve the data transfer agreement?

Mozambican law does not regulate the transfer of data outside the jurisdiction.

ENFORCEMENT AND SANCTIONS

25. What are the enforcement powers of the national regulator?

There is currently no national data protection regulator in the Mozambican jurisdiction.

26. What are the sanctions and remedies for non-compliance with data protection laws?

Non-compliance with the data protection provisions set out in the Labour Law is punishable by a fine of three to ten minimum wages on the relevant economic sector for each worker concerned. If the non-compliance relates to various workers, the fine is five to ten minimum wages.

Under the Electronic Transactions Law, non-compliance with the data protection provisions is punishable by a fine of 30 to 90 minimum wages on the public service sector.

However, please note that the data protection provisions are not actively enforced.

REGULATOR DETAILS

There is presently no national data protection regulator in the Mozambican jurisdiction.

ONLINE RESOURCES

LEGISPALOP

W www.legis-palop.org/bd/Home.aspx/IndexLogout?ReturnUrl=/bd/Legislacao.aspx/Search

Description. Unofficial website, but up-to-date. This site provides up to date Mozambican legislation but no translations are available.

ACIS Mozambique

W www.acismoz.com/?_target_=translations

Description. Unofficial website. ACIS is a Mozambican non-profit business association, representing over 400 companies throughout Mozambique. This site provided unofficial translations of the applicable legislation.

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Fabrícia de Almeida Henriques, Founding and Managing Partner

Henriques, Rocha & Associados

T +00258 213 440 00

F +00258 213 440 99

E fahenriques@hrlegalcircle.com

W www.hrlegalcircle.com



Mara Rupia Lopes

Henriques, Rocha & Associados

T +00258 213 440 00

F +00258 213 440 99

E mrlopes@hrlegalcircle.com

W www.hrlegalcircle.com

Professional qualifications. Mozambique, 1997

Areas of practice. Corporate and commercial (including commercial law, mergers, acquisitions and joint ventures); capital markets; energy; PPPs.

Non-professional qualifications. Law Degree, Law Faculty of the University of Lisbon, 1997; Postgraduate Studies in Internet and Intellectual Property Law, Law Faculty of the University of Lisbon, 2001; Master's Degree in Civil Law, Law Faculty of the University of Lisbon, 2007

Languages. Portuguese, English, Spanish and Italian

Professional associations/memberships. Mozambique Bar Association, admitted in 2011.

Publications

- *Getting the Deal Through: Vertical Agreements 2017 – Law Business Research.*
- *Africa Guide Competition Law 2017 - Bookbinder Business Law.*
- *Benchmarking PPP Procurement 2017 Report - World Bank Group.*
- *Getting the Deal Through: Merger Control Mozambique 2017 – Law Business Research.*
- *LEGAL ALERT // Energy and Infrastructure Business Opportunity Electrifi Round 1- Call for Applications.*
- *Getting the Deal Through: Vertical Agreements Mozambique 2016 - Law Business Research.*
- *The African and Middle Eastern Antitrust Mozambique Review 2016 - Law Business Research.*

Professional qualifications. Mozambique, Trainee, 2014

Areas of practice. Administrative and public procurement

Non-professional qualifications. Law Degree, Faculdade de Direito da Universidade de Lisboa, 2014; Attends the Master in Law, Faculdade de Direito da Universidade de Lisboa.

Languages. Portuguese and English

Professional associations/memberships. Preparing for admission to the Mozambican Bar Association.