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LAW ON THE ORGANIZATION AND OPERATION OF THE NATIONAL AGENCY FOR THE PROTECTION OF PERSONAL DATA

Sao Tome and Principe – Law 7/2017, of 6 April 2017

The Personal Data Protection Law (Law 3/2016, of 10 May 2016) enshrines a principle of protection of private life and determines in which circumstances the processing of personal data is permitted. Law 7/2017, of 6 April 2017 sets up an independent body tasked with regulating, monitoring and controlling all transactions involving personal data of individuals – The National Agency for the Protection of Personal Data (ANPDP) to enforce the provisions in the Personal Data Protection Law. The ANPDP is an independent administrative entity operating at national level under the National Assembly and vested with authority powers. The ANPDP is the national authority tasked with controlling and supervising compliance with legal provisions on personal data protection, in strict observance of human rights and the liberties and guarantees enshrined in the Constitution and the law.

This new entity has **broad** powers:

- Investigation and enquiry powers, and it may access the data being processed and collect all information required to perform its control duties;
- Authority powers, notably powers to order blocking, erasure or destruction of data, as well as the powers to prohibit the processing of personal data on a temporary or permanent basis, even if included in open data transfer networks from servers located in the National Territory; and
- The power to issue opinions prior to the processing of personal data, ensuring their disclosure.

As for ANPDP's **responsibilities**, the following are noteworthy:

- Issue opinions on legal provisions and legal instruments being prepared by international institutions on the processing of personal data;
- Authorize or register, as applicable, any processing of personal data;
- Authorize, on an exceptional basis, the use of personal data for non-key objectives of collection, in compliance with the principles defined in the Personal Data Protection Law;
- Authorize interconnection of automated processing of personal data;
- Authorize the transfer of personal data;
- Set the timings for maintaining personal data in accordance with their purpose, and it may issue directives for certain economic sectors;

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- Ensure (i) the right to access the information, and (ii) the right to rectification and update;
- Authorize the setting of costs or periodicity for the exercise of the right of access, and the maximum deadlines for compliance with the obligations imposed on controllers within each economic sector;
- Follow up on any request submitted by any person or association representing it for the protection of the person's rights and liberties as regards the processing of personal data, and keep the person informed of the outcome;
- Verify at the request of any person the lawfulness of any data processing, where the processing is subject to restricted access or information and inform the person that the verification took place;
- Assess complaints, claims or petitions by private parties;
- Represent the country before any international bodies of independent personal data protection control entities, and attend international meetings within the scope of its powers;
- Resolve on the assessment of administrative fines;
- Promote and assess codes of conduct; and
- Promote the dissemination and clarification of the rights regarding personal data protection and periodically disclose its activities, namely by publishing an annual report.

ANPDP's decisions are binding, but may be challenged and appealed against before the Courts.

As for the **appointment** and **term of office** of ANPDP members, the agency is made up of three members of recognized standing and merit, who are elected for a term of five years by a two-third majority of the MPs in attendance at the relevant National Assembly session, if that is more than the absolute majority of the acting MPs. Terms of office may only be renewed once.

The ANPDP **operates** on a continuous basis, with ordinary and extraordinary meetings. Extraordinary meetings of the ANPDP may only be convened upon the initiative of the chairman or at the request of two of its members. ANPDP's resolutions must be passed by a majority of the members in attendance, and the chairman has casting vote where necessary. At any rate, the ANPDP can only convene and pass resolutions with the presence of at least two members.

Although the documents addressed to the ANPDP and subsequent procedures are not subject to any special **formalities**, the ANPDP may approve physical or electronic templates or forms to allow for a better investigation of opinion and authorization requests and of personal data processing notices. In addition, authorization requests and notices submitted to the ANPDP must always be signed by the controller or its legal representative.

According to the complexity of the request and/or the service provided, the ANPDP may charge **fees**:

- For the registration of the notices; and
- For any authorizations granted.

Upon the entry into force of Law 7/2017, of 6 April 2017, and through the setup of the ANPDP, Sao Tome and Principe will be endowed with fundamental mechanisms for the protection of personal data, an issue that has become increasingly pressing at sector, national, regional and international level.

VdA Legal Partners has a team dedicated to the provision of consulting services in the field of Privacy, Data Protection and Cybersecurity, with broad experience in all jurisdictions comprising VdA Legal Partners.