

Data Sharing and Cross border Data transfers- Options and Solutions

A person is standing on a stone pier that extends into the ocean. The sky is a mix of light blue and orange, suggesting a sunset or sunrise. The water is calm with some small waves. The person is wearing a dark shirt and shorts.

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2016 Data Protection Conference, Accra

29.01.2016

“ Data transfers are the
life blood of many
organizations and the
underpinnings for all of
electronic commerce...”

Challenges of International Data Transfers

1

Economic and political asymmetry in state power

2

Lack of globally co-ordinated arrangement/effort

3

inconsistent legal regimes

4

Touches various activities: human resources, financial services, education, e-commerce, health research, Social networking,

5

increased volume of trans border data flows

6

Advances in technology mean that data can be transferred quickly and stored indefinitely

7

Increased risks

7

Cyberlibertarianism

Models of Data Protection

Sectorial

- selected market segments
- response to particular needs

Co/Self Regulatory

- Industry development of enforceable code
- can exist within the General Framework

Comprehensive/European

- governs collection, use and dissemination of personal information in the public and private sector
- usually an established office to oversee enforcement

European Law on Cross-Border Transfers

“Data transfers outside the EEA territory banned unless recipient country “ensures adequate data protection level”

- Necessary to protect fundamental rights and freedoms of EEA citizens
 - Andorra, Argentina, Canada, Faroe Islands, Guernsey, Israel, Isle of Man, Jersey, New Zealand,
 - Switzerland, Uruguay
 - European Council and Parliament empowered the commission to determine whether a 3rd country ensures adequate level of protection
- Barrier to trade and information flow because not many countries have *“adequate protections”*
 - Safe Harbour
 - Max Schrems case

Protections for Ghanaian Citizens' data transferred to other countries?

- There are no explicit standards/protections in the Act
- The Act offers more guidance for Personal data from other countries

18(2) A data controller or processor shall in respect of foreign data subjects ensure that personal data is processed in compliance with data protection legislation of the foreign jurisdiction of that subject where personal data originating from that jurisdiction is sent to this country for processing.

- Some protections may be inferred from disparate provisions but they are mostly vague and inadequate for the purposes of cross border protections:

- **Article 45 Application of the Act**

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

- **Section 47 on Registration of Data Controllers**

(g) the name or description of the country to which the applicant may transfer the data;

Scenario 1 (Outsourcing)

A leading UK insurance company wants to outsource its call centre operations to Ghana. Most, if not all, the information collected on each telephone call to obtain an insurance quote will be personal data. What must that company consider before implementing the new policy?



Scenario 2 (Multinationals)

A Ghanaian company is a subsidiary of a multinational company. As part of its new reporting obligation, the company has been asked to send copies of all of its employee records to its headquarters.

Scenario 1 (Outsourcing)

- Is the information personal data?
- What is the status of the company handling the data in Ghana?
Subsidiary or processor?
- If data processor the following must be in place:
 - Contract spelling out processor obligations
 - Privacy and Data Processing safeguards
 - Appropriate technical and organisational measures against unauthorised disclosures
- Status of Ghana... Non adequate levels... Model contracts

Scenario 2 (Multinationals)

- Is the information personal data?
- In the absence of adequate level of protection (or safe harbour in the European case), will derogations apply?
- Consent, to execute a contract, public interest grounds, legal proceedings, vital interest of Data subject
- Standard contracts (EU Approved)
- Binding Corporate Rules (BCRs)
- Approved Private Contracts

Thank You

your thoughts are
welcome

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