

30 MARCH 2020

# TECHNOLOGY, MEDIA & TELECOMMUNICATIONS ALERT

## What are some of the data protection implications of COVID-19 in South Africa?

In order to mitigate the spread of COVID-19 in South Africa, both public and private organisations will be required to implement data-sharing strategies and procedures in respect of COVID-19-related personal information. Organisations in the European Union – the current epicentre of the COVID-19 pandemic – are already in a position to implement such data-sharing strategies after having received guidance from European data protection regulators.

## What are some of the data protection implications of COVID-19 in South Africa?

In order to mitigate the spread of COVID-19 in South Africa, both public and private organisations will be required to implement data-sharing strategies and procedures in respect of COVID-19-related personal information. Organisations in the European Union – the current epicentre of the COVID-19 pandemic – are already in a position to implement such data-sharing strategies after having received guidance from European data protection regulators.

Notably, both the Information Commissioner's Office (ICO) in the United Kingdom and the Data Protection Commission (DPC) in Ireland have issued statements in order to clarify the position on data protection in the context of the COVID-19 pandemic. These statements stress that European data protection laws are not crafted to prohibit the sharing of personal information in order to protect against serious threats to public health – such as COVID-19. Accordingly, organisations to which European data protection laws apply should not restrict themselves from taking the necessary action in response to the COVID-19 pandemic, provided that they continue to comply with data protection principles – particularly those in relation to ensuring that the personal information being processed is secure (i.e. by taking reasonable technical and organisational measures to prevent such personal information from being unlawfully accessed, lost or damaged).

Similarly, South African organisations are going to be required to balance common law and constitutional rights

to privacy in the current circumstances by taking into account the provisions of the South African Protection of Personal Information Act, 2013 (POPI), which is relevant, although not yet fully in force, in regard to how they will lawfully process COVID-19-related personal information. POPIA provides for the legal basis on which personal information may be processed. The best solution is to obtain the person's consent and, given the sensitive nature of this information, to take the necessary steps to ensure that the personal information is safeguarded and kept secure, is not used for any other unrelated purpose and that it is not retained for longer than such information is required. Where it is not possible or practical to obtain consent, POPIA provides for instances of specific authorisation for the processing of health data which include that it allows for "*processing by...medical professionals, healthcare institutions or facilities or social services, if such processing is necessary for the proper treatment and care of the data subject, or for the administration of the institution or professional practice concerned*".

Other organisations who are required to process COVID-19-related personal information could also potentially rely on the general authorisation that the processing of such health-related personal information is "*necessary for the establishment, exercise or defence of a right or obligation in law*" – provided that the organisation in question can show that the processing in question took place in accordance with a specific law.

While it will generally be lawful for relevant South African organisations to carry out reasonable processing of COVID-19-related personal information in the current circumstances, considering the increased cyber security risks that are presenting themselves during the COVID-19 pandemic, organisations processing COVID-19-related personal information (e.g. of their employees) should take necessary steps to ensure that the relevant COVID-19-related personal information is kept secure and that the privacy rights of individuals impacted by the virus are protected.

CDH is a Level 1 BEE contributor – our clients will benefit by virtue of the recognition of 135% of their legal services spend with our firm for purposes of their own BEE scorecards.

## OUR TEAM

For more information about our Technology, Media & Telecommunications practice and services, please contact:



**Christoff Pienaar**  
National Practice Head  
Director  
T +27 (0)21 481 6350  
E christoff.pienaar@cdhlegal.com



**Preeti Bhagattjee**  
Director  
T +27 (0)11 562 1038  
E preeta.bhagattjee@cdhlegal.com



**Aphindile Govuza**  
Senior Associate  
T +27 (0)11 562 1090  
E aphindile.govuza@cdhlegal.com



**Fatima Ameer-Mia**  
Director  
T +27 (0)11 562 1837  
E fatima.ameermia@cdhlegal.com



**Simone Dickson**  
Director  
T +27 (0)11 562 1249  
E simone.dickson@cdhlegal.com



**Nikita Kekana**  
Associate  
T +27 (0)21 481 6334  
E nikita.kekana@cdhlegal.com



**Liam Sebanz**  
Associate  
T +27 (0)11 562 1625  
E liam.sebanz@cdhlegal.com

### BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 1 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

### JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

### CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.  
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

### STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.  
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

©2020 8757/MAR

