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## FEATURED Q&A

# Will Panama's Data Protection Law Become a Model?



Panama's data protection law took effect last month, two years after it won legislative approval. // File Photo: Imgix via Unsplash.

**Q** Panama's data privacy law took effect on March 29. The law requires processors of data to obtain their subjects' prior consent, and they must define the purpose for collection of data. Collectors of data are also required to take actions to keep data secure. What are the most significant parts of the law, and how adequate will it be to keep consumers' data secure? How do Panama's data privacy rules compare to such laws in other countries, and should legislators elsewhere use it as a model for their own data privacy efforts? What are the most important ramifications of the law for businesses in Panama?

**A** Raúl Echeberría, executive director of the Latin American Internet Association (ALAI): "Panama's data protection law closely follows the GDPR model, but it has some key provisions that deviate from it, and that might have an impact on how the law is interpreted and implemented. For instance, the law includes, besides consent, four additional bases of legitimation for the treatment of personal data, following the GDPR expansion of such legal basis. However, legitimate Interest, which is indeed included as a legal basis in the GDPR and deemed as a flexible tool that is closely related to accountability, is included in this law as an exception to consent, and not as an autonomous legal basis. With regard to the impact of Act 81 on businesses, this law has the potential to promote innovation and development in the digital economy. This now depends more on its regulation and interpretation. There is an opportunity for the national Data Protection Agency (ANTAI) and for the executive branch to include certain provisions

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Raúl Castro is expected to step down as head of Cuba's Communist Party as the party's eighth congress gets underway today. President Miguel Díaz-Canel is expected to succeed him.

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Castro // File Photo: Granma.

## POLITICAL NEWS

## Castro to Step Down as Head of Cuba's Communist Party

Raúl Castro is expected to step down as head of Cuba's Communist Party when the party convenes today to begin its eighth congress, NBC News reported. Cuban President Miguel Díaz-Canel is expected to be certified as the next party secretary and set guidelines for state policy. While Castro's departure is not expected to bring significant policy changes, the move is historic as he and his brother Fidel, who died in 2016, have been in power

“If my health permits it, I will be just one more soldier with the people defending this revolution.”

— Raúl Castro, in 2018

in Cuba since the country's 1959 revolution. Raúl Castro, who turns 90 in June, had said in 2018 that he expected that Díaz-Canel would succeed him as the party's leader when he retired in 2021. “After that,” Castro said at the time, “If my health permits it, I will be just one more soldier with the people defending this revolution,” CNN reported. This year's party congress is also taking place during the 60th anniversary of the failed U.S.-directed invasion of Cuba at the Bay of Pigs. Castro's retirement comes after Cuba's economy shrank 11 percent last year amid the Covid-19 pandemic, NBC News reported. It has also been grappling with tighter U.S. sanctions and a drop in aid from Venezuela. Additionally, while lockdowns in Cuba have kept infections and deaths below those of most other nations of the region, the country is still facing a spike in cases. Cuba also has developed five potential vaccines, with two in late-stage trials. In February, the government announced that it would open most of its economy to private businesses. That move,

along with Cuba's decision to unify its dual currencies, if they succeed, “will significantly reduce government control over the island's economy,” Vicki Huddleston, the former chief of the U.S. Interests Section in Havana, told the Advisor in a [Q&A](#) published Feb. 22.

## U.S. Reportedly Impasse With Brazil Over Deforestation

The United States is at an impasse on providing aid to Brazil to curb deforestation in the South American country, Reuters reported Thursday. Brazil's government wants money up-front to pay for protection of the Amazon, but the administration of U.S. President Joe Biden wants to see progress first, two people familiar with talks between the two governments told Reuters. In a letter to Biden dated Wednesday, Brazilian President Jair Bolsonaro pledged to end illegal deforestation in the South American country by 2030, Agence France-Presse reported. “In an unequivocal measure of support for your efforts, we wish to reaffirm our commitment to eliminate illegal deforestation in Brazil by 2030,” Bolsonaro wrote in the seven-page letter, AFP reported. “However, achieving this goal will require considerable resources,” including from “the international community, governments and the private sector,” the letter added. “Brazil deserves to be fairly compensated for the environmental services its citizens provide for the planet,” Bolsonaro said in the letter. Since February, the U.S. and Brazilian governments have held talks about soaring destruction of the Amazon under Bolsonaro. Amazon deforestation hit a 12-year high last year, according to government data. Bolsonaro is expected to take part in a high-profile U.S. Earth Day summit that begins April 22. Brazil's Foreign Ministry said the government's efforts since 2006 to fight deforestation have avoided the release of billions of tons of carbon dioxide into the air, adding that if the country had been compensated for the efforts, it would have amounted to between \$30 billion and \$40 billion. Brazil's environment minister, Ricardo Salles, has publicly asked for \$1 billion in

## NEWS BRIEFS

## Brazil's Supreme Court Confirms Annulment of Lula's Convictions

Brazil's Supreme Court on Thursday confirmed a previous decision to annul criminal convictions against former President Luiz Inácio Lula da Silva, who was sentenced and imprisoned on graft charges in 2018 and later released, Reuters reported. Justice Edson Fachin last month annulled the convictions saying the lower federal court where Lula was tried lacked jurisdiction. The ruling paves the way for Lula to potentially run in the 2022 presidential election against President Jair Bolsonaro. [Editor's note: See related [Q&A](#) in the March 17 issue of the Advisor.]

## Bolivia's Ruling MAS Party Suffers Defeats in Gubernatorial Elections

Bolivia's ruling party, the Movement for Socialism, lost every second-round gubernatorial election held on Sunday, the top electoral authority said Thursday, Agence France-Presse reported. With almost 100 percent of the ballots counted, the Supreme Electoral Tribunal said MAS candidates lost in all four of the gubernatorial runoffs, in La Paz, Chuquisaca, Pando and Tarija departments. MAS now holds just three of Bolivia's nine governorships. The other five governors were elected in a first round held earlier this year.

## Brazilian Private Equity Firm Bids \$916 Mn for Stake in Chile's SQM

Brazilian private equity firm IG4 has bid \$916 million for a stake in holding companies that have a large stake in Chilean lithium miner SQM, Reuters reported today, citing two sources familiar with the matter. If SQM shareholder Julio Ponce agrees to the proposal, IG4 would become one of SQM's largest shareholders.

foreign aid for Amazon protection. The money could potentially come from the United States and other partners. If Brazil receives that money, it could reduce deforestation by 30 percent to 40 percent within a year, Salles told O Estado de S. Paulo.

## ECONOMIC NEWS

# Colombian Gov't Sends Congress \$6.4 Bn Tax Reform

The government of Colombian President Iván Duque on Thursday formally submitted to Congress its tax reform proposal, which includes scrapping many deductions and increasing levies on individuals and businesses, Reuters reported. The \$6.4 billion tax reform, which financial markets and analysts see as crucial to maintaining Colombia's fiscal sustainability and credit rating, aims to increase tax collection by 23.4 trillion pesos (\$6.38 billion) annually, equivalent to 2 percent of GDP. The tax package would take effect next year. Opposition legislators have already slammed parts of the proposal, and it faces a difficult path to approval in Congress, Reuters reported. "It is a moderate reform if we compare it internationally," Finance Minister Alberto Carrasquilla said during a virtual presentation. He has previously warned that Colombia's fiscal sustainability in the medium term is at risk if the package is not approved. The government has forecast a fiscal deficit of about \$26 billion this year, or about 8.6 percent of GDP, in part due to increased government spending to deal with the Covid-19 pandemic and the resulting economic crisis. The government expects the economy to expand 5 percent this year. "Strong economic growth in 2021 and future years would be very important to allow Colombia to revert some of the deterioration that the pandemic caused in the government's fiscal profile," Renzo Merino, vice president and senior analyst in the Sovereign Risk Group at Moody's Investors Service, told the Advisor in a [Q&A](#) published March 16.

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in the secondary norms that can provide certainty to the companies that will act as controllers and processors. To this regard, the accountability provisions included in the law should allow those controllers and processors to choose various means of accrediting the legitimate use and adequate protection of users' personal data, without being affected by a priori restrictions on legitimate processing activities. It is best that neither the law's interpretation nor its implementation adopt a restrictive stance toward a certain technology, industry or data-processing activity, especially in this initial implementation phase. ANTAI's role will be instrumental to adequately balance the law's provisions with a practical and forward-looking execution in subjects such as international data transfers (an important pillar for international trade), automated decisions (an essential tool benefiting a wide array of industries), user rights (such as data portability) and differentiated access of minors to digital services and the informative self-management that ensues according to their maturity level, given that youth will be increasingly dependent and interested in the use of a wide array of digital services for their personal and professional development."

**A Rodrigo Noriega, columnist on legal analysis at La Prensa in Panama City:** "The protection of private data and personal information has improved under Law 81. The basic principle of the legal framework is that private data belongs to each individual citizen. Most transfers of personal data will require prior consent given by the titleholder, in this case the individual. The law exerts full jurisdiction over databases in Panama, excluding those in other jurisdictions. There are some ambiguities regarding freedom of the press, particularly in cases of 'corrections' of mistakes, errors, imprecisions or data that the owner believes are false or impertinent. The law sets up an administrative

procedure to obtain changes in the personal data managed by third parties. In the final analysis, Law 81 is a step in a right direction. Although it has shortcomings, privacy protection has improved. Major local corporations have changed, but the Panamanian government is still behind the curve. Maybe Covid-19 is liable for the situation. In 2002, Panama enacted Law 6 of transparency and access to information, which followed the U.S. FOIA model. Law 6 became a good starting point for Latin American countries; Law 81 now represents a work in progress. A better model needs to be developed to protect personal data all over the world."

**A Irvin A. Halman, president of the National Center for Competitiveness in Panama and former general administrator of**

**Panama's National Authority for Governmental Innovation:** "Panama has made significant inroads in the advancement and use of digital government and e-commerce through digital platforms. Therefore, it also needs norms to assure citizen and consumer confidence on treatment of their personal data. Although constitutional rights on data protection had already existed (a legal mandate for the Transparency and Access to Information Authority, or ANTAI, for data privacy oversight), Panama lacked a legal framework for data protection, and citizens had increasing concerns about the inappropriate use or sale of their personal data. After ample consultations initiated in 2016, Panama's executive branch submitted a bill inspired by Europe's GDPR, and Panama's Congress approved it in 2019. It took effect last month, two years after its passage, providing sufficient time for business, government and nongovernmental institutions to conform their systems and procedures to the new law, as well as for ANTAI to issue its regulations, which are pending approval by the executive branch. Law 81 establishes overarching general principles for its interpretation and application (loyalty, purpose,

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proportionality, truthfulness and accuracy, data security, transparency, confidentiality, legality and portability) as well as the ARCO rights, including portability, in Panama and in cross-border data treatment. There are exceptions, including for penal processes, national security and in regulated sectors, as long as minimum technical standards are met. The law requires businesses to communicate with subjects when data breaches occur. ANTAI has the legal capacity for overall supervision, and the sector regulators will establish specific procedures and standards to be met. The law establishes a public-private sector advisory, the Personal Data Protection Council, which the Ministry of Commerce and Industry oversees. ANTAI can impose fines, considered low when compared to legislation in other countries, that range from \$1,000 to \$10,000. The amount depends on the severity of the violation, which in very serious cases can lead to sanctions such as closure of a database or the temporary or permanent suspension of an activity."

**A** **Alejandro Valerio, associate practice leader for Latin America at FrontierView:** "Panama's data privacy law used the E.U. General Data Protection Regulation (GDPR) as a benchmark, which governs how personal data of individuals in the European Union may be processed and transferred. Panama's law is an important step to attract investment after last year's economic fallout. Good data protection legislation reassures investors about a country's rule of law, particularly for a global business hub like Panama. The most significant parts of the

law are: 1.) the broad list of rights protecting individuals' and firms' personal data; 2.) the creation of ANTAI, a centralized authority to enforce the law; and 3.) the exception the law grants to the banking sector to be regulated by the entity that supervises it. By excluding Panama's financial system, which

“**Good data protection legislation reassures investors about a country's rule of law...**”

— Alejandro Valerio

is arguably the sector most interconnected to the global economy, the new law avoids bureaucratic entanglements that could make the sector less competitive. Panama's law is perhaps the most updated in Latin America, as countries such as Argentina and Chile enacted legislation in this area two decades ago. Because most Latin American countries are trying to update their data protection laws according to GDPR guidelines, legislators elsewhere should look at Panama's law aiming to have access to the economic benefits that stem from having a robust data protection framework. The most important ramification of the law for businesses in Panama is that it will force them to be more careful about the use of personal data in order to avoid reputational damage and administrative fines."

*The Advisor welcomes comments on its Q&A section. Readers can write editor Gene Kuleta at [gkuleta@thedialogue.org](mailto:gkuleta@thedialogue.org).*

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