
Data Privacy Compliance under the Mexican Law and the GDPR.

by Carlos A. Chavez.

The protection of personal data of individuals has turned into one of the hottest topics for international watchdogs and a major concern for governments all over the world. Already acknowledged as a fundamental right by relevant statutes (in the case of Mexico, Article 16 of the Political Constitution of the United Mexican States, and for the European Union, Article 8(1) of the Charter of Fundamental Rights of the European Union), we have witnessed in the past decade how governments worldwide have further enacted numerous regulations in order to outline the scope of such right.

Mexico took the necessary steps to safeguard the privacy of personal data by enacting, in 2010, the Federal Law for the Protection of Personal Information in Possession of Individuals (*Ley Federal de Protección de Datos Personales en Posesión de Particulares* or “LFPDPPP”), swiftly followed by secondary regulations that delimit the obligations of individuals and/or entities, known as “data controllers”, that process personal data from any individual or “data owners”. With an almost exclusive local scope, data controllers operating in Mexico have had several years to adapt to the Mexican data privacy legal framework, although their full compliance is still a work in process.

Upon the entry into force of the General Data Protection Regulation (EU) 2016/679 (the “GDPR”) on May 25, 2018, these data controllers may need to review their privacy policies in order to adapt to a new legal framework that will certainly impact their business operations. Although the GDPR was enacted by the European Parliament and Council of the European Union, it holds an extraterritorial scope pursuant its Article 3, applying to the processing of personal data of data owners who are in the European Union by a data controller not established in the European Union, where the processing activities are related to the offering of goods or services.

The foregoing means that in addition to the obligations of a data controller operating in Mexico under the LFPDPPP, if such data controller processes personal data of data owners residing in the European Union in connection with the offering of goods or services, he must abide by the GDPR, too.

Although the GDPR sets forth similar rights and obligations than those detailed in the LFPDPPP, we encourage all individuals and entities processing personal data to conduct an assessment of their data flows and, accordingly, review their privacy policy statements, their security measures, their accountability, the lawfulness of the processing of the personal data under the principles set forth both in the LFPDPPP and the GDPR due to the different interpretations under those regulations (tacit consent is valid under LFPDPPP, not under the GDPR), as well as their mechanisms to ensure that the ARCO rights and other rights under the GDPR are being safeguarded, among other measures.

JATA is a Mexican law firm with offices at Monterrey, Mexico and Houston, Texas.

Legal Note.

The information contained in this report is provided for informational purposes only and should not be construed as legal advice on any subject matter. No recipients of the content of this report, clients or otherwise, should act or refrain from acting solely on the basis of any content included herein, without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue. The members of our Firm are only authorized to practice law in Mexico and this report has been prepared solely in accordance with Mexican law.

Do not hesitate to contact us at our numbers below for professional legal advice on the subject matter of this report or for any further information, comments or questions. We will be very glad to help you.

July 17, 2018.



JATA - J.A. Treviño Abogados S.A. de C.V.

www.jata.mx

Monterrey Office:
Tel. +52 (81) 8335-4200.

Houston Office:
Tel. +1 (713) 963-3677.

info@jata.mx

© 2018 J.A. Treviño Abogados S.A. de C.V., Monterrey, N.L. Mexico