

Client Communication: Personal data protection in Mexico

On January 26, 2017, the decree enacting the General Law on the Protection of Personal Data in possession of Responsible Parties (the “**Law**”) was published in the Official Federal Gazette, and it entered into force on January 27, 2017.

It is important to mention that the scope of application of the Law is at the federal, state and municipal level, with respect only to any authority, entity, agency and organization of the Executive Branch, the Legislative Branch and the Judicial Branch, as well as autonomous entities, political parties, trusts and public funds (jointly the “**Responsible Parties**”).

The Law is not applicable to unions or any other entity or individual who receives and spends public funds or carries out acts of authority at the federal, state and municipal level, which will be governed by the laws applicable to protection of personal data held by private parties.

We consider the following points particularly important to highlight: **i)** General Provisions; **ii)** Privacy Notice; **iii)** ARCO Rights; **iv)** Personal Data Communication; **v)** Liability in relation to Protection of Personal Data held by Responsible Parties; **vi)** Guarantor Organizations; and **vii)** the Challenge Procedure regarding the Protection of Personal Data held by Responsible Parties.

i) General Provisions

It is important to highlight that in terms of the Law the Responsible Parties referred to in article 1 of the Law who decide on the processing of such data will be considered “**Responsible**” for the processing of personal data. Likewise, “**Data Owner**” will be considered the individual to whom the personal data corresponds, as in the Federal Law on Protection of Personal Data in Possession of Private Parties (the “**Private Parties Law**”). The Law also refers to the National System, which will be established in accordance to the General Law for Transparency and Access to Public Information.

ii) Privacy Notice

In regard to the privacy notice, the Law requires the Responsible Party to inform the Data Owner through a privacy notice of the conditions of the processing of the personal data of the Data Owner. The types of privacy notices, their requirements, the form and the means of delivery, are similar to those mentioned in the Private Parties Law.

iii) ARCO Rights

The law grants the same Access, Rectification, Cancellation and Opposition rights to the processing of personal data as those granted by the Private Parties Law. The procedure to exercise these rights will be governed by the same principles and conditions as indicated by the Private Parties Individuals Law.

iv) Personal Data Communication

The Law does not establish any significant difference in relation to the Private Parties Law regarding the remission (communication of personal data between the Responsible Party and the processor) and the national or international transfer (communication of personal data between the Responsible Party and a third party). The same obligations are established for both the Processor, in the case that remissions take place, and for the Responsible Party, if said Party communicates any personal data to third parties.

v) Responsibility in relation to the Protection of Personal Data in Possession of Responsible Parties

This section mainly establishes the obligation of each Responsible Party to have a transparency committee, which will be composed and will function in accordance with the provisions of the General Law on Transparency and Access to Public Information and other applicable regulations. Likewise, the Responsible Party must have a transparency unit which is intended to assist Data Owners with respect to the exercise of the right to the protection of personal data, among other things.

vi)) Guarantor Organizations

It is established that Guarantor Organizations will be organizations with constitutional autonomy that are specialized in matters of access to information and protection of personal data. The National Institute for Transparency, Access to Information and Protection of Personal Data ("INAI") is considered by the Law as a Guarantor. The Guarantor Organization has the power to guarantee the right to the protection of personal data in possession of Responsible Parties.

vii) Challenge Proceedings regarding the Protection of Personal Data in possession of Responsible Parties

The Law indicates the possibility that the Data Owner or his/her representative may file a motion for review or an motion for reconsideration before the INAI or before any of the Guarantors, or before the transparency unit for cases in which the personal data are classified as confidential without complying with the characteristics indicated in the applicable laws; to declare the non-existence of personal data; when incompetence is declared by the Responsible Party, among other cases.

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Sincerely,

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Mexico City, February 14th, 2017.