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INSIGHT

15 YEARS OF DATA PROTECTION IN MACAU

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Digital era: not exactly a foreign concept to most of us. In the current society we live in, we are very dependent on (to the point of almost being addicted to) technology. Digital era is dominated by information and communication technology, and under the massive influence of the Internet. As digital technologies gain prominence in shaping and regulating human behavior and experiences, changes in traditional business have also occurred, making way to new business and organizational strategies. Under this shift of perception, personal data is now deemed as an asset, of great economic value. Personal data allows economic agents to understand the customer, gaining insight into their personalities, past experiences and purchasing habits, generating great revenue to those who have access to such data.

This newfound trend met even more adherence with the recent challenges posed by COVID-19, characterized by a renovated demand for digital means. However, the collection and processing of personal data require limitations, so as to not sacrifice any fundamental rights of the individual - and this risk is mitigated by regional, national and international laws on data protection.

The Macau Data Protection Law (Law no. 8/2005) (the “MDPL”) came into force in August of 2005, roughly 15 years ago. Between 2005 and today, the Macau Data Protection Office has carried out numerous studies and issued several guidelines, with the intent of strengthening personal data protection in the digital era.

To celebrate the International Data Protection Day, as well as to raise awareness to its increasing importance to our society, we summarize below the main features of the MDPL:

- **Personal data** – the MDPL defines ‘personal data’ as any information, of any nature and regardless of its means, including sound or image, related to an identified or identifiable individual. In other words, personal data is any data that can be linked, by any means, to a natural person. This concept is extremely important to understand what type of data falls within the scope of the law, and that merits its protection. In addition, the MDPL grants increased protection to sensitive data, understood as philosophical or political beliefs, political or union membership, religious faith, private life and racial or ethnic origin, as well as the processing of health and sexual life data, including genetic data.

- **Data Controller and Data Processor** – the MDPL distinguishes between data controller and data processor, whereas the former is the entity that determines the purposes and means of data processing, and the latter is incumbent of processing the data on behalf of the data controller. This distinction entails a division of responsibilities, where the data processor shall solely act in accordance with the data controller’s instructions. On the other hand, the data controller has the obligation to duly notify the Macau Data Protection Office, in respect to any new collection or processing of data, as well as to request for its authorization in certain cases.
- **Legitimacy to collect and process personal data** – the MDPL foresees the several manners under which data collection and processing are legitimate: data subject’s consent, compliance with contractual and/or legal obligations, protection of data subject’s vital interests, enforcement of a mission of public interest, pursuit of legitimate interests of the data controller or third parties. Moreover, in what concerns sensitive data, the MDPL establishes that its collection and processing are only legitimate provided that the data subject has given its express consent, or it was authorized by public authorities, among other procedures of legitimization.
- **Data Subject’s rights** – the rights of the data subject are expressly foreseen in the MDPL, such as the right to information, right to access, right to opposition, right to compensation (in the event of breach) and right to safety of personal data.
- **Enforcement** – generally, the breach to the duties foreseen in the MDPL may translate into an administrative offense, punishable by fine between MOP\$ 2,000 and MOP\$ 100,000, depending on the type of infraction, the responsible person and the seriousness of the offense. In some cases, the offense may be deemed as of criminal nature, and will therefore result in a punishment of imprisonment or fine, depending on the type of crime committed. An example of a crime under the MDPL is the ‘Improper Access’, that refers to the person who, without due authorization, by any means, accesses the personal data whose access is forbidden.

The MDPL is evidently not perfect, nor foolproof to all possible data breaches. And as the society changes rapidly, with the help of technology, so should the legislation on Data Protection. Being intimately connected with other regulations, such as IoT (Internet of Things), big data and cloud computing, regulation on data protection shall familiarize with these big concepts and adapt accordingly. Moreover, we believe the MDPL could greatly benefit from its coordination with the Regulation (EU) 2016/679, considered to be the paramount legislation in data protection in the European Union, that has compelled its Member States to proceed with the revision of the respective national laws on personal data protection.

With the increasing resort to monetization of personal data, so will individual's privacy rights be more prone to online attacks. This risk is inevitable and may only be soothed by constant adaptation to the new reality, which, fortunately, is all possible and facilitated by modern technologies.

[José Leitão \[+info\]](#)

[Daniela Guerreiro \[+info\]](#)