



GENERAL DATA PROTECTION REGULATION

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Background

- ▶ European Union Parliament and the Council of European Union
- ▶ Regulation on the protection of natural persons with regard to the processing of personal data and free movement of such data
- ▶ Adopted 2016
- ▶ Effective 25 May 2018
- ▶ Replaced Data Protection Directive 95/46/EC (1995)
- ▶ Covers the use of personal data
- ▶ Applies to controllers and processors within the EU or to those offering goods and services to the EU (data subjects in the EU whose data is being processed outside the EU)
- ▶ Enforced by national data protection authorities



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Why do we have to know this?

- FINES
- €10 million or 2% of the annual worldwide turnover, whichever is HIGHER
- €20 million or 4% of the annual worldwide turnover, whichever is HIGHER



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How similar is GDPR with the DPA

- ▶ DPA is primarily based on European Directive 95
- ▶ Similar purpose
- ▶ Similar rights recognized
- ▶ Similar coverage
- ▶ Similar categories of data
- ▶ Similar conditions for processing of data
- ▶ Similar privacy principles (transparency, proportionality, legitimate purpose_



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How similar is GDPR with the DPA



PURPOSE	
GDPR	DPA
To protect fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data	To safeguard the fundamental human right of every individual to privacy
To enable the free movement of personal data within the Union	To ensure the free flow of information for innovation, growth, and national development

How similar is GDPR with the DPA



RIGHTS
Be informed
File a complaint
To object
Access
Correct
Erasure / blocking
portability
Compensation / indemnification

How similar is GDPR with the DPA

COVERAGE	
GDPR	DPA
Natural persons within the EU	Natural Persons within the PH
EU citizens whose data are processed abroad for the purpose of offering goods and services in the EU	Filipino citizens outside PH
EXTRATERRITORIAL APPLICATION	



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How similar is GDPR with the DPA

COVERAGE	
GDPR	DPA
Personal Data	Personal Information
Special categories of personal data	Sensitive Personal Information
Data controllers and data processors	Personal Information Controllers and Processors



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How similar is GDPR with the DPA

COVERAGE for PROCESSING OF SENSITIVE PERSONAL DATA	
GDPR	DPA
	<ul style="list-style-type: none">ConsentContractLegal ObligationProtection of Vital interestsExercise of public authorityLegitimate interests



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How similar is GDPR with the DPA

PROCESSING OF SENSITIVE PERSONAL INFO	
GDPR	DPA
Consent, legal obligation, protection of vital interests of the person or another, legitimate activities of Non-profit organizations, public data, court proceedings, substantial public interest, medical diagnosis or treatment, archiving for scientific or historical research or statistical purposes.	Consent, legal obligation, protection of vital interests of the person or another, medical treatment, lawful and non-commercial objectives of public organizations, court proceedings, exercise of public authority, scientific and statistical research



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How similar is GDPR with the DPA

APPOINTMENT OF A DPO	
GDPR	DPA
Controllers and processors should designate a DPO (or for controllers and processors not established in the EU, a data protection representative must be registered in writing.	All controllers and processors should designate an individual accountable for compliance.

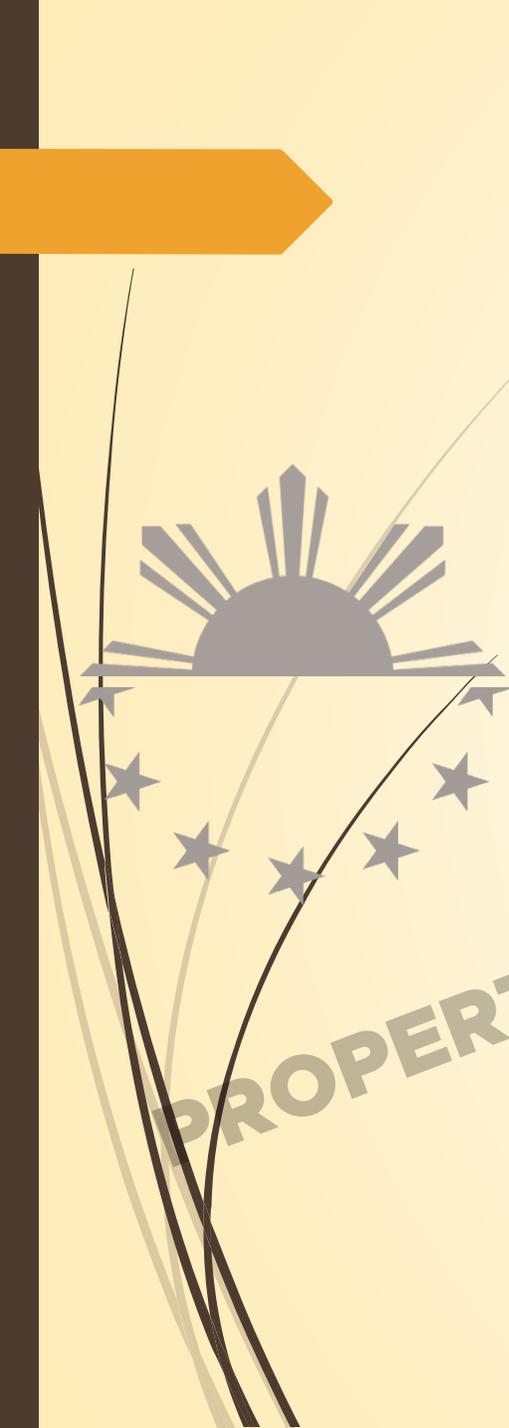


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How different is GDPR with the DPA

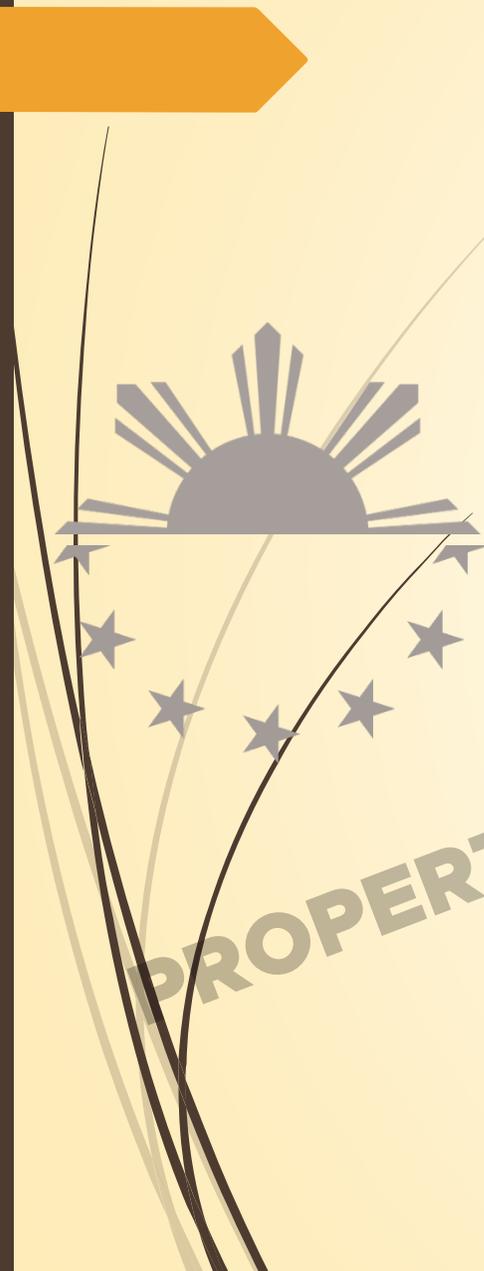
APPOINTMENT OF A DPO	
GDPR	DPA
FINES	FINES AND JAILTIME

PERMANENT TOTAL DISABILITY TO
CONTINUE ON THE BUSINESS



Why is this important to the PH Maritime Industry?

- GDPR applies to the processing of personal data by a controller not established in the Union, but in a place where Member State law applies by virtue of public international law.



Why is this important to the PH Maritime Industry?

- A ship can fly only one flag of a state, except where granted by International law, and is subject to the exclusive jurisdiction of the flag state when on the high seas.

Why is this important to the PH Maritime Industry?



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Why is this important to the PH Maritime Industry?

- In the HIGH SEAS, GDPR applies.
- Being processors of seafarer's data, you should comply with the GDPR.
- Being controllers under PH Law by virtue of the seafarer's contract, you should comply with the DPA and INTERNATIONAL STANDARDS FOR DATA PROTECTION.

Legal Characterization

- It means you are processors of data of individuals who are under the coverage of the GDPR even if the seafarers are Filipinos.
- It subsequently amounts to transfer of data to third parties or organizations once the seafarer boards the EU flagged vessel and is in international waters even if the data originated from PH.



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Is it allowed?

- 
- Under EU law, transfers may take place if the **third country ensures an adequate level of protection** or if the **data controller or processor provides appropriate safeguards, including enforceable data subject rights and legal remedies**, through means such as standard data protection clauses or binding corporate rules.

Is it allowed?

- ▶ Under EU law, there are, in principle, two ways of allowing the transfer of personal data to third countries or to international organisations.
- ▶ Transfers of personal data may take place on the basis of:
 - ▶ an adequacy decision by the European Commission;
 - ▶ or, in the absence of such an adequacy decision, where the controller or processor provides appropriate safeguards, including enforceable rights and legal remedies for the data subject.
 - ▶ In the absence of either an adequacy decision or appropriate safeguards, a number of derogations are available.



Is it allowed?

- No adequacy findings YET for the PH
- Left with either the appropriate safeguards rule or through permissible derogations.



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Appropriate Standards Rule

- ▶ a legally binding and enforceable instrument between public authorities or bodies;
- ▶ binding corporate rules approved by at least three EU member states;
- ▶ standard data protection clauses adopted either by the European Commission or by a supervisory authority;
- ▶ codes of conduct;
- ▶ certification mechanisms.

Appropriate Standards Rule

- ▶ Customised contractual clauses between the controller or processor in the EU and the data recipient in a third country are another means of providing appropriate safeguards.
- ▶ Such contractual clauses, however, need to be authorised by the competent supervisory authority before they can be relied upon as a tool for the transfer of personal data.
- ▶ Similarly, public authorities can make use of data protection provisions included in their administrative arrangements, provided that the supervisory authority has authorised these.
- ▶ The most important features of a standard contractual clause are:
 - ▶ a third-party beneficiary clause which enables data subjects to exercise contractual rights even though they are not a party to the contract;
 - ▶ the data recipient or importer agreeing to be subject to the authority of the dataexporting controller's national supervisory authority and/or courts in the case of a dispute

Derogations

- ▶ Derogations for specific situations Under EU law, personal data transfers to a third country may be justified, even in the absence of an adequate decision or safeguards, such as standard contractual clauses or binding corporate rules, in any of the following circumstances:
 - ▶ the data subject gives explicit consent for the data transfer;
 - ▶ the data subject enters – or is preparing to enter – into a contractual relationship where the transfer of data abroad is necessary;
 - ▶ to conclude a contract between a data controller and a third party in the interests of the data subject;
 - ▶ for important reasons of public interest;
 - ▶ to establish, exercise or defend legal claims;
 - ▶ to protect the vital interests of the data subject; • for the transfer of data from public registers (this is an instance of prevailing interests of the general public to be able to access information stored in public registers)

Derogations

- ▶ Where none of these conditions applies, and where the transfers cannot be based on an adequacy decision or appropriate safeguards, a transfer may take place only when it is not repetitive, concerns a limited number of data subjects and is necessary for the purposes of the data controller's compelling legitimate interests, provided that the data subject's rights do not override these.
- ▶ In these cases, the controller needs to assess the circumstances surrounding the transfer and to provide safeguards. It must also inform the supervisory authority and the data subjects affected of both the transfer and the legitimate interest justifying it



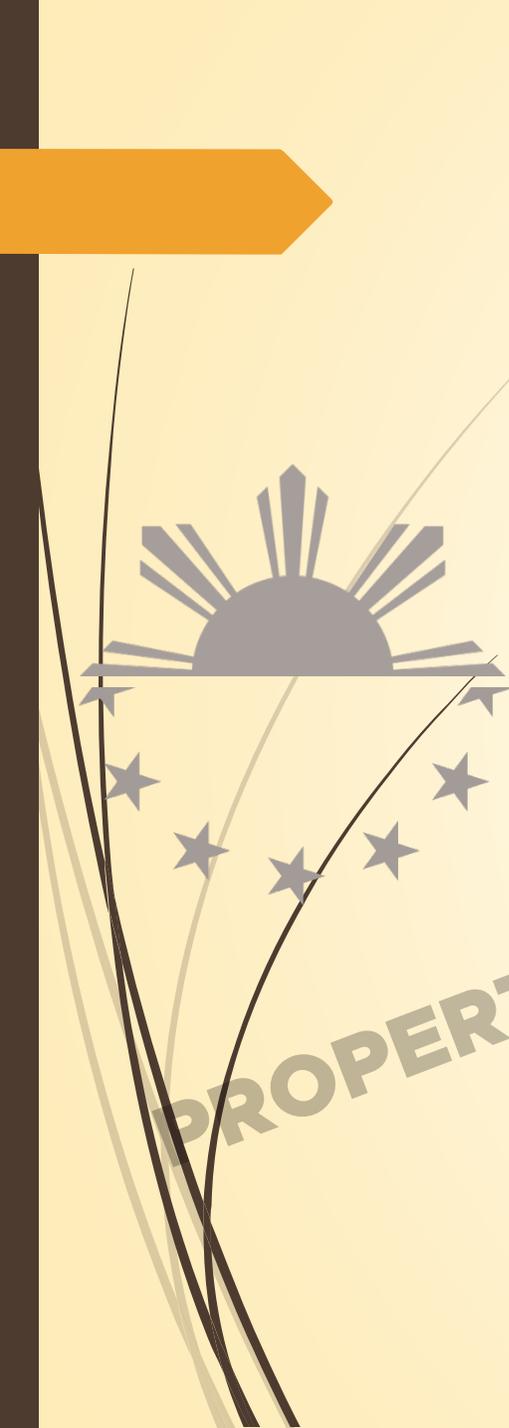
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Derogations

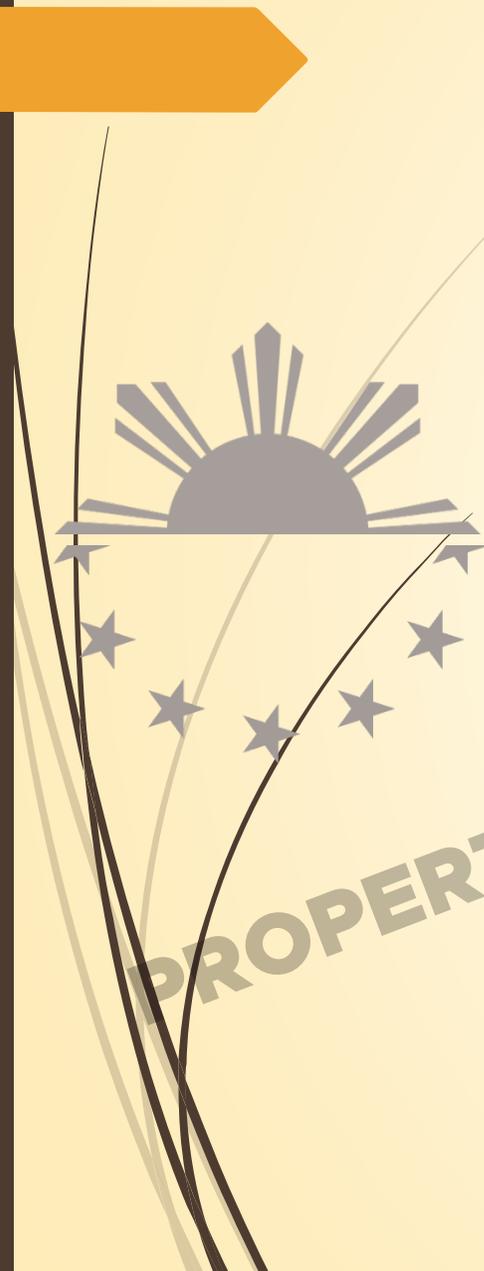
- ▶ according to guidance from the Article 29 Working Party, relying on derogations for specific situations must be exceptional, based on individual cases, and **cannot be used for massive or repetitive transfers.**

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Exposures:

- Claims by seafarers against you filed before the EU.
- Remember the fines involved under the GDPR.
- Claims against you can be filed also here.
- Remember jail time under the DPA.



What to do?

- As processors in the eyes of EU law, you must appoint a representative in writing and submit the same to the EU.
- As controllers in the eyes of the POEA-SEC contract, you and your principals must have a DPO registered with the NPC.
- Comply with the GDPR requirements of transfers.
- Comply with the DPA.



What to do?

➤ PROTECT AND RESPECT DATA.

➤ THANK YOU!



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