

ANPD publishes Resolution that regulates on the role of the Data Protection Officer



On July 17th, the Brazilian Data Protection Authority ("ANPD") published Resolution No. 18, which regulates on the role of the Data Protection Officer ("DPO").

Although the Brazilian General Data Protection Law (LGPD) already generally addresses the topic and has established some obligations for the Data Protection Officer, the new Resolution complements and clarifies their responsibilities.

Check out the main new topics regulated by the new Resolution in the comparative analysis below:



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	LGPD	Resolution CD/ANPD Nº 18
Mandatory Appointment of the DPO:	Yes *exception: a small-scale agent that does not carry out high-risk processing, according to ANPD Resolution No. 2	Yes *exception: a small-scale agent that does not carry out high-risk processing, according to ANPD Resolution No. 2
Formality:	Not provided	Formal act required
Number of DPOs:	Not provided	At least two people: one official and one substitute
Responsible for Appointing the DPO:	Controller	Controller
Registration of the DPO:	Not provided	Clarifies that performing the activities of the DPO does not require registration with any entity
Certification:	Not provided	Clarifies that no certification is necessary
Characteristics of the DPO:	Not provided	<ul style="list-style-type: none"> Natural or legal person, who may or may not be part of the organizational structure A person capable of communicating with data subjects and the ANPD in Portuguese No specific professional training is required
Accumulation of Roles:	Not provided	Possible, provided there is no conflict of interest.
Serving More Than One Controller:	Not provided	Possible, provided there is no conflict of interest.
Conflict of Interests:	Not provided	Conflicts of interest will be assessed on a case-by-case basis.
Identification of the DPO:	The identity and contact information of the DPO must be publicly disclosed, preferably on the controller's website	<p>The identity and contact information of the DPO must be publicly disclosed, in a prominent and easily accessible location, on the processing agent's website: If a natural person: full name + contact information</p> <ul style="list-style-type: none"> If a legal person: business name or establishment title, as well as the full name of the responsible individual + contact information
Activities and Responsibilities of the DPO:	<ul style="list-style-type: none"> Receive complaints and communications from data subjects, provide clarifications, and take appropriate measures; Receive communications from the ANPD and take action; Advise the entity's employees and contractors on data protection practices; and Carry out other duties determined by the controller or established in supplementary regulations. 	<ul style="list-style-type: none"> Receive complaints and communications from data subjects, provide clarifications, and take appropriate measures; Receive communications from the ANPD and take action, including specifically forwarding the request internally with proper guidance to the processing agent; Advise the processing agent's employees and contractors on data protection practices; Carry out other duties determined by the processing agent or established in supplementary regulations; Advise the processing agent on the development, definition, and implementation, as applicable, of: (a) records and communications of incidents; (b) record of processing operations; (c) impact reports; (d) internal supervision and risk mitigation mechanisms; (e) security measures; (f) internal procedures and policies; (g) contractual instruments; (h) procedures for international

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Liability of the DPO for Processing Activities	Not provided. General rule is that the controller is responsible for the processing	Clarifies that the DPO does not have responsibility, before the ANPD, for the compliance of the data processing carried out by the controller.
Other Obligations of the Processing Agent in Relation to the DPO:	Not provided	<p>Specifically, the following obligations are added:</p> <ul style="list-style-type: none"> • Provide resources (human, technical, administrative, among others) for the DPO to perform their duties; • Seek the DPO's guidance for strategic decisions related to data processing; • Ensure the DPO has the necessary technical autonomy to carry out their activities; • Provide data subjects with effective means to communicate with the DPO and exercise their rights; • Ensure the DPO has direct access to those responsible for strategic decision-making that affects or involves data processing, as well as to other areas of the organization; and • Ensure that the DPO does not undertake duties that result in a conflict of interest.

Points of attention

1

Formalization of the DPO Appointment

If you have not yet formalized the appointment of the DPO, now is the time. If applicable, it is recommended to draft a document with retroactive effects. Remember: the ANPD may request this document

2

Substitute DPO

Appoint a substitute DPO and formalize this decision

3

Processors

Definitions of processing agents are not absolute. Most processors are also data controllers for their own activities. Ensure you appoint a DPO unless you fall under the exception of ANPD Resolution No. 2 – small-scale agents

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4

DPO Registration

There is no regulation requiring prior registration of the natural or legal person occupying the DPO position with any official body or entity. There is no official database of DPO names. Be cautious of communications demanding such registrations.

5

DPO Not Fluent in Portuguese

If the DPO is not fluent in Portuguese, ensure they have sufficient support to interact appropriately with data subjects and the ANPD. The Resolution does not mention the possibility of the DPO being assisted by interpreters or translators, but this seems to be a viable solution for now

6

Conflict of Interests

The Resolution stipulates that a potential conflict of interest occurs when the DPO's activities are combined with roles involving strategic decision-making on data processing. Cases of conflict of interest should be assessed individually and carefully

