

APPLICATION OF LGPD TO SMALL-SIZED PROCESSING AGENTS

■ NON-OFFICIAL TRANSLATION

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REGULATION FOR THE APPLICATION OF LAW N. 13,709 OF 14 AUGUST 2018, THE GENERAL PERSONAL DATA PROTECTION LAW (LGPD), TO SMALL- SIZED PROCESSING AGENTS

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TITLE I GENERAL PROVISIONS

CHAPTER I PRELIMINARY PROVISIONS

Art. 1. This regulation aims to regulate the application of Law No. 13,709, of August 14, 2018, the General Personal Data Protection Law (LGPD), to small-sized processing agents, based on the competences provided for in Article 55-J, item XVIII, of said Law.

Single paragraph. This regulation does not apply to the processing of personal data performed by a natural person for exclusively private and non-economic purposes, as well as in the other hypotheses provided for in Article 4 of the LGPD.

CHAPTER II DEFINITIONS

Art. 2. For the purposes of this Regulation, the following definitions are adopted:

- I - small-sized processing agents: micro-enterprises, small businesses, startups, legal entities of private law, including non-profits, in accordance with current legislation, as well as natural persons and private entities with no legal personality that perform the processing of personal data, assuming typical obligations of a controller or processor;
- II - micro-enterprises and small businesses: business company, simple company, a single-person limited company, pursuant to Article 41 of Law No. 14,195 of

August 26, 2021, and the business owner referred to in Article 966 of Law No. 10,406 of January 10, 2002 (Civil Code), including the individual microentrepreneur, duly registered in the Register of Commercial Companies or in the Civil Registry of Legal Persons, in accordance with Article 3 and 18-A, §1 of Complementary Law No. 123 of December 14, 2006;

III - startups: business or corporate organizations, nascent or in recent operation, whose practice is characterized by innovation applied to business models or to products or services offered, which meet the criteria set forth in Chapter II of Complementary Law No. 182, of June 1, 2021; and

IV - areas accessible to the public: spaces open to the public, such as squares, shopping centers, public roads, buses, subway and train stations, airports, ports, public libraries, among others.

Art. 3. Small-sized processing agents may not benefit from the differentiated legal treatment provided for in this Regulation if they:

I - carry out processing that poses high risks for the data subjects, with the exception of the provision in Art. 8;

II - generate gross revenue higher than the limit established in Art. 3, II, of Complementary Law No. 123 of 2006 or, in the case of startups, in Art. 4, § 1, I, of Complementary Law No. 182 of 2021; or

III - belong to an economic group *de facto* or *de jure* whose global revenue exceeds the limits referred to in item II, as the case may require.

CHAPTER III

HIGH-RISK PROCESSING

Art. 4. For the purposes of this regulation, and without prejudice to the provisions of Art. 16, the processing of personal data that meets at least one general criterion and one specific criterion listed below will be considered of high-risk:

I - general criteria:

(a) large-scale processing of personal data; or

(b) the processing of personal data which may significantly affect the interests and fundamental rights of the data subjects.

II - specific criteria:

- (a) use of emerging or innovative technologies;
- (b) surveillance or control of areas accessible to the public;
- (c) decisions taken solely on the basis of automated processing of personal data, including those intended to define the personal, professional, health, consumer and credit profile or aspects of the personality of the data subject; or
- (d) use of sensitive personal data or personal data of children, adolescents, and elderly people.

§1 - The large-scale processing of personal data will be characterized when it covers a significant number of data subjects, also considering the volume of data involved, as well as the duration, frequency and geographical extent of the processing carried out.

§2 - The processing of personal data which may significantly affect the interests and fundamental rights shall be characterized, among other situations, in those situations where the processing activity may impede the exercise of rights or the use of a service, as well as cause material or moral damage to the data subjects, such as discrimination, violation of physical integrity, the right to image and reputation, financial fraud or identity theft.

§3 - The ANPD may provide guidelines with the aim of assisting small-sized processing agents in the assessment of high-risk processing.

Art. 5. It will be up to the small-sized processing agent, when requested by the ANPD, to prove that it falls within the provisions of Art. 2 and Art. 3 of this regulation within fifteen days.

TITLE II

PROCESSING OF PERSONAL DATA BY SMALL-SIZED PROCESSING AGENTS

CHAPTER I

GENERAL PROVISIONS

Art. 6. The waiver or flexibilization of the obligations set out in this Regulation does not exempt small-sized processing agents of the other provisions of the LGPD, including the legal bases and principles, other legal, regulatory and contractual provisions relating to the protection of personal data, as well as the rights of the data subjects.

CHAPTER II

OBLIGATIONS OF THE SMALL-SIZED PROCESSING AGENT

Section I

Obligations relating to the rights of the data subject

Art. 7. Small-sized processing agents shall provide information on the processing of personal data and comply with the requests of the data subjects in accordance with the provisions of Art. 9 and Art. 18 of the LGPD, through:

- I - electronic;
- II - printed; or
- III - any other means that ensure the rights provided for in the LGPD and facilitated access to information by the data subject.

Art. 8. Small-sized processing agents, including those that perform high-risk processing, are allowed to organize themselves through entities representative of their business activity, legal entities or through natural persons for the purposes of negotiation, mediation and conciliation of complaints submitted by data subjects.

Section II

Register of Processing Activities

Art. 9. Small-sized processing agents may comply with the obligation to prepare and maintain a register of personal data processing operations, as stated in Art. 37 of the LGPD, in a simplified manner.

Single paragraph. The ANPD will provide a template for the simplified record which the caput refers to.

Section III

Reporting Security Incidents

Art. 10. The ANPD shall regulate the flexibilization or simplified reporting procedure of security incidents for small-sized processing agents in accordance with the specific regulations.

Section IV

Data Protection Officer

Art. 11. Small-sized processing agents are not obliged to appoint the data protection officer required in Art. 41 of the LGPD.

- §1 - The small-sized processing agent who does not appoint a data protection officer shall provide a communication

channel with the data subject to comply with the provisions of Article 41, § 2, I of the LGPD.

§2 - The appointment of the data protection officer by the small-sized processing agents shall be considered a good practice and a governance policy for the purposes of the provisions of Article 52, §1, IX of the LGPD.

Section V

Security and Good Practices

Art. 12. Small-sized processing agents should take essential and necessary administrative and technical measures based on minimum information security requirements for the protection of personal data, while also considering the level of risk to the privacy of data subjects and the context of the processing agent.

Single paragraph. Compliance with the recommendations and good practices regarding prevention and safety disclosed by the ANPD, including through orientation guides, will be considered as compliance with the provisions of Article 52, §1, VIII of the LGPD.

Art. 13. Small-sized processing agents may establish a simplified information security policy, which includes essential and necessary requirements for the processing of personal data, with the aim of protecting them from unauthorized access and accidental or unlawful situations of destruction, loss, alteration, communication or any form of improper or unlawful processing.

§1 - The simplified information security policy shall take into account the implementation costs as well as the structure, scale and volume of operations of the small-sized processing agent.

§2 - The ANPD shall consider the existence of a simplified information security policy for the purposes of Article 6, X and Article 52, §1, VIII and IX of the LGPD.

TITLE III

DIFFERENTIATED DEADLINES

Art. 14. Small-sized processing agents will be granted an extended deadline equal to twice the regular deadlines:

I - when meeting the requests of the data subjects regarding the processing of their personal data, as provided for in Article 18, §§ 3 and 5 of the LGPD, in accordance with the specific regulation;

- II - when reporting to the ANPD and the data subject of the occurrence of a security incident that may entail a risk or significant damage to the data subjects, in accordance with the specific regulation, except when there is a potential impairment to the physical or moral integrity of the data subjects or to national security, and in such cases the reporting must take into account the deadlines given to other processing agents, in accordance with the terms of the abovementioned regulation;
- III - when providing a clear and complete declaration according to Article 19, II of the LGPD;
- IV - in relation to the deadlines established in the specific regulations for the presentation of information, documents, reports and records requested by the ANPD to other processing agents.

Single paragraph. The deadlines not laid down in this Regulation for small-sized processing agents shall be determined by specific regulations.

Art. 15. Small-sized processing agents may provide the simplified declaration mentioned in Article 19, I of the LGPD within fifteen days of the date of the data subject's request.

TITLE IV

FINAL PROVISIONS

Art. 16. The Brazilian Data Protection National Authority (ANPD) may determine to the small-sized processing agent that they comply with the obligations waived or relaxed in this Regulation, taking into account the relevant circumstances of the situation, such as the nature or volume of its operations, as well as the risks to the data subjects.