

Regulation on the Role of the Data Protection Officer




New Resolution CD/ANPD No. 18,
dated July 16, 2024

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DPO - Data Protection Officer

The new Regulation establishes supplementary rules regarding the appointment, definition, duties, and activities of the DPO (Data Protection Officer), as provided for in Law No. 13,709 of August 14, 2018 (Brazilian General Data Protection Law - LGPD, Portuguese translation). The DPO is the individual designated by the controller and processor to act as a communication channel between the controller, data subjects, and the Brazilian Data Protection Authority (ANPD).

Appointment of the DPO

-  The appointment of the DPO shall be made through a written, dated, and signed document by the person responsible for data processing.
-  Public legal entities are also required to appoint a DPO for data processing activities. Their appointment must be published in the Official Gazette of the respective government spheres (Union, State, Federal District, or municipality).
-  Small data processing agents, who are exempt from the obligation to appoint a DPO, under the terms of Resolution CD/ANPD No. 2, of January 27, 2022, must provide a communication channel with data subjects.

[Click here to view the complete new ANPD Resolution.](#)

Identification and information about the DPO

The identity and contact information of the DPO must be publicly disclosed, clearly and objectively, in a prominent and easily accessible place on the data processing agent's website. This measure ensures that data subjects can easily contact the DPO for requests regarding the processing of their personal data. In the absence of a website, other communication methods should be employed to disclose the DPO's contact information.

Individual DPO: the disclosure of their identity shall include at least the full name of the DPO.

Corporate DPO: the disclosure of their identity shall include at least the business name or establishment title, as well as the full name of the individual responsible.

The disclosure of the DPO's contact information shall include, at least, the communication details that enable the exercise of data subjects' rights with the controller and facilitate the receipt of communications from the ANPD.



Duties - Data Processing Agents

- Provide the necessary resources for the DPO's functions, including technical, administrative, and human resources support.
- Ensure the DPO's technical autonomy to perform their duties without undue interference, especially in advising on data protection practices.
- Guarantee rapid, effective, and appropriate methods for data subjects to communicate with the DPO and exercise their rights.
- Seek the assistance and guidance of the DPO when performing activities and making strategic decisions related to data processing.
- Ensure the DPO has direct access to the highest hierarchical levels within the organization, the decision-makers responsible for strategic decisions affecting or involving data processing, as well as other areas of the organization.

Characteristics and Duties of the DPO

The role of the DPO does not require registration with any entity nor any specific certification or professional training. The data processing agent must establish the necessary professional qualifications, considering the need for knowledge of data protection legislation, as well as the context, volume, and risks of data processing operations.

The DPO Regulation establishes that the DPO's duties include:

- Receiving complaints and communications from data subjects, providing clarifications, and taking appropriate measures;
- Receiving notifications/communications from the ANPD and taking necessary actions;
- Fulfilling other responsibilities assigned by the data processing agent or provided for in additional laws or regulations; and
- Instructing the data processing agent's employees and contractors on the measures to be adopted for data protection.

Attention

The fulfillment of the DPO's duties does not make the DPO responsible to the ANPD for the compliance of data processing carried out by the controller.

Characteristics and Duties of the DPO

The DPO should also provide assistance and guidance to the data processing agent in the development, definition, and implementation, as appropriate, of:

- I. incident reporting and communication;
- II. record of personal data processing operations;
- III. data protection impact assessment report;
- IV. internal mechanisms for monitoring and mitigating risks related to personal data processing;
- V. technical and administrative security measures to protect personal data from unauthorized access and accidental or unlawful destruction, loss, alteration, communication, or any form of improper or unlawful processing;
- VI. internal processes and policies to ensure compliance with the LGPD and the regulations and guidelines of the ANPD;
- VII. contractual instruments that address issues related to personal data processing;
- VIII. international data transfers;
- IX. good practices and governance rules and privacy governance programs, in accordance with the LGPD;
- X. products and services that adopt design standards compatible with the principles set forth in the LGPD, including privacy by default and the limitation of personal data collection to the minimum necessary; and
- XI. other activities and strategic decision-making related to personal data processing.

How to Avoid Conflicts of Interest

- ❖ The DPO must act with ethics, integrity, and technical independence, avoiding any situation of conflict of interest.
- ❖ It is possible to hold multiple roles, provided there is no conflict of interest, which will be assessed on an individual basis.
- ❖ In the event of identifying a potential conflict of interest, the data controller may:
 - (i) not appoint the person to the role;
 - (ii) implement measures to mitigate the risk; or
 - (iii) replace the person appointed to the role.

The Regulation allows the DPO to accumulate functions and act for multiple data processing agents, as long as they can fully fulfill their duties for each agent and there is no conflict of interest for such exercise.

The data processing agent must ensure that the DPO does not perform duties that result in a conflict of interest.

The assessment of potential conflict of interest will be analyzed on a case-by-case basis and may result in sanctions to the data processing agent, as provided for in Article 52 of the LGPD.

New Guidelines for Data Protection Officers

The new ANPD Regulation marks a significant advancement in personal data protection in Brazil, reinforcing the importance of more robust privacy governance practices by specifying the crucial role of the DPO in data processing.

Thus, the regulation introduces new guidelines, among which we highlight the following:



Strengthening Data Protection Culture: The guidelines of the Regulation provide a clear framework for DPOs, encouraging more organized and proactive management, which contributes to fostering an organizational culture that prioritizes personal data protection.



Respect for Data Subject Rights: The guidelines of the Regulation ensure that DPOs guarantee the exercise of data subjects' rights, such as the right of access, correction, and deletion of data in a facilitated, effective, and transparent manner.



Responsibility and Compliance: The definition of the DPO's responsibilities ensures that data processing complies with the legislation, reducing the risk of penalties and promoting continuous improvement of data protection practices.

Below we highlight some adjustment and compliance measures that should be observed by data processing agents:

Assessment: Compliance audit, including to meet the new rules of the Regulation. This process includes reviewing existing practices and identifying areas that still need adjustment to meet the new guidelines.

Designation of the Data Protection Officer: Appointment of a DPO, DPO as a Service, or corporate Data Protection Officer, provided they meet the Regulation's requirements and have the necessary qualifications.

Planning and Strategy: Develop an action plan to implement and monitor the necessary changes. This includes defining policies, procedures, and responsibilities in accordance with regulatory standards.

Implementation of Compliance Measures: Adopt procedures and practices to avoid conflicts of interest and ensure effective management of data subjects' rights.

Communication and Disclosure: Ensure clear and extensive communication with best practices for data subjects and, if necessary, to the ANPD.

Risk and Contingency Management: Prepare contingency plans to address possible non-compliance and incidents, with the help of external experts if necessary.

Di Blasi, Parente & Associados

Di Blasi, Parente & Associados offers Data Protection Officer services and can help your company comply with the new guidelines of the Regulation. For more information, contact: legal@diblasiparente.com.br

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