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BRAZILIAN FEDERAL OFFICIAL GAZETTE

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Authority: Acts of the Executive Branch

PRESIDENTIAL DECREE No. 869 OF DECEMBER 27, 2018.

Amends Law No. 13,709 of August 14, 2018, to provide for the protection of personal data and to create the National Data Protection Authority (*Autoridade Nacional de Proteção de Dados* or “ANPD”), among other provisions.

THE PRESIDENT OF THE REPUBLIC, in the use of the powers and authorities conferred on him by art. 62 of the Brazilian Federal Constitution, adopts the following Presidential Decree, with force of law:

Art. 1 Law no. 13,709, of August 14, 2018 comes into effect with the following amendments:

“Art. 3

.....
.
II - the processing activity is to offer or provide goods or services or the processing of data of individuals located on the national territory; or

....." (New Wording)

“Art. 4

.....
.
II

.....
b) academic purposes;
.....
.

§2 The processing of data as provided in item III of the lead sentence of this article by a legal entity of private law shall only be admitted in procedures under the supervision of a legal entity of public law, in which case the limitation mentioned in §3 shall be observed.

§3 The personal data contained in databases created for the purposes referred to in item III of the lead sentence of this article shall not be processed in their entirety by legal entities of private law, other than those controlled by the Public Authority.” (New Wording)

“Art. 5

.....
VIII – data protection officer: person named by the controller to act as a communication channel between the controller, the subjects of such data and the National Data Protection Authority;

.....
XVIII - research body: body or entity from the direct or indirect public administration or nonprofit legal entity of private law, legally organized under the Brazilian law, with headquarter

and jurisdiction in the Country, that includes in its institutional mission or in its corporate or statutory purposes basic or applied research of historical, scientific, technological or statistical nature; and

XIX - national authority: body of the public administration responsible for supervising, implementing and monitoring the compliance with this Law." (New Wording)

“Art. 11

§4 Communication or shared use between controllers of sensitive personal data referring to health in order to obtain an economic advantage is prohibited, except in the following cases:

I - data portability of data when consented by the data subject; or

II - need for communication in order to provide adequate provision of supplementary health services.” (New Wording)

“Art. 20 The data subject has the right to request for the review of decisions made solely based on automated processing of personal data affecting his interests, including decisions intended to define his personal, professional, consumer and credit profile, or aspects of his personality.

.....” (New Wording)

“Art. 26

§1.....

III - if a data protection officer is designated for the processing of personal data operations, according to art. 39;

IV - when there is a legal provision or the transfer is grounded on contracts, agreements or similar instruments;

V - in the event the transfer of data is intended to prevent fraud and irregularities, or to protect and safeguard the security and integrity of the data subject; or

VI - in cases when the data is publicly accessible, subject to the provisions of this Law.

.....” (New Wording)

“Art. 27 The communication or shared use of personal data from a legal entity of public law to a legal entity of private law shall depend on the consent of the data subject, except:
.....” (New Wording)

“Art. 29 The national authority may request, at any time, for bodies and entities of the Public Administration to carry out personal data processing operations, the specific information on the scope and nature of the data and other details of the processing performed and may issue complementary technical report to ensure compliance with this Law.” (New Wording)

“Art. 55-A The National Data Protection Authority (“ANPD”) is hereby created, without any increase in expenses, an entity part of the federal public administration, pertaining to the Presidency of the Republic.” (New Wording)

“Art. 55-B Technical autonomy is ensured to ANPD.” (New Wording)

“Art. 55-C ANPD is comprised of:

- I - Board of Directors, highest governing body;
- II- National Council for Personal Data and Privacy Protection;
- III - Internal Affairs Office;
- IV- Ombudsman Office;
- V- Own legal advisory body; and
- VI- Administrative units and specialized units required for the application of the provisions of this Law.” (New Wording)

“Art. 55-D ANPD Board of Directors shall be comprised of five chief officers, including the Chief Executive Officer.

§1 The members of ANPD Board of Directors shall be appointed by the President of the Republic and will hold a commission position of the Direction-Group and Superior Advisory - Level 5 DAS.” (New Wording)

§2 The members of the Board of Directors shall be chosen among Brazilians, with an immaculate reputation, with a high level of education and renowned in the field of the positions for which they will be appointed.

§3 Members of the Board of Directors shall serve four-year terms.

§4 The term of the first members of the Board of Directors will be of two, three, four, five and six years, as provided for in the appointment.

§5 In the event of vacancy of the position during the term of a Board of Directors member, the remaining term shall be completed by the successor.” (New Wording)

“Art. 55-E The members of the Board of Directors will only lose their position upon resignation, final and unappealable judicial conviction or dismissal penalty due to disciplinary administrative proceeding.

§1 Pursuant to the lead sentence of this article, the President’s Chief of Staff shall be responsible for initiating the disciplinary administrative proceeding, which shall be conducted by a special commission composed of stable federal public servants.

§2 The President of the Republic be responsible for determining the preventive work leave, if necessary, and hand down the decision.”(New Wording)

“Art. 55-F The provision set forth in article 6 of Law 12,813, of May 16, 2013 shall apply to the members of the Board of Directors, once their term comes to an end.

Sole Paragraph. Breach to the provisions set forth in the lead sentence of this article shall characterize an act of administrative improbity.” (New Wording)

“Art. 55-G the ANPD regimental structure shall be determined by Act from the President of the Republic.

Sole Paragraph. Until ANPD regimental structure comes into force, ANPD will be provided with technical and administrative assistance from the Office of the President’s Chief of Staff in order to fulfill its activities.” (New Wording)

“Art. 55-H The commission and trust positions of ANPD will be relocated from other bodies and entities of the Federal Executive.” (New Wording)

"Art. 55-I Those exercising commission and trust positions of ANPD will be recommended by the Board of Directors and appointed or designated by the Chief Executive Officer." (New Wording)

"Art. 55-J ANPD shall have the following duties:

- I - ensure the protection of personal data;
- II - enact regulations and procedures on personal data protection;
- III - discuss, at the administrative level, on the interpretation of this Law, its authorities and matters on which the Law is silent;
- IV - request information, at any time, to controllers and operators of personal data that carry out personal data processing operations;
- V - implement simplified mechanisms, including by electronic means, to collect and record complaints on the processing of personal data non-compliant with this law.
- VI - monitor and apply sanctions for data processing that is not compliant with legislation, through an administrative process that ensures right to adversary proceeding, full defense and the right to appeal;
- VII - report to the relevant authorities the criminal offenses of which it becomes aware of;
- VIII - report to the internal control bodies any violations to the provisions set forth in this Law performed by bodies and entities of the Federal Government;
- IX - help the population to be knowledgeable about the rules and public policies regarding the protection of personal data and security measures;
- X - encourage the adoption of standards for services and products that facilitate data subjects' control of their personal data, which shall take into consideration specifics of the activities and the size of the responsible parties;
- XI - carry out studies on domestic and international practices for protection of personal data and privacy;
- XII - promote cooperation actions with personal data protection authorities from other countries, of international or transnational nature;
- XIII - promote public consultations to gather suggestions on topics of relevant public interest in subjects of ANPDs scope of activities;
- XIV - carry out, prior to issuing resolutions, hearings on public administration entities or bodies which are responsible for the regulation of specific sectors of the economy;

XV - coordinate with public regulatory authorities to exert their authority in specific sectors of economic and governmental activities bound to regulation;

XVI - draft annual management reports of its activities.

§1 The ANPD, when issuing its rules, shall observe the requirement of minimum intervention, ensuring the grounds and principles set forth in this Law and on the provisions set forth in art. 170 of the Federal Constitution.

§2 The ANPD and other public bodies and entities responsible for regulating specific sectors of the economic and governmental activity shall coordinate their activities, in its respective spheres of action, in order to ensure the fulfillment of their duties efficiently and to promote the adequate functioning of the regulated sectors, according to the specific legislation, and the processing of personal data, in conformity with this Law.

§3 The ANPD shall maintain a permanent communication forum, including through technical cooperation, with bodies and entities of the public administration responsible for the regulation of specific sectors of economic and governmental activity, in order to ease ANPD's regulatory, monitoring and punitive duties.

§4 In the exercise of the powers referred to in the lead sentence of this article, the relevant authority shall ensure the preservation of industrial and information secrecy, under the terms of the law, subject to responsibility.

§5 Complaints collected in accordance with the provisions set forth in item V of the lead sentence of this article may be analyzed in an aggregate manner and any measures arising therefrom may be adopted in a standardized manner." (New Wording)

"Arti. 55-K Applying the sanctions as provided for herein shall be of sole responsibility of the ANPD, whose other powers shall prevail, with regards to the protection of personal data, over the related powers of other entities or bodies of the public administration.

Sole Paragraph. ANPD shall dialogue with the National Consumer Defense System of the Ministry of Justice and with other bodies and entities with sanctioning and normative powers related to the subject of personal data protection, and will be the central body for the interpretation of this Law and for setting the standards and guidelines for the implementation thereof." (New Wording)

"Art. 58-A The National Board for the Protection of Personal Data and Privacy shall be

comprised of twenty-three representatives, full representatives and alternates, from the following bodies:

- I – six representatives from the federal Executive Branch;
- II – one representative from the Federal Senate;
- III – one representative from the House of Representatives;
- IV – one representative from the National Council of Justice;
- V – one representative from the National Council of Public Prosecutors;
- VI – one representative from the Brazilian Internet Steering Committee;
- VII – four representatives from entities of the civil society with proven experience in personal data protection;
- VIII – four representatives from scientific, technological and innovative institution; and
- IX – four representatives from entities representatives of the business sector related to the area of personal data processing.

§1 The representatives shall be appointed by the President of the Republic.

§2 The representatives referred to in items I to VI of the **lead sentence of this article** and their alternate shall be appointed by the full representatives of their respective bodies and entities of the public administration.

§3 The representatives referred to in items VII, VIII and IX of the **lead sentence of this article** and the alternate thereof:

- I – shall be appointed as provided for in the regulation;
- II – shall have a two-year term, with one reappointment being allowed; and
- III – may not be members of the Brazilian Internet Steering Committee.

§4 Participation in the the National Board for the Protection of Personal Data and Privacy will be considered a relevant unpaid public service." (New Wording)

"Art. 58-B It is incumbent on the National Council of Personal Data Protection and Privacy to:

- I – propose strategic guidelines and provide subsidies for the preparation of the National Policy for the Protection of Personal Data and Privacy and for the operation of ANPD;
- II – prepare annual reports to evaluate the execution of the actions of the National Policy for the Protection of Personal Data and Privacy;
- III – suggest actions to be performed by ANPD;
- IV – prepare studies and hold public debates and public hearing on personal data

protection and privacy; and

V – disseminate knowledge about protection of personal data and privacy to the general population." (New Wording)

"Art. 65 This Law shall come into force:

I – as for art. 55-A, art. 55-B, art. 55-C, art. 55-D, art. 55-E, art.55-F, art. 55-G, art. 55-H, art. 55-I, art.55-J, art. 55-K, art. 58-A and art.58-B, on December 28, 2018; and

II – twenty-four months following the date of its official publication as regards the remaining art.." (New Wording)

Art. 2 Law No. 13,502, of November 1, 2017, shall come into force with the following amendments thereto:

"Art. 2

V – the Institutional Security Office;

VI – the Special Office for Agriculture and Fisheries; and

VII – the National Authority for Personal Data Protection.

....." (New Wording)

"SECTION VI - A

NATIONAL PERSONAL DATA PROTECTION AUTHORITY

Art. 12-A It will be for the National Personal Data Protection Authority to exercise the powers set forth in Law No. 13,709, of August 14, 2018." (New Wording)

Art.3 The following provisions of Law No.13,709, of 2018, shall be repealed:

I - §4 of art. 4;

II - §1 and §2 of art. 7; and

III - art. 62.

Art. 4 This Presidential Decree becomes effective on the date of its publication.

Brasília, December 27, 2018; 197th of the Independence and 130th of the Republic.

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