

Brazil: National Congress approves bill of General Law on Data Protection After approval by both legislative houses, the bill goes to presidential sanction

By Pedro Vilhena

Developed over the course of eight years, Brazil's first General Law on Data Protection (LGPD - Lei Geral de Proteção de Dados Pessoais) is just a few days away from gaining life. Mere six weeks passed between approval by the House of Deputies (on May 29) and by the Senate (on July 11). Please find below our preliminary considerations regarding the upcoming law.

LGPD's impacts on companies

In the absence of the LGPD, the regulation of personal data protection in Brazil is segmented, with numerous legal provisions affecting only some data of certain individuals. Examples can be seen in the Federal Constitution, the Code of Consumer Protection, the National Tax Code and the Bank Secrecy Law. This entanglement of legal provisions prevents the effective knowledge, by citizens and companies, of the rights and duties applicable to the matter, generating substantial legal uncertainty.

The LGPD creates a single data protection system, with clear rules for companies and citizens to understand their duties and rights. Inspired by the former Directive 95/46/EC of October 24, 1995, the legal framework for the harmonization of the legislation of the Member States of the European Union which preceded the current regulations in Europe (known as GDPR - General Data Protection Regulation, effective on May 25 of this year, and was approved by the Directive 2016/679), the Brazilian LGPD brings in its text the following highlights:

- Broad protection to the personal data of citizens, consumers, employees and internet users;
- The processing of these data by companies and public authorities must occur based on consent given from the data subject or, in absence thereof, based on one of the few express legal permissions (there are nine hypotheses where consent is not necessary);
- A higher level of protection is granted to sensitive data (such as those that reveal ethnic origins, political or religious beliefs, genetic data and sex life);
- The creation of a National Data Protection Authority (ANPD, who will be responsible for regulating and supervising the processing of personal data in Brazil);
- Any legal entity, public or private, that treats personal data must appoint a person in charge, who will be responsible for ensuring compliance with the LGPD and concentrate the communication between the holders and the ANPD;
- Any security incidents that carry risks to data subjects must be communicated to the affected data subjects and to the ANPD;
- Penalties for non-compliance with the LGPD can reach up to 50 million Brazilian Reais, in addition to the possible prohibition of activities of processing personal data.

Once sanctioned, the Law will enter into force within 18 months. Although it seems long, the deadline is only adequate for impacted companies to provide the voluminous changes in procedures required for full compliance with the law.

History and impact of GDPR

The project emerged as part of a broader effort to regulate the exercise of civil rights on the internet (which included the enactment of the Civil Rights Framework for Internet, Law No. 12,965/2014). The Ministry of Justice began working on a bill on protection of personal data in 2011.

The project went through several public consultations, whose contributions were gradually incorporated. The final project was published in October 2015 and sent to the Civil House of the Presidency of the Republic. After some adjustments, the text was submitted to the National Congress on May 13, 2016, as Bill n. 5276/2016 (attached to Bill n. 4060/2012). The process was slow, until an external factor generated enough enthusiasm in the National Congress. The recent application of the European GDPR has become the driving force behind the approval of the bill of LGPD in Brazil.

With the theme dominating the legal news at the end of May, the House of Deputies approved its Bill n. 4060/2012 on an emergency basis on May 29. The final text was submitted to the Senate on May 30. Renumbered as Bill n. 53/2018, it was approved by the Senate's Economic Affairs Committee on July 3 and by the Plenary on July 10.

Global context

Besides the European Union, numerous jurisdictions have adopted general data protection laws, among which we highlight Australia and New Zealand; Mexico, Cuba, Costa Rica and Canada; Turkey and Switzerland; Ghana, Morocco, South Africa, Tunisia and Zimbabwe; Hong Kong, Israel, Japan, Malaysia, Philippines, Qatar, Russia, Singapore and Taiwan.

Several neighbor countries have also adopted their own general data protection laws, particularly Argentina, Chile, Colombia, Paraguay, Peru and Uruguay. Therefore, the enactment of Brazilian LGPD will **raise personal data protection levels in South America up to 84% of its territory and up to 93% of its population**. Those percentages offer substantial legal certainty to the inclusion of the continent in the relevant international data market.

To obtain a copy of the approved text or more information regarding this matter, please contact us at digital@kasznarleonardos.com.