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OFFICIAL GAZETTE OF THE UNION

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Agency: Ministry of Justice and Public Security / National Data Protection Authority
/ Board of Directors

RESOLUTION CD/ANPD No. 18, OF JULY 16, 2024

Approves the Regulation on the Role
of the Data Protection Officer.

The BOARD OF DIRECTORS OF THE NATIONAL DATA PROTECTION AUTHORITY (ANPD), in the exercise of its legal powers, considering the provisions of Articles 41, § 3 and 55-J, item XIII, of Law No. 13,709, of August 14, 2018, as well as the decision made in the proceedings of process No. 00261.000226/2022-53, resolves:

Article 1 The Regulation on the Role of the Data Protection Officer is approved, in the form of the Annex to this Resolution.

Article 2 This Resolution comes into effect on the date of its publication.

WALDEMAR GONÇALVES ORTUNHO JUNIOR

Director - President

ANNEX

REGULATION ON THE ROLE OF THE DATA PROTECTION OFFICER

CHAPTER I

PRELIMINARY PROVISIONS

Article 1 This Regulation establishes supplementary rules on the appointment, definition, responsibilities, and performance of the data protection officer, as provided by Law No. 13,709, of August 14, 2018.

Article 2 For the purposes of this Regulation, the following definitions apply:

I - Data Processing Agents: the controller and the processor;

II - Conflict of Interest: a situation that may compromise, influence, or improperly affect the objectivity and technical judgment in the performance of the data protection officer's duties;

III – Controller: a natural or legal person, whether public or private, who makes decisions regarding the processing of personal data;

IV - Personal Data: information related to an identified or identifiable natural person;

V - Data Protection Officer: a person appointed by the controller and processor to act as a communication channel between the controller, the data subjects, and the National Data Protection Authority (ANPD);

VI - Processor: a natural or legal person, whether public or private, who processes personal data on behalf of the controller;

VII - Data Subject: the natural person to whom the personal data being processed refers;

VIII - Processing: any operation performed on personal data, such as collection, production, reception, classification, use, access, reproduction, transmission, distribution, processing, archiving, storage, deletion, evaluation or control of information, modification, communication, transfer, dissemination, or extraction.

CHAPTER II

DATA PROCESSING AGENTS

Section I

On the Appointment of the Data Protection Officer

Article 3 The appointment of the Data Protection Officer (DPO) must be made through a formal act by the data processing agent, which should outline the forms of action and the activities to be performed.

§ 1 The term "formal act" refers to a written, dated, and signed document that clearly and unequivocally demonstrates the intention of the data processing agent to appoint a natural or legal person as the DPO.

§ 2 The document mentioned in the caput must be submitted to the ANPD when requested.

§ 3 Small-scale data processing agents exempt from appointing a DPO must provide a communication channel with data subjects, in accordance with Article 11 of the LGPD Small-Scale Data Processing Agents Regulation, approved by Resolution CD/ANPD No. 2, of January 27, 2022.

Article 4 In cases of absence, impediments, and vacancies of the DPO, the role will be filled by a formally designated substitute.

Sole Paragraph. The situations referred to in the caput should not impede the exercise of data subjects' rights or the handling of communications from the ANPD.

Article 5 Public legal entities referred to in Article 1, Sole Paragraph, of Law No. 12,527, of November 18, 2011, must appoint a DPO when performing personal data processing operations. The appointment should preferably be made from among public servants or employees with an unblemished reputation.

§ 1 The appointment must be published in the Official Gazette of the Union, the State, the Federal District, or the Municipality, depending on the jurisdiction of the data processing agent.

§ 2 Public Administration entities that perform typical controller obligations may appoint their own DPO, considering the context and volume of personal data processing operations and the need for administrative decentralization, while observing the obligations set forth in this Regulation.

§ 3 The appointment of a DPO under the terms of § 2 presumes their competence over the entire organizational structure subordinated to the entity, except in the case of an express reservation in the appointment act.

Article 6 The appointment of a DPO by processors is optional and will be considered a best practice governance policy for the purposes set forth in Article 52, § 1, item IX, of Law No. 13,709, of August 14, 2018, and Article 13, item II, of the annex to Resolution CD/ANPD No. 4, of February 24, 2023, provided that the rules of this Regulation are observed.

Article 7 It is the responsibility of the data processing agent to establish the professional qualifications necessary for the performance of the DPO's duties, considering their knowledge of personal data protection legislation, as well as the context, volume, and risk of the processing operations carried out.

Section II

On the Identity and Contact Information of the DPO

Article 8 The data processing agent must disclose and keep updated the identity and contact information of the DPO.

Article 9 The identity and contact information of the DPO must be publicly disclosed, clearly and objectively, in a prominent and easily accessible location on the data processing agent's website, except in the case specified in § 3 of this article.

§ 1 The disclosure of the DPO's identity must include, at a minimum:

I - the full name, if a natural person; or

II - the business name or establishment title, as well as the full name of the responsible natural person, if a legal entity.

§ 2 The disclosure of the DPO's contact information must include, at a minimum, details regarding communication channels that enable data subjects to exercise their rights with the controller and facilitate the receipt of communications from the ANPD.

§ 3 A data processing agent without a website may disclose the identity and contact information of the DPO through any other available communication means, especially those commonly used for contacting data subjects.

Section III

Duties of the Data Processing Agents

Article 10 The data processing agent must:

I - Provide the necessary means for the performance of the DPO's duties, including, among others, human, technical, and administrative resources;

II - Seek assistance and guidance from the DPO when performing activities and making strategic decisions related to personal data processing;

III - Ensure the DPO has the technical autonomy required to perform their duties, free from undue interference, particularly regarding guidance on data protection practices;

IV - Provide data subjects with swift, effective, and adequate means to communicate with the DPO and exercise their rights;

V - Guarantee the DPO direct access to the highest levels of hierarchy within the organization, to decision-makers affecting or involving personal data processing, as well as to other areas of the organization.

Article 11 The data processing agent is responsible for ensuring the compliance of personal data processing in accordance with Law No. 13,709, of August 14, 2018.

CHAPTER III

THE DATA PROTECTION OFFICER

Section I

Characteristics

Article 12 The DPO may be:

I - A natural person, either within the data processing agent's organizational structure or external to it; or

II - A legal entity.

Article 13 The DPO must be able to communicate clearly and precisely with data subjects and the ANPD in Portuguese.

Article 14 Performing the role of DPO does not require registration with any entity or specific certification or professional training.

Section II

Activities and Responsibilities

Article 15 The DPO's activities consist of:

- I - Accepting complaints and communications from data subjects, providing clarifications, and taking appropriate actions;
- II - Receiving communications from the ANPD and taking necessary actions;
- III - Guiding employees and contractors of the data processing agent on data protection practices; and
- IV - Performing other duties as determined by the data processing agent or established in supplementary regulations.

Sole Paragraph Upon receiving communications from the ANPD, the DPO must take the necessary measures to address the request and provide the relevant information, including but not limited to the following actions:

- I - Forwarding the request internally to the appropriate units;
- II - Providing necessary guidance and assistance to the data processing agent; and
- III - Explicitly appointing the representative of the data processing agent before the ANPD for administrative proceedings if this role is not fulfilled by the DPO.

Article 16 Additionally, the DPO is responsible, in accordance with Article 10, item II of this Regulation, for assisting and guiding the data processing agent in the development, definition, and implementation, as applicable, of:

- I - Security incident registration and communication;
- II - Records of personal data processing operations;
- III - Data protection impact assessments;
- IV - Internal monitoring mechanisms and risk mitigation related to personal data processing;
- V - Security measures, both technical and administrative, to protect personal data from unauthorized access and accidental or unlawful situations of destruction, loss, alteration, communication, or any form of inadequate or unlawful processing;
- VI - Internal processes and policies that ensure compliance with Law No. 13,709 of August 14, 2018, and the regulations and guidance from the ANPD;
- VII - Contractual instruments that address issues related to personal data processing;

VIII - International data transfers;

IX - Best practices and governance rules and privacy governance programs, as per Article 50 of Law No. 13,709 of August 14, 2018;

X - Products and services that adhere to design standards compatible with the principles outlined in the LGPD, including privacy by design and data collection limitation to the minimum necessary for achieving their purposes; and

XI - Other activities and strategic decisions related to personal data processing.

Article 17 The performance of the activities and responsibilities outlined in Articles 15 and 16 does not transfer the responsibility, to the ANPD, for the compliance of personal data processing carried out by the controller.

Section III

Conflict of Interest

Article 18 The DPO must act with ethics, integrity, and technical autonomy, avoiding situations that may create a conflict of interest.

Article 19 The DPO may hold multiple roles and perform activities for more than one data processing agent, provided that they can fully meet their responsibilities for each agent and there is no conflict of interest.

§ 1º A conflict of interest may arise:

I - Between the duties performed internally within a single data processing agent or when serving as DPO for different agents; or

II - When combining DPO activities with other roles involving strategic decisions about personal data processing by the controller, except for those operations with personal data inherent to the DPO's responsibilities.

§ 2º The presence of a conflict of interest will be subject to verification in the specific case and may lead to sanctions for the data processing agent in accordance with Article 52 of Law No. 13,709 of August 14, 2018.

Article 20 The DPO must declare to the data processing agent any situation that could constitute a conflict of interest, and is responsible for the accuracy of the information provided.

Article 21 The data processing agent must ensure that the DPO does not perform duties that result in a conflict of interest.

Sole Paragraph Once a potential conflict of interest is identified, the data processing agent must take the following actions, as applicable:

I - Not appoint the person to perform the role of DPO;

II - Implement measures to eliminate the risk of a conflict of interest; or

III - Replace the person appointed to the role of DPO.
