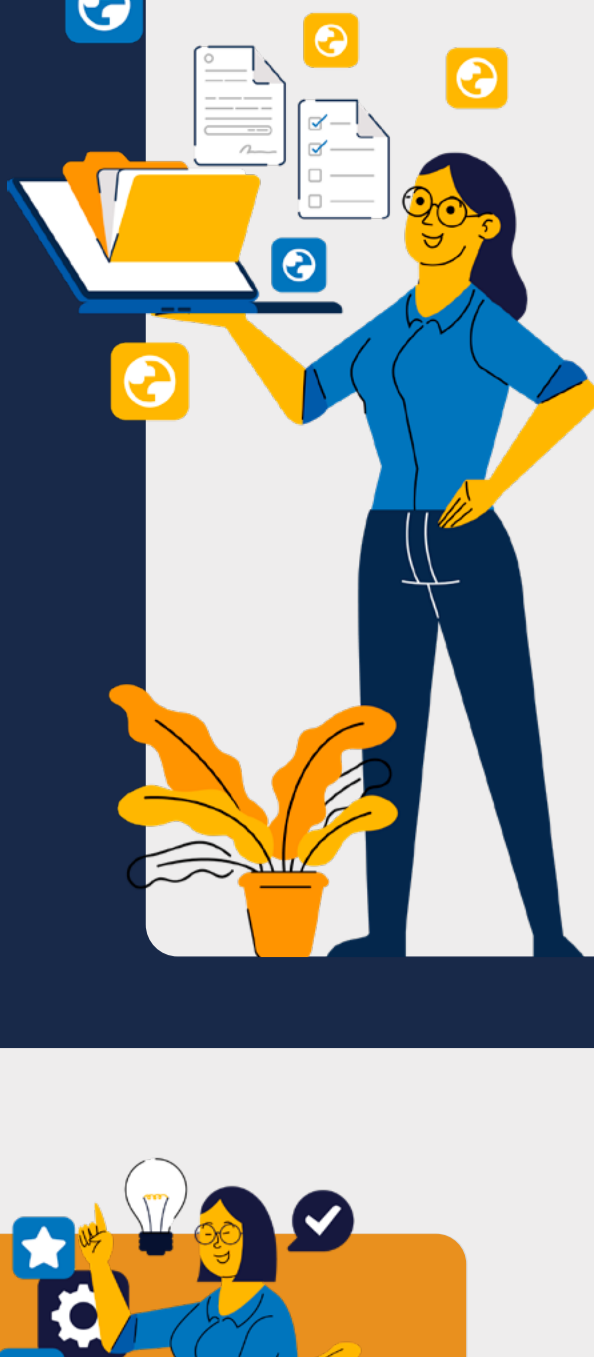


REGULATION ON INTERNATIONAL DATA TRANSFERS

Resolution CD/ANPD n. 19/2024 was published on August 23, 2024, approving the Regulation on International Data Transfers.

The Regulation, published by the National Data Protection Authority (ANPD), seeks to regulate international data transfers and provide standard clause models for use in such activities.



Main definitions



International data transfer:

the transfer of personal data to a foreign country or international organization of which the country is a member.



Exporter:

The entity, located either within the national territory or in a foreign country, that transfers personal data to an importer.



Importer:

the entity, located in a foreign country or an international organization, that receives personal data transferred by the exporter.



International data collection:

collection of personal data of the data subject carried out directly by the processing agent located abroad.

note: an international data collection does not constitute an international transfer.



Responsible entity:

business corporation with headquarters in Brazil that is liable for any violation of binding corporate rules, even if the violation results from an act committed by a member of the group or conglomerate based in another country.

Liability of the controllers and processors

Liability of data processing entities in relation to international data transfer operations:

Controller

Check if the operation:

- can be characterized as an international data transfer;
- is subject to national data protection legislation
- is supported by valid legal bases and international transfer mechanism.

Processor

Provide assistance to the controller by supplying any information that is available and necessary for the controller to fulfill their obligations

Controller and processor

Adopt measures capable of proving compliance with the rules for the protection of personal data, in a manner compatible with the level of risk of the processing and the modality of international transfer mechanism used.

Requirements

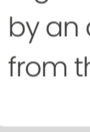
The Regulation published by the ANPD establishes certain requirements for the execution of international personal data transfers:

Specific requirements:

- observe **legitimate, specific, explicit and informed purposes as communicated to the data subject;**
- the processing must be compatible with the **informed purposes;**
- rely on the **legal bases** provided for in article 7 or article 11 of the LGPD;
- limit itself to **the minimum** necessary to achieve its purpose; and
- adopt one of the **international transfer mechanisms.**

International transfer mechanisms

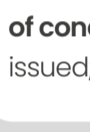
The Regulation states that international data transfers must be supported by one of the following mechanisms



Transfer to countries or international organizations that offer a **level of personal data protection equivalent** to that stipulated by the LGPD and its complementary regulations, as recognized by an adequacy decision from the ANPD;



standard contractual clauses, binding corporate rules or specific contractual clauses;



in cases where the controller provides and demonstrates guarantees of compliance with the principles, data subject rights, and data protection regime stipulated by the LGPD, through **seals, certificates, and codes of conduct** that are duly issued;



When necessary for:

- International legal cooperation between public intelligence, investigation and prosecution agencies, in accordance with international law instruments.
- Compliance with a legal or regulatory obligation.
- The execution of a contract in which the data subject is a party.
- The regular exercise of rights in judicial, administrative or arbitration proceedings.

Adequacy decision

The ANPD may determine that the level of personal data protection offered by a country or international organization is equivalent to that provided by the LGPD.

For this equivalence to be recognized, the country or international organization in question must offer a level of personal data protection that complies with the requirements of the LGPD and the ANPD's regulations.

What aspects will be taken into account in the adequacy assessment?

- the **risks and benefits** provided by the adequacy decision;
- impacts on the **international flow of data, diplomatic relations,** and Brazil's international cooperation with other countries;
- the **general and sectoral rules** of the legislation in force in the destination country or international organization;
- the **nature** of the data;
- compliance with the **general principles** of protection of personal data and **data subjects' rights** provided for in the LGPD;
- the adoption of **appropriate security measures;**
- the existence of **judicial and institutional guarantees** for the respect of **personal data protection rights;** and
- other specific circumstances relating to the transfer.

Standard contractual clauses (SCCs)



The data processing entity may use the standard contractual clauses, available in Annex II of the Regulation, as a mechanism for validating international transfers. Once adopted, these **standard contractual clauses** must not be changed, modified, excluded, or supplemented with any other provisions.

How can standard clauses be applied?

The **model of standard clauses** may be used as part of a specific contract governing the international transfer of data, or they may be incorporated as an annex to a broader contractual agreement.

What is the timeline for making contract adjustments?

Companies have **12 months** from the Regulation's publication date to bring their contracts into compliance with the new standard clauses.

Is the use of standard contractual clauses from other countries permitted?

Yes, ANPD may, via a formal decision, recognize the equivalence of standard contractual clauses from other countries or international organizations through a procedure initiated by the interested parties.

Is the use of specific contractual clauses permitted?

Yes, the data controller may request the ANPD's **approval for specific contractual clauses** due to the unique nature of certain international transfers or exceptional factual or legal circumstances, provided that they are compatible with the provisions of the LGPD and ensure a level of protection equivalent to that guaranteed by the national standard contractual clauses.

ATTENTION!

The data controller is required to provide the data subject, upon request, with the full text of the clauses used for the international transfer of data, while respecting trade and industrial secrets. This request must be fulfilled within 15 days.

Data transfers within the same economic group

The Regulation also recognizes Binding Corporate Rules as a valid mechanism for international data transfers within the same group or conglomerate of companies, with binding effect on all members.

These Binding Corporate Rules must comply with the requirements outlined in the Regulation and must be submitted for approval by the ANPD.

Requirements of Binding Corporate Rules

- Describe international data transfers
- Identify the recipient countries
- Provide information about the structure of the group of companies, including the list of affiliated entities and the roles and contact details of each organization
- Delimit the responsibilities for processing, indicating the responsible entity
- Indicate the applicable rights of data subjects, as well as the means to exercise those rights and the possibility of filing a complaint with the ANPD
- Describe the rules regarding the process of reviewing such standards, indicating the need for approval of changes by the ANPD

The ANPD will publish a list of approved Binding Corporate Rules on its website, including the respective applicant and the date of approval. Additionally, upon request by the data subject, the controller must provide the full text of these rules within 15 days

Transparency

The controller must publish a document on its website containing clear and accessible information about international data transfers. This document must be in Portuguese and include the following:

- Form, duration and specific purpose of the transfer.
- Country of destination of the transferred data.
- Identification and contacts of the controller.
- Shared use of data by the controller and its purposes.
- Responsibilities of the entities involved in processing and the security measures adopted.
- Rights of the data subjects and means to exercise those rights, including access channels and information on the right to file a complaint with the ANPD.

DISCLOSE

The document containing information about international data transfers can be made available in two ways:

- On a **dedicated page** specifically for this topic.
- Integrated prominently and easily accessible within the **Privacy Policy** or another equivalent instrument.

Application of the LGPD to personal data originating from abroad

General Rule: The LGPD also applies to personal data originating from abroad, whenever such data is processed in Brazil.

EXCEPTIONS

There are specific exceptions where the LGPD does not apply, such as:

- Data merely transiting through Brazil without communication or sharing with Brazilian entities.
- The return of data to its country of origin, provided that the country has adequate protection recognized by the ANPD.

The non-application of the LGPD in the described situations does not exempt the need to comply with other applicable laws and regulations, particularly those concerning the inviolability and confidentiality of communications, technical and security requirements, and access to data by public authorities.