

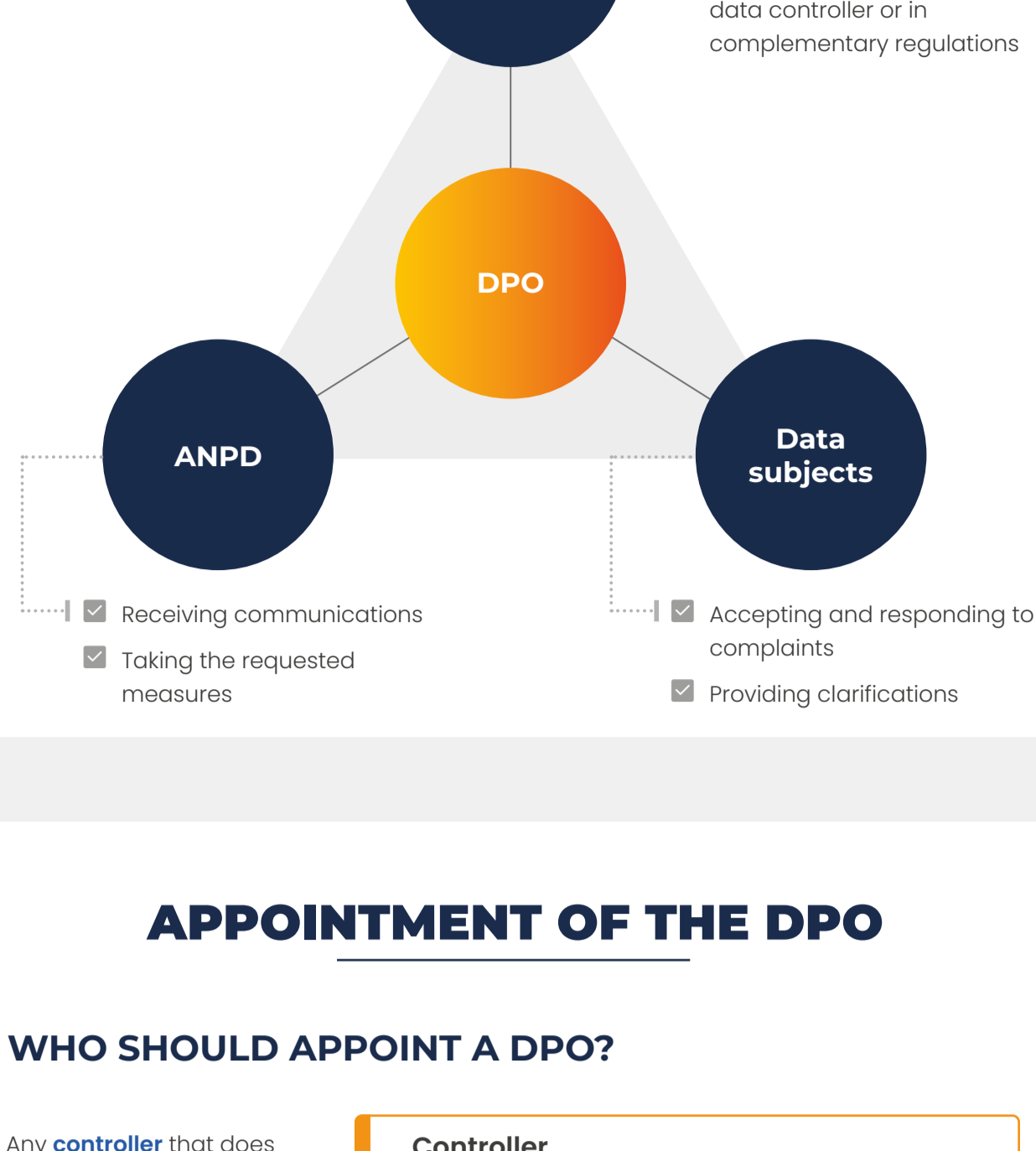
ROLE OF THE DATA PROTECTION OFFICER

On December 19, 2024, the National Data Protection Authority (ANPD) released the **Guidelines – Role of the Data Protection Officer** (“Guidelines”). This document provides guidance on the DPO’s role, aiming to support the interpretation of Resolution CD/ANPD No. 18/2024, which established the Regulation on the Role of the DPO.

The Guidelines will remain open for public comments and contributions on an ongoing basis and may be updated as necessary at the ANPD’s discretion.

Discover the key highlights of these Guidelines in the accompanying infographic below.

WHO IS THE DPO?



APPOINTMENT OF THE DPO

WHO SHOULD APPOINT A DPO?

Any **controller** that does not fit the exemption criteria must necessarily appoint a DPO

Controller

Natural or legal person, public or private, responsible for making decisions about the processing of personal data.

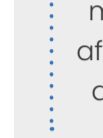
WHAT ARE THE CASES OF EXEMPTION FROM APPOINTMENT?

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SMALL-SCALE PROCESSING AGENTS

Small-scale processing agents, as defined by Resolution CD/ANPD No. 02/2022, are not required to appoint a data protection officer.

EXCEPT IN THE FOLLOWING CASES:



High-risk processing: processing agents that carry out activities classified as high risk.

The processing of personal data will be considered high risk when it meets cumulatively at least (i) one **general criterion** and (ii) one **specific criterion**:

GENERAL CRITERIA

Large-scale processing

Processing that may significantly affect the interests and rights of the data subjects

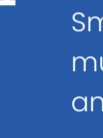
SPECIFIC CRITERIA

Surveillance or control of publicly accessible areas

Automated processing

Emerging or innovative technologies

Sensitive data or data of children, adolescents, or elderly individuals



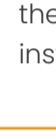
High annual gross revenue:

- Revenue between R\$ 360,000.00 and R\$ 4,800,000.00 in the calendar year.
- For **startups**, revenue up to R\$ 16,000,000.00 in the previous calendar year or R\$ 1,333,334.00 multiplied by the number of months of activity in the previous calendar year, when less than 12 months, regardless of the legal structure adopted.



Economic groups:

when the data processing agents are part of economic groups whose global revenue exceeds the limits mentioned above.



IMPORTANT!

Small-scale processing agents, even if exempt from appointing a DPO, must provide a communication channel for data subjects and the ANPD and are encouraged to appoint a DPO as a good governance practice.

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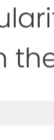
PROCESSOR

The appointment of a DPO by the processor is **optional**. However, the Guidelines emphasize that it is a good compliance practice.



Processor

Natural or legal person, public or private, that processes personal data on behalf of the controller, following its instructions



IMPORTANT!

The Guidelines emphasize that situations in which an organization acts **only as a processor**, without any degree of autonomy, are uncommon and occur in a limited manner

HOW TO MAKE THE APPOINTMENT?

Public Sector Agencies and Entities

The appointment can be made by the **highest authority** of the entity or a delegate, following the applicable administrative legislation and considering the internal structure and particularities. The appointment of the DPO must be published in the Official Gazette.

Private Processing Agents

The responsibility for the indication lies with the **competent manager**, as stipulated in the organization’s contract or bylaws.

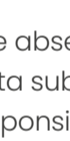
FORMALIZATION OF THE APPOINTMENT



FORMAL ACT

The appointment of the DPO must be made by a written document, dated and signed, that clearly demonstrates the intention to designate the DPO.

The Guidelines provide suggested templates for appointment documents, the use of which is not mandatory.



IMPORTANT!

The act of appointing the DPO must be stored by the processing agent, and there is no need for public disclosure. The act may be presented to the ANPD upon request.

WHO CAN BE APPOINTED AS A DPO?



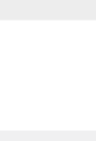
Legal Entity



Natural person



Employee of the processing agent



Third party contracted for the provision of services

Public Sector Agencies and Entities

- Preferably, the appointment should be assigned to public servants or employees with an unblemished reputation
- Outsourcing to external companies is allowed but should be approached with caution due to the strategic role of the data protection officer, as advised by the Federal Court of Accounts (TCU).



IMPORTANT!

The Guidelines emphasize that the data protection officer must be a natural or legal person responsible for acting as a communication channel between the controller, data subjects, and the ANPD. **It is not permitted to appoint an organizational unit without legal personality, as it lacks the autonomy to assume responsibilities.**

ABSENCE, IMPEDIMENT AND VACANCY OF THE DPO

The absence, impediment, or vacancy of the DPO must not compromise the rights of data subjects or the handling of communications with the ANPD. In such situations, the responsibilities must be assumed by a formally designated substitute.

Designation of Substitute

- The Guidelines suggest that the appointment of the substitute DPO should occur simultaneously with the formal appointment of the primary DPO, in order to ensure the continuity of their activities.
- When the appointed DPO is a legal entity, it is necessary to appoint a substitute from the natural person designated as responsible.

DPO’S IDENTITY AND INFORMATION

The processing agent must provide the following information about the DPO:



Natural person

- full name of the individual
- contact information



Legal entity:

- business name or trade name
- full name of the responsible natural person
- contact information



IMPORTANT!

It is essential that the information is kept up to date and accessible to ensure effective communication with the DPO, facilitating the exercise of data subjects’ rights and the supervisory activities of the ANPD.

CHARACTERISTICS

The Guidelines emphasize that, considering that the DPO is the communication channel with data subjects, the processing agent, and the ANPD itself, it is essential that the DPO is able to communicate in Portuguese (the official language of Brazil).

Although the regulations do not establish specific requirements for the DPO’s profile, the Guidelines suggest that the professional should possess knowledge in the following areas:

- personal data protection legislation
- ANPD regulations
- risk management, data management, and governance
- compliance and auditing
- information security
- understanding of the organization’s core business

ACTIVITIES AND ASSIGNMENTS

The DPO is responsible for guiding and assisting the processing agent in the following activities:

- Registration and communication of security incidents
- Record of personal data processing operations
- Preparation of Data Protection Impact Assessments and implementation of internal mechanisms for supervision and mitigation of risks associated with the processing of personal data
- Security measures, technical and administrative, to protect personal data
- International data transfers
- Processes and internal policies that ensure compliance with the LGPD and regulations and guidelines from the ANPD
- Contractual instruments that regulate issues of personal data processing
- Guarantee that products and services comply with the principles and adopt design standards compatible with the LGPD



IMPORTANT!

The DPO is **not** responsible for making decisions regarding data processing but rather for guiding and advising the data processing agent on matters related to personal data protection.

CONFLICT OF INTEREST

CONCEPT

As defined in the Regulation on the Role of the DPO, a conflict of interest is a situation that may compromise, influence, or improperly affect the objectivity and technical judgment in the performance of the DPO’s duties.

The Guidelines emphasize that the conflict of interest must be assessed on a case-by-case basis and, if confirmed, may result in sanctions against the processing agent.

Conflict of interest within the same organization

When there is an overlap of functions within the organization

The DPO should not be responsible for **functions involving strategic decision-making related to the processing of personal data.**

The Guidelines suggest that a conflict of interest may arise if the DPO simultaneously holds **leadership, management, or executive roles responsible for determining the means and purposes of personal data processing**, such as those in charge of human resources, information technology, finance, or health management.

Attention: decision-making related to personal data processing that is inherent to the DPO’s duties does not constitute a conflict of interest.

Conflict of interest in more than one organization

Among different organizations, when the DPO serves both

The concurrent activities of the DPO for more than one data processing agent **must not affect the objectivity and technical judgment of the DPO.**

The Guidelines suggest assessing potential conflicts of interest based on factors such as the economic sectors involved, the types of data processing conducted, the nature of the organizations, conflicting decisions, and the exchange of privileged or strategic information, among others.