**Brazil’s Privacy Law**

Brazil enacted the Brazilian General Data Protection Law (LGPD), which was published on August 15, 2018, as the first comprehensive data protection regulation. The law’s key provisions closely mirror the European Union’s General Data Privacy Regulation (GDPR). Like the GDPR, the LGPD imposes new rules regarding the collection, use, processing, and storage of personal data in electronic and physical form and will affect all industries and sectors of the Brazilian economy. Before the LGPD, data privacy regulations in Brazil were composed of various provisions spread across the country’s legislation. That is, Before the LGPD, the data protection regulatory framework in Brazil was sector-based and primarily regulated by the country’s Civil Rights Framework for the Internet (Internet Act) and Consumer Protection Code, among others. For example, the Brazilian Internet Act imposed some requirements regarding the security and processing of personal data and other obligations on service providers, networks, and application providers, as well as the rights of internet users.

Shortly after passing the LGPD, Brazil provisionally created the Brazilian National Data Protection Authority to enforce the LGPD and extended the compliance period to August 2020. Before the LGPD, general provisions and principles applicable to data protection were also found in: The Federal Constitution, The Brazilian Civil Code, Laws and regulations that address particular types of relationships, sectors, and professional activities such as medicine and law. There are also laws on the treatment and safeguarding of documents and information handled by governmental entities and public bodies. The LGPD applies to any processing operation carried out by a natural person or a legal entity, of public or private law, irrespective of the means used for the processing, the country in which its headquarter is located or the country where the data are located, provided that:

* The processing operation is carried out in Brazil
* The purpose of the processing activity is to offer or provide goods or services, or the processing of data of individuals located in Brazil, or
* The personal data was collected in Brazil

Unfortunately, LGPD doesn’t apply to the processing of personal data that is:

* Carried out by a natural person exclusively for private and non-economic purposes
* Performed for journalistic, artistic or academic purposes
* Carried out for purposes of public safety, national security and defense or activities of investigation and prosecution of criminal offenses (which will be the subject of a specific law), or
* Originated outside the Brazilian territory and are not the object of communication
* Shared data use with Brazilian processing agents or the purpose of international transfer of data with another country that is not the country of origin, provided that the country of origin offers a level of personal data protection adequate to that established in the Brazilian law

In comparison with the GRPR, the LGPD seems to have similar characteristics. That is, like the GDPR, the LGPD regulates controllers and processors of personal data. In this case, data controllers are the natural or legal entities who decide how and why to collect and process personal data. On the other hand, processors are the entities that process the data according to the controller’s instructions.

Additionally, much like the GDPR, the LGPD applies across industry sectors and has an extraterritorial application. That is, the LGPD applies to any individual or organization, private or public, regardless of residency, as discussed above. Due to this scenario, a business collecting or processing personal data need not be headquartered, or even have a physical presence, in Brazil for the LGPD to apply. Furthermore, the consequences of non-compliance with the LGPD can be just as severe as non-compliance with the GDPR. Violations of the LGPD can result in fines of up to 2 percent of the company’s gross revenues derived from Brazil, or 50 million reais (approximately $13 million), per infraction.

References

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