

Brazilian Data Protection Law (LGPD) Administrative Sanctions Come into Force

On August 1, 2021, the administrative sanctions provided for the Brazilian Data Protection Law (LGPD) - Law No. 13.709/2018 (the "Law") came into force and will be applied by the Brazilian Data Protection Authority (ANPD).



LGPD provides that data processing agents (controller and processor) who violate the rules provided for in the Law will be subject to:



Warning, indicating the deadline for taking corrective measures;



Simple fine, of up to 2 percent of the billing, excluding taxes, limited to BRL R\$50 million per infraction;



Daily fine, limited to the total amount of BRL R\$50 million per infraction;



Publicizing the infraction, after being investigated and confirmed;



Deletion of personal data related to the infringement;



Partial suspension of the functioning of the database to which the infringement refers until regularization;



Suspension of the exercise of data processing; and



Partial or total prohibition of the exercise of activities related to data processing.

Who the administrative sanctions apply to

Administrative sanctions apply to any **Controller** (natural or legal person, under public or private law, who is responsible for decisions regarding the processing of personal data) or **Processor** (natural or legal person, under public or private law, who carries out the processing of personal data on behalf of the controller).

Controllers and processors located in foreign territory are also subject to administrative sanctions, as the LGPD has extraterritorial application.

Parameters for applying administrative sanctions

LGPD provides that administrative sanctions will be applied after an administrative procedure that allows for the opportunity of ample defense, depending on the circumstances of each individual case and the following criteria:

- **Severity and nature** of infringements and affected personal rights;
- **Violator's good faith;**
- **Advantage gained or intended** by the Violator;
- Violator's **economic condition;**
- **Recurrence;**
- **Degree of damage;**
- Violator **cooperation;**
- Repeated and demonstrated adoption of **internal mechanisms and procedures capable of minimizing damage**, aimed at the safe and proper data processing;
- Adoption of **good practices and governance policy;**
- Adoption of **corrective measures;** and
- Proportionality between the **seriousness of the violation** and the intensity of the sanction.

Conduct subject to administrative sanctions

Any non-compliance with obligations by the LGPD to the controllers and processors is subject to sanction by ANPD

ANPD's performance in sanctions

ANPD carried out a public consultation to prepare the Regulation for Inspection and Application of Administrative Sanctions, which is currently being concluded. In addition to such regulation, ANPD will also submit a specific rule to public consultation to deal with sanctions and dosimetry.

ANPD will start its sanctioning action after the approval of this regulation, acting in relation to facts that occurred after August 1, 2021, or for continuing violations initiated before that date.

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