

Brazil has enacted its first data protection legislation, which provides for the protection of the data of individuals and private and public legal organizations. The General Data Protection Law (Law No. 13.709/2018) will become effective on February 14, 2020.

Application: The law is applicable to any activity that involves the transfer of “personal data,” which is broadly defined and encompasses transfer of data of individuals **and private and public legal entities**. The law applies to companies headquartered in Brazil, foreign affiliates located in Brazil and companies located outside of Brazil that offer or provide goods or services to individuals or entities located in Brazil or that collect or process personal data of data subjects in Brazil. Like similar comprehensive data protection laws, it imposes restrictions on the international transfer of data. It permits the exchange of data with countries or international organizations that provide an appropriate level of protection for personal data, or that provide assurances for the protection of personal data. Standard contractual clauses, global corporate standards, seals, certificates or codes authorized by the national data protection authority are considered appropriate assurances for cross-border data transfers.

Legitimate and specific interest: Generally, the consent of the data subject is required in order to process personal data (including adequate notice about the purpose for the processing). However, companies cannot use it for a different purpose unless authorized in advance by the data subject. Consent is not required in certain specific situations, such as a public concern (i.e., protection of life), to comply with regulatory obligations, and for judicial, administrative or arbitration decisions.

Personal data: The law establishes different categories of data, and dictates how such data should be treated. For instance, the law:

- a. Provides greater protection to information defined as “sensitive data,” which encompasses data related to race, national origin, religion, sexual orientation, health condition and political view. This information cannot be used to redirect advertisements. It aims to avoid discrimination between people based on that information.
- b. Prohibits the trade in medical information regarding a patient’s health conditions.

Data holders’ rights: Data subjects are authorized to have access, at any time, to their personal data, and to request rectification, cancellation, exclusion and transfer of the data to another service provider.

Data protection officer: Companies subject to the law must appoint a data protection officer to be in charge of the communication among the company, the holder of the personal data and the national authority.

Security: Companies must ensure the protection of personal data, adopting all necessary technical measures to do so. **The national authority may request “impact reports” on the protection of personal data from companies, including “sensitive data,” which identify the measures taken to protect the data.**

Mandatory notice in the event of a breach: In the case of unauthorized disclosure of personal data, companies must give notice to the data subject and to the national authority (to be created) within a reasonable time.

Penalties: Non-compliance with the provisions of Brazil’s new law may result in a fine of up to 2% of income for the preceding fiscal year, subject to a maximum limit of BRL 50 million per violation. **For the application of the penalty, authorities will take into consideration the extent of the measures adopted to comply with the law (such as existence of internal policies and training).**

We are well prepared to assist companies with understanding the requirements, to develop an internal data protection policy and to provide training to employees in order to ensure compliance with the new law. As mentioned above, compliance with the law is an important means to reduce potential liability in case the legislation is violated, as it is a requirement that companies develop a program.

Contacts

Diego Capistrano

Associate, Houston
T +1 713 546 3354
E diego.capistrano@squirepb.com

Paula Galhardo

Of Counsel, Houston
Chair, Brazil Country Desk
T +1 713 546 5855
E paula.galhardo@squirepb.com

Robin B. Campbell

Partner, Washington DC
T +1 202 457 6409
E robin.campbell@squirepb.com

Ann J. LaFrance

Partner, London
T +44 20 7655 1752
E ann.lafrance@squirepb.com