

Data Privacy Dish

Updates on the Evolving Data Protection Landscape

Brazil's Data Protection Law Will Be Effective After All, But Enforcement Provisions Delayed Until August 2021



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In a major plot twist over the last few days, Brazil's new General Data Protection Law (*Lei Geral de Proteção de Dados Pessoais*) – Law No. 13,709/2018 (LGPD) will take effect in two short weeks, after a last-minute decision not

to delay its rollout.

The Background: A Very Brief Overview of the LGPD

The **LGPD** is similar to the EU's General Data Protection Regulation (GDPR), applying data protection obligations to companies processing personal data regarding Brazilian residents. Among other requirements, the LGPD requires certain legal bases for processing data and provides Brazilian residents with many enumerated rights over their personal data. For a helpful overview of the LGPD's provisions, including the individual rights, legal bases for processing, and sanctions as enumerated in the legislation, see ***GT Alert, 6 Months Until Brazil's LGPD Takes Effect – Are You Ready?***

The Plot: A Uniquely Brazilian Process

The timeline of the LGPD's implementation has been in flux for months. Originally, per the terms of the statutory text, the LGPD was supposed to come into force August 16, 2020. In the wake of the COVID-19 pandemic, however, both the Brazilian Congress and President Jair Bolsonaro moved to delay the rollout of the LGPD. When Congressional efforts faltered, President Bolsonaro himself issued the equivalent of an executive order on April 29, 2020, that delayed the rollout of the LGPD. The president's provisional measure (PM), **No. 954**, delayed the LGPD effective date (from August 16, 2020, to May 3, 2021) and enforcement of those LGPD provisions addressing penalties until August 1, 2021.

However, under Brazilian law, PMs are only temporary, emergency actions that can be issued by the executive. They only last for 60 days, though they can be renewed once for the same time period by the National Congress of Brazil. After that, unless the National Congress enacts a PM into law, the PM expires. On June 12, the National Congress passed and President Bolsonaro signed legislation that solidified the delay of the enforcement of the LGPD's penalties and sanctions provisions until August 1, 2021. The National Congress was slower to act, however,

on enacting the overall delay to the effective date of the LGPD (though on June 26, the National Congress extended the PM for another 60 days, giving it until August 27, 2020 to figure out a solution).

The Twist: The LGPD Is Effective Immediately

For the last couple of months, the National Congress has been attempting to land on a date for the LGPD's effective date. As recently as August 25, Brazil's Chamber of Deputies (the lower house of the National Congress) **approved** a postponement until December 31, 2020. The following day, on August 26, however, the Brazilian Senate rejected that proposal, setting an immediate date of enactment of August 27, 2020. The Conversion Bill will now go to the president's desk. According to Article 62 of the Brazilian Federal Constitution, the LGPD will come into force at the end of a 15-business day period, or as soon as the Conversion Bill is sanctioned or vetoed (or if the president takes no action).

The Sequel: Brazil's New Data Protection Authority

On August 26, President Bolsonaro approved a regulatory structure and framework of official positions for the Brazilian Data Protection Authority, the ANPD. The ANPD will be tasked with overseeing personal data protection measures, developing relevant guidelines, investigating and enforcing the LGPD, and promoting cooperation actions with data protection authorities from other countries.

Final Thoughts

Though the LGPD's provisions addressing penalties will not be enforced until August 1, 2021, any Brazilian resident damaged by a violation of law will be able to immediately seek remedies. Consequently, organizations processing Brazilian residents' personal data want to make sure they are in compliance with the LGPD and pay close attention to any guidance that the ANPD issues in coming months.

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