The Brazilian National Data Protection Authority (ANPD) approves the rules for the application of sanctions in cases of violation of the General Data Protection Law - LGPD

The Brazilian National Data Protection Authority (ANPD) published today (02/27) the rules for the application of sanctions and the methodology for calculating fines for violation of the General Data Protection Law - LGPD (Resolution CD/ANPD No. 04/2023 of 02/24/2023).

The LGPD is in force since 09/18/2020 setting forth obligations for the protection of personal data and sanctions that can be applied by the ANPD, in case of violations of the law, after administrative proceedings with the due process.

Although the Authority is already established and active, listening to the population in Public Hearings, and receiving complaints from data subjects and reports in cases of Security Incidents, it was needed more detail on how the penalties provided for by the LGPD, in particular fines, would be applied.

With the publication of the current Resolution, from now on organizations can suffer penalties for events that occurred since 09/18/2020, the term LGPD came into force.

09/18/2020

The LGPD enters into force and establishes obligations for personal data protection and the sanctions applied in cases of LGPD violation (Law nº 13.709/2018).

03/08/2021

The ANPD approves its Rules of Procedures (Order nº 01/2021).

10/28/2021

The ANPD approves the Regulation that provides the rules of the Supervision Process and of the Administrative Sanction Procedure (Resolution CD/ANPD nº 01/2021).

10/25/2022

The ANPD turned into an Autarchy to act with more technical independence (Law nº 14.460/2022).

02/24/2023

The ANPD approves the Regulation that provides the rules to apply sanctions and the methodology for calculating fines in case of General Data Protection Law violations (Resolution CD/ANPD nº 04/2023 of 02/24/2023).

The LGPD violations will be classified considering the severity and type of the law infraction and the rights affected:

LIGHT

when the violation cannot be classified in any of the medium or high hypotheses below:

MEDIUM

when the violation can significantly affect fundamental rights of personal data subjects
(it means: whenever the infraction causes significantly obstruction and restriction of the personal data subjects rights or use of services, as well cause material or moral damages, such as discrimination; violation of physical integrity; violation of right to image and reputation; financial frauds or unauthorized use of a person's identity, if it is not classified as high).

HIGH

when there is obstruction of the inspection activity or when it happens to be a hypothesis describe as medium + at least one of the following cases:

- It involves processing of personal data in large scale, which is characterized by the presence of a great number of personal data subjects, considering also the volume of the data involved and the duration, frequency and geographic extension of the processing;
- The offender earns or intends to gain economic advantage as a result of the infraction committed;
- There is risk to the lives of the data subjects;
- It involves processing of sensitive data or personal data of children, adolescents or the elderly;
- There is unlawful processing of personal data (without legal basis provided for in the LGPD);
- There is unlawful or abusive discriminatory effects of the data processing; or
- There is systematic adoption of irregular practices by the offender.

After the administrative procedure, the ANPD will impose sanctions **proportionally** to the seriousness of the infraction.

What are the sanctions established in the legislation?

WARNING
if the infraction is light or medium and there is no specific recurrence or there is a need for corrective action.

SIMPLE OR DAILY FINE
up to 2% of the revenue of the legal entity of private law, group or conglomerate in Brazil in its last fiscal year, excluding taxes, limited, in total, to R$ 50,000,000.00 per infraction.

The calculation of the fine must be carried out in accordance with the Methodology established in Resolution CD/ANPD No. 04/2023, which takes into account parameters such as:

- Infraction classification (light, medium or high)
- Degree of the damage
- Extenuating factors (cessation of infraction, implementation of good practices and governance policy or repeated adoption and demonstrated internal mechanisms and procedures capable of minimizing damage to data subjects, cooperation or good faith on the part of the offender)
- Aggravating factors (specific or generic recidivism and orientation or preventive measure not complied with)

PUBLICIZATION OF THE INFRACTION
considering the relevance and public interest of the matter, after properly clarified and confirmed its occurrence;

BLOCKING OF THE PERSONAL DATA
referred to in the infraction until its regularization;

DELETION OF THE PERSONAL DATA
to which the infraction relates

In case of recurrence may be applied:

PARTIAL SUSPENSION OF THE DATABASE
related to the infraction for the maximum period of 6 (six) months, extendable for an equal period, until the processing activity is regularized by the controller;

SUSPENSION OF THE PERSONAL DATA PROCESSING ACTIVITY
related to the infraction for the maximum period of 6 (six) months, extendable for an equal period

PARTIAL OR TOTAL PROHIBITION OF THE ACTIVITY RELATED TO THE PERSONAL DATA PROCESSING

For more information on the new ANPD Resolution and LGPD penalties, please contact our Technology and Data Protection team equipetecnologia@daniel-ip.com.br