



Centre for Information Policy Leadership
HUNTON ANDREWS KURTH

Centre for Information Policy Leadership (CIPL) Virtual Private Sector Roundtable on

Determining the Legal Bases for Processing Personal Data under the LGPD

Via Microsoft Teams, in English

—Chatham House Rule—

Friday, 17 July 2020

9:30 AM – 11:00 AM EDT | 10:30 AM – 12:00 PM Brasília | 2:30 PM – 4:00 PM London

AGENDA

The new Brazilian data protection law (*Lei Geral de Proteção de Dados – LGPD*) provides that data processing can only occur if based on consent, legal obligation, contractual necessity, legitimate interests, legal obligation, among others (Arts. 7, 8 and 10). It also allows for further processing of personal data in special circumstances (Art. 7, paragraph 7) and has specific requirements concerning sensitive personal data (Art. 11).

Participation in this roundtable is limited to the private sector. Participants will examine and discuss how to identify and apply the appropriate legal basis for specific processing operations, including documenting and evidencing the rationale behind these decisions.

10:30 AM Brasília

Opening Remarks

- ❖ **Giovanna Carloni**, Global Privacy Policy Manager, CIPL

10:35 AM Brasília

The LGPD provisions on legal bases for processing

- ❖ **Marcel Leonardi**, Partner, Leonardi Advogados
- ❖ **Marcela Mattiuzzo**, Partner, Vinicius Marques de Carvalho Advogados (VMCA)

The two speakers will provide the legal background and context for this roundtable discussion. The issues they will address include the following:

- What are the LGPD's conventional legal bases (e.g., consent and legal obligation) and its more innovative legal bases (e.g. protection of credit)? What are the requirements for relying on them?
- Is there a hierarchy between the legal bases for processing in the LGPD?
- What are the most appropriate legal bases for processing sensitive personal data in different scenarios?
- Do the LGPD requirements concerning legal bases apply to both controllers and operators?
- What are the requirements for consent to be valid under the LGPD? In particular, what does it mean that consent has to be “prominent” when consent is provided in writing (“*cláusula destacada das demais cláusulas contratuais*”) under Article 8, paragraph 1? What happens if consent is provided in writing but by means other than a contract (e.g. via responding to bots)?

- What are the specific requirements for publicly available personal data (e.g. Article 7, paragraphs 3, 4 and 7)? What does “publicly available” mean in this context?
- In what circumstances can organizations carry out further processing of personal data? Does the LGPD allow for further processing of personal data in general, or only for personal data which is made publicly available?

10:55 AM Brasília

Open discussion: sharing experiences in selecting and implementing legal bases for processing personal data

Moderator: **Nathalie Laneret**, Director of Privacy Policy, CIPL

Provocateurs:

- ❖ **Paula Vargas**, Head of Privacy Engagement, Latin America, Facebook
- ❖ **Teresa Patraquim da Conceição**, Head of Privacy Team – International, Novartis
- ❖ **Renato Leite Monteiro**, Data Protection Counsel Lead for LATAM, Twitter
- ❖ **Flavia Mitri**, Privacy Director for Latin America, Uber

The Provocateurs will each share brief observations and relevant experiences and then participate in an open discussion amongst all participants. Possible questions for discussion include:

- How can organizations determine the legal bases they rely upon under the LGPD? What processes and tools can be used? What internal stakeholders should be involved in this decision-making?
- How can organizations obtain valid and informed consent under the LGPD as well as allow individuals to withdraw their consent? What tools can they use to evidence consent?
- How can organizations verify the identity of parents giving consent to the processing of their children’s data?
- How can organizations carry out and document legitimate interests assessments under the LGPD, including determining the data subjects’ legitimate expectations as per Article 10? Is the transparency obligation around legitimate assessments different than the general LGPD transparency obligation? What are examples of legitimate interests in your business sector?
- Could organizations rely on vital interests and protection of health as legal bases for processing personal data and sensitive personal data under the LGPD in the context of fighting COVID-19 and using data for good? Have organizations seen a shift in the relevance of these legal bases internationally compared to other more commonly used legal bases such as consent, contractual necessity and legitimate interests?
- What are the business benefits of further processing personal data and what grounds for processing enable such further processing?

12:00 PM Brasília

End of the virtual roundtable