

**Centre for Information Policy Leadership (CIPL) &
Instituto Brasileiro de Direito Publico (IDP)
Special Project**

Brazilian Data Protection Implementation and Effective Regulation

In August 2018, Brazil approved its first comprehensive data protection law (“Lei Geral de Proteção de Dados Pessoais” or “LGPD”). In December 2018, the former President of Brazil issued Provisional Measure No. 869/2018 which makes some amendments to the LGPD and importantly creates Brazil’s national data protection authority (the “ANDP”). The Brazilian Congress has until the beginning of June 2019 to confirm the provisional measure in its entirety or to reject or amend it. If accepted, the LGPD will enter into force in August 2020. Under the law, the current effective date is February 2020.

This leaves many organisations with approximately a 9 to 15 month window to assess the impact of the LGPD on their data processing activities and operations, devise and execute implementation strategies and make relevant changes to their business processes, compliance infrastructures and IT systems to reflect the new requirements. For many organisations, some of this work will have been completed in the context of preparations for the GDPR. For many others, including, local and Latin America wide companies, this will be a new compliance journey and an opportunity to transform their approach to data protection and data management in line with the modern digital economy.

In addition to internal preparations, organisations will now need to constructively engage and work with, for the first time, a new central data protection authority which will have its own unique leadership style and approach to ensuring the protection and privacy of Brazilians throughout the country. For the ANDP, 2020 symbolises the first cycle of regulatory data protection leadership and enforcement power and this will be as much of a learning experience for the regulator as it will for organisations. Ensuring the effectiveness of the ANDP and constructive engagement and bridge building with organisations will be critical to the success of the new data protection framework.

Many of the key changes introduced by the LGPD appear to be modeled on the GDPR requirements, including rules around the LGPD’s extraterritorial scope, the introduction of different legal bases for processing, including legitimate interest, expanded individual rights, requirements to appoint a DPO, rules around risk, including performance of a DPIA and breach notification and rules surrounding data transfers. At the same time, there are several differences and unique aspects to the LGPD. For example, the LGPD introduces legal bases not explicitly present in the GDPR, such as processing for the protection of credit. Also, there may be variations between the concept of “legitimate interest” under the LGPD and the GDPR, which could be further explored. Data portability was a completely new right for individuals in

Europe but existed in Brazil in the context of porting data related to a telephone number since 2007 under Brazil's General Portability Regulation of Anatel. Organisations cannot rest on their GDPR efforts alone for compliance with the LGPD. It is a unique compliance operation and while there will be opportunities to leverage existing organisational and technical compliance measures, organisations will need to bridge the gaps through strategic, well-informed and timely planning and implementation of the requirements.

The Centre for Information Policy Leadership (CIPL)¹ launches this special project on **Brazilian Data Protection Implementation and Effective Regulation**, in collaboration with the Instituto Brasiliense de Direito Publico ("IDP"),² to bring together key stakeholders and experts from industry, government and academia to engage in a constructive and expert dialogue on the LGPD, its interpretation, implementation and effective application. Through a series of 3 major workshops, several webinars and white papers, CIPL and IDP will facilitate consistent and forward-thinking interpretations of the new obligations, suggest best practices for implementing the requirements and build bridges between the different stakeholders in order to ensure the success of the new regulation for Brazil, for the global data landscape and for the modern digital economy.

Project Objectives

The objectives of the project are four-fold:

1. **Information Sharing:** The project will facilitate information sharing on the LGPD, regulatory and political data protection developments in Brazil and global data protection updates which will impact organisations based in Brazil.
2. **LGPD Implementation:** The project aims to inform and advance constructive and forward-thinking interpretations of key LGPD requirements, facilitate its consistent application among organisations and throughout the country and draw on global experiences in implementing and addressing many of the new requirements.
3. **Industry Experience and Best Practices:** The project will provide a forum for organisations to share and reflect on their experiences and challenges in implementing

¹ CIPL is a global data privacy and cybersecurity think tank in the law firm of Hunton Andrews Kurth LLP and is financially supported by the law firm and 75 member companies that are leaders in key sectors of the global economy. CIPL's mission is to engage in thought leadership and develop best practices that ensure both effective privacy protections and the responsible use of personal information in the modern information age. CIPL's work facilitates constructive engagement between business leaders, privacy and security professionals, regulators and policymakers around the world. For more information, please see CIPL's website at <http://www.informationpolicycentre.com/>.

² The Instituto Brasiliense de Direito Publico (Brazilian Institute of Public Law) is a legal and educational institute that seeks to contribute to the social, political and economic transformations of Brazil. As part of its mission, the IDP connects the three branches of the Brazilian government with the marketplace and society in general through neutral settings.

the LGPD, to contribute and learn about best practices and methods to execute and streamline their implementation measures and to benchmark their progress against their peers.

4. **Effective Regulation:** The project aspires to promote effective regulatory strategies, including innovative regulatory methods and constructive engagement with organisations, drawing on regulatory experiences in Europe, Asia and North America. The essential role of the data protection authority will be discussed and how regulators can make the best use of their limited resources to ensure a high level of data protection and strike the right balance with data driven innovation.

Proposed Project Focus Topics

A project-specific Steering Committee will be set up to finalise the proposed topics. Details on how to join this Committee will be provided in due course.

The areas of focus for this project include:

A. Implementation of the LGPD

- Operationalising consent and legitimate interest
- Novel legal bases for processing (e.g. protection of credit)
- Rules and effects of anonymisation and pseudonymisation of personal data
- LGPD and its interaction with big data, AI and machine learning, including rules on automated decision-making and profiling
- Data breach notification in Brazil
- Extraterritorial application of the LGPD to multinational organisations

B. Accountability

- Appointment and role of the Data Protection Officer
- Risk Assessments under the LGPD (e.g. requirements to perform a DPIA and privacy by design/default)
- Evidencing and demonstrating accountability internally and externally, including to the ANPD and individuals
- Incentivising accountability
- Content of privacy management programmes and elements of accountability mapped to LGPD requirements
- The privacy governance program - requirements and acknowledgement by the ANPD

C. Individual Rights

- Rules surrounding classic data protection rights (e.g. access, correction, erasure, etc.)
- Scope and effects of the informational self-determination principle
- Data portability and existing practices surrounding this right in Brazil
- Transparency requirements
- Differences between Brazilian data protection rights and other international regimes
- Other novel rights

D. International Data Transfers

- LGPD similarity with GDPR and its potential for adequacy
- Transfer mechanisms, challenges and solutions to export and import data
- Certified accountability schemes to legitimise transfer, including Brazilian certifications and Codes of Conduct
- Interoperability with other transfer mechanisms and schemes, including EU BCR and certifications and APEC CBPR

E. The Role of the ANDP

- Unique structure and legal nature of the ANDP
- Elements of autonomy: administrative, technical and budgetary
- Powers and Tasks of the ANDP
- Effective regulation and how the ANDP can best utilise its resources
- Sanctions and liability
- International cooperation with other data protection authorities

Preliminary Proposed Project Timeline

- **August 2019:** Project Launch
- **25 September 2019** – *Workshop I:* LGPD - Implementation and harmonisation with international standards (IDP - Brasília – DF)
- **16 October 2019** – *Webinar I:* The role of the DPO
- **27 November 2019** – *Webinar II:* DPIA - when and how

- **4 March 2020** – *Workshop II: Security and International Data Flows* (São Paulo – SP)
- **15 April 2020** – *Webinar III: Implementing individual rights*
- **13 May 2020** – *Webinar IV: ANPD and the regulation of LGPD - thinking on innovative regulatory models*
- **05 August 2020** – *Workshop III: Accountability and LGPD requirements* [provisional] [place TBD]

Please note that in addition to these official CIPL & IDP workshops, the IDP may as part of this project organise additional local meetings in Portuguese with local stakeholders and further webinars. The topics and shape of such meetings and webinars will vary according to the pace of implementation of the LGPD, the progression of the ANPD and various other factors, including demand by project participants and the input of the Steering Committee. Participants will be made aware of these events and offered the invitation to participate and attend.

Potential White Papers Topics

- **February 2020** LGPD Implementation Guidelines
- **April 2020** Individual Rights under Brazil's Data Protection Regime
- **June 2020** Accountability under the LGPD

CIPL and IDP are excited to embark on this new project to facilitate the advancement of data protection in Brazil. To learn more about the project and ways to get involved, please contact Bojana Bellamy, bbellamy@huntonak.com, Markus Heyder, mheyder@huntonak.com, Nathalie Laneret, nlaneret@huntonak.com or Sam Grogan, sgrogan@huntonak.com.