

## **CD/ANPD RESOLUTION NO. 18, OF JULY 16, 2024**

Approves the Data Protection Officers (DPOs) Regulation.

The BOARD OF DIRECTORS OF THE NATIONAL DATA PROTECTION AUTHORITY (ANPD), in the use of its legal attributions, considering the provisions of arts. 41, § 3 and 55-J, item XIII, of Law No. 13,709, of August 14, 2018, as well as the decision taken in the records of case No. 00261.000226/2022-53, resolves:

**Article 1** The Data Protection Officers (DPOs) Regulation is hereby approved, in the form of the attachment to this Resolution.

**Article 2** This Resolution comes into force on the date of its publication.

**WALDEMAR GONÇALVES ORTUNHO JUNIOR**

Chief Executive Officer

ATTACHMENT

DATA PROTECTION OFFICERS (DPOS) REGULATION

CHAPTER I

PRELIMINARY PROVISIONS

**Article 1** - This Regulation establishes complementary rules on the appointment, definition, attributions and performance of the Data Protection Officers, as provided for in Law No. 13. 709, of August 14, 2018.

**Article 2** - For the purposes of these Regulations, the following definitions are adopted:

I – processing agents: the controller and the operator;

II – conflict of interest: the situation that may improperly compromise, influence or affect the objectivity and technical judgment in the performance of the duties of the DPO;

III – controller: natural or legal person, under public or private law, who is responsible for decisions regarding the processing of personal data;

IV – personal data: information related to an identified or identifiable natural person;

V – DPO: person appointed by the controller and operator to act as a communication channel between the controller, the data subjects and the National Data Protection Authority (ANPD);

VI – operator: natural or legal person, under public or private law, who processes personal data on behalf of the controller;

VII – data subject: natural person to whom the personal data that are the object of processing refers; and

VIII – processing: any operation carried out with personal data, such as those referring to the collection, production, reception, classification, use, access, reproduction, transmission, distribution, processing, filing, storage, elimination, evaluation or control of information, modification, communication, transfer, dissemination or extraction.

## CHAPTER II

### PROCESSING AGENTS

#### Section I

##### Appointment of the Data Protection Officer

**Article 3** - The appointment of the Data Protection Officer (DPO) must be made by a formal act of the processing agent, which includes the forms of action and the activities to be performed.

§1 - A formal act is understood to be a written, dated and signed document that, in a clear and unequivocal manner, demonstrates the intention of the processing agent to designate a natural person or a legal entity as the DPO.

§2 - The document referred to in the caput shall be submitted to the ANPD, when requested.

§3 - Small-sized Processing Agents exempted from appointing a DPO must provide a communication channel with the data subject, pursuant to article 11 of the LGPD Application Regulation for Small-Sized Processing Agents, approved by Resolution CD/ANPD No. 2, of January 27, 2022.

**Article 4** - In the absences, impediments and vacancies of the DPO, the function shall be exercised by a formally appointed substitute.

Sole Paragraph. The situations referred to in the caput may not consist of obstacles to the exercise of the rights of the holders or to the fulfillment of ANPD communications.

**Article 5** - The legal entities governed by public law referred to in article 1, sole paragraph, of Law No. 12,527, of November 18, 2011, shall appoint a DPO when they carry out personal data processing operations, with the indication falling, preferably, on public servants or employees with an unblemished reputation.

§1 - The indication must be published in the Official Gazette of the Union, the State, the Federal District or the Municipality, depending on the sphere of activity of the processing agent.

§2 - Depersonalized entities of the Public Administration that have typical controller obligations may appoint their own DPO, considering the context and volume of the processing of personal data carried out and the need for administrative deconcentration, subject to the obligations set forth in this Regulation.

§3 - The appointment of a DPO under the terms of §2 presumes his competence over the entire organizational structure subordinated to the body, except in the case of an express reservation in the act of appointment.

**Article 6** - The appointment of a DPO by operators is optional and will be considered a policy of good governance practices for the purposes of the provisions of article 52, §1, item IX, of Law No. 13,709, of August 14, 2018, and article 13, item II, of the attachment to Resolution CD/ANPD No. 4, of February 24, 2023, provided that the rules of this Regulation are observed.

**Article 7** - It is incumbent upon the processing agent to establish the professional qualifications necessary for the performance of the duties of the DPO, considering his knowledge of the personal data protection legislation, as well as the context, volume and risk of the processing operations carried out.

## Section II

### Identity and Contact Information of the DPO

**Article 8** - The processing agent must disclose and keep updated the identity and contact information of the DPO.

**Article 9** - The identity and contact information of the DPO shall be publicly disclosed, in a clear and objective manner, in a prominent and easily accessible place, on the website of the processing agent, except for the hypothesis of §3 of this article and article.

§ 1 - The disclosure of the identity of the DPO shall cover, at least:

I - the full name, if it is a natural person; or

II - the corporate name or title of the establishment, as well as the full name of the responsible natural person, if a legal entity.

§2 - The disclosure of the contact information of the DPO shall cover, at least, the data related to the means of communication that enable the exercise of the rights of the data subjects with the controller and enable the receipt of communications from the ANPD.

§3 - The processing agent who does not have an electronic website may disclose the identity and contact information of the DPO by any other means of communication available, especially those usually used to contact the data subjects.

## Section III

### Duties of Processing Agents

**Article 10** - The processing agent shall

I - provide the necessary means for the exercise of the duties of the DPO, including, among others, human, technical and administrative resources;

II - request assistance and guidance from the DPO when carrying out activities and making strategic decisions regarding the processing of personal data;

III - guarantee the DPO the technical autonomy necessary to carry out his activities, free from undue interference, especially in the guidance regarding the practices to be taken in relation to the protection of personal data;

IV - ensure that the data subjects have fast, effective and adequate means to enable communication with the DPO and the exercise of rights;

V - guarantee the DPO direct access to the people with the highest hierarchical level within the organization, to those responsible for making strategic decisions that affect or involve the processing of personal data, as well as to other areas of the organization.

**Article 11** - The processing agent is responsible for the compliance of the processing of personal data, under the terms of Law No. 13. 709, of August 14, 2018.

## CHAPTER III

### THE DATA PROTECTION OFFICER

#### Section I

##### Characteristics

**Article 12** - The DPO may be:

I - a natural person, a member of the organizational framework of the processing agent or external to him; or

II - a legal entity.

**Article 13** - The DPO must be able to communicate with the data subjects and with the ANPD, clearly and precisely and in Portuguese.

**Article 14** - The exercise of the activity of foreman does not presuppose registration with any entity or any specific certification or professional training.

#### Section II

##### Activities and Attributions

**Article 15** - The activities of the DPO consist of:

I - accepting complaints and communications from the holders, to provide clarifications and to adopt appropriate measures;

II - receiving communications from the ANPD and to adopt measures;

III - guiding the employees and contractors of the processing agent regarding the practices to be taken in relation to the protection of personal data; and

IV - performing the other duties determined by the processing agent or established in complementary rules.

Sole Paragraph. Upon receiving communications from the ANPD, the DPO must adopt the necessary measures to comply with the request and provide the relevant information, adopting, among others, the following measures:

I - internally forwarding the demand to the competent units;

II - to provide the necessary guidance and assistance to the processing agent; and

III - expressly appoint the representative of the processing agent before the ANPD for the purpose of acting in administrative proceedings, when this function is not exercised by the DPO himself.

**Article 16** - It is also incumbent upon the DPO, under the terms of article 10, item II, of these Regulations, to provide assistance and guidance to the processing agent in the preparation, definition and implementation, as the case may be, of:

I - registration and communication of security incidents;

II - registration of personal data processing operations;

III - impact report on the protection of personal data;

IV - internal mechanisms for supervision and mitigation of risks related to the processing of personal data;

V - security, technical and administrative measures, capable of protecting personal data from unauthorized access and from accidental or unlawful situations of destruction, loss, alteration, communication or any form of inappropriate or unlawful processing;

VI - internal processes and policies that ensure compliance with Law No. 13,709, of August 14, 2018, and with the regulations and guidelines of the ANPD;

VII - contractual instruments that regulate issues related to the processing of personal data; VIII - international data transfers;

IX - rules of good practices and governance and privacy governance program, pursuant to article 50 of Law No. 13. 709, of August 14, 2018;

X - products and services that adopt design standards compatible with the principles set forth in the LGPD, including privacy by default and the limitation of personal data collection to the minimum necessary for the achievement of its purposes; and

XI - other activities and strategic decision-making regarding the processing of personal data.

**Article 17** - The performance of the activities and duties set forth in arts. 15 and 16 do not confer on the DPO the responsibility, before the ANPD, for the compliance of the processing of personal data carried out by the controller.

### Section III

#### Conflict of Interest

**Article 18** - The DPO must act with ethics, integrity and technical autonomy, avoiding situations that may constitute a conflict of interest.

**Article 19** - The DPO may accumulate functions and perform his activities for more than one processing agent, provided that it is possible to fully comply with his duties related to each processing agent and there is no conflict of interest.

§1 - The conflict of interest may be configured:

I - between the duties exercised internally in a processing agent or in the exercise of the activity of a DPO of different processing agents; or

II - with the accumulation of the activities of the DPO with others that involve strategic decision-making on the processing of personal data by the controller, except for operations with personal data inherent to the duties of the DPO.

§2 - The existence of a conflict of interest will be subject to verification in the specific case and may lead to the application of a sanction to the processing agent under the terms of article 52 of Law No. 13,709, of August 14, 2018.

**Article 20** - The DPO must declare to the processing agent any situation that may constitute a conflict of interest, being responsible for the veracity of the information provided.

**Article 21** - The processing agent must ensure that the DPO does not exercise duties that entail a conflict of interest.

Sole Paragraph. Once the possibility of a conflict of interest is verified, the processing agent must adopt the following measures, as the case may be:

I - not appoint the person to exercise the function of DPO;

II - implement measures to remove the risk of conflict of interest; or

III - to replace the person designated to exercise the function of DPO.