

## In a nutshell

# Six reasons to care about Brazil's new data protection law

### 1. Extra-territorial scope



Similarly to the GDPR, the LGPD has extraterritorial reach and applies to companies that do not have an establishment in Brazil. Companies must comply with the law in any of the following cases: 1) when processing of personal data occurs in Brazil; 2) when processing is related to the offering of goods or services to data subjects in Brazil; 3) when the personal data being processed was collected in Brazil.

### 2. Similar - but not the same



The LGPD is clearly inspired by the GDPR and, in many ways, very similar to it. Principles, conditions for international transfers, records keeping and accountability requirements are all quite the same. However, there are also a lot of differences. Complying with the GDPR will go a long way to complying with the LGPD but it is important to notice and account for the differences.

### 3. Wider lawful bases



Many of the lawful bases for processing of personal data are equivalent to those under the GDPR. However, the LGPD provides a wider range of lawful bases, including in relation to special categories of personal data. For instance, personal data can be lawfully processed when it is necessary for credit protection.

### 4. Shorter timelines for DSARs



When a data subject exercises his/her right of access, the controller must respond to that request within 15 days from receipt, providing the data subject with a full report which includes details of the source of the data, the absence of records (if applicable), the criteria used for the processing and the purposes of the processing. If the data subject only exercises his/her rights to confirm the existence of the processing, the controller must respond to that request immediately, in a simple manner.

### 5. Onerous notification thresholds



Data controllers must notify the supervisory authority and the affected data subjects whenever there is a security incident that may result in either damage or risk to the data subjects. Notification must be carried out within a reasonable period of time, which has not yet been clearly defined but may be a later stage, through a regulation issued by the Data Protection Authority.

### 6. It's not just about fines



The sanctions prescribed under the Brazilian law are significant, albeit lower than those under the GDPR. The maximum monetary penalty a company may receive is up to 2% of its turnover in Brazil over the last fiscal year, excluding taxes, and limited to a total of BRL 50m per breach (approximately £10m subject to the current exchange rate). More concerning is the prospect of increased litigation. Brazil is well-known for large rates of litigation, especially in connection with employment and consumer matters. The Brazilian courts are known for granting moral damages awards to claimants and this could be a trend in relation to privacy issues as well. Litigation is often regarded as time consuming and expensive, and it is worth noting that the Brazilian small claims courts do not require claimants pay any court fees to initiate a claim.

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