

# Brazilian Data Protection Law

## Partial Vetoes to the Bill of Law No. 7/2019

Law No. 13.853/2019 altering the Brazilian Data Protection Law was published in the Federal Official Gazette on July 9, 2019, implementing the changes from Provisionary Measure No. 869/2018, which was sanctioned by former president Michel Temer in late 2018. Some articles of the law have been vetoed, as indicated below:

### A) RULES VETOED FOR BEING CONTRARY TO PUBLIC INTEREST:



#### POSSIBILITY OF REVISION BY AUTOMATED DECISION

ARTICLE: Paragraph 3 of article 20

RULE: Established, in article 20, that the data owner has the right to request the revision of decisions made solely on the basis of automated data processing that affect their interests and determined, in paragraph 3, that such revision could only be made by a natural person.

REASON FOR VETO: Contrary to public interest because it (i) would impair the current business models of several companies, notably startups; (ii) would impact the risk analysis of credit and financial institutions' new models of business, which would, consequently, (iii) cause a negative effect on the offer of credit to consumers – impacting the quality of guarantees, the volume of hired credit and the composition of prices – and (iv) impact the inflation rates and the conducting of monetary politics.

WHO VETOED: The Ministry of the Economy, the Ministry of Science, Technology Innovation and Communication; the General Comptroller's Office; and the Central Bank of Brazil.



#### QUALIFICATION OF DATA PROTECTION OFFICER ("DPO")

ARTICLE: Paragraph 4 of article 41

RULE: Established that the DPO must have legal regulatory knowledge.

REASON FOR VETO: Contrary to public interest because this would be an unnecessary interference of the State in the private parties' discretion of hiring in the productive sector, which would violate a fundamental right of the article 5, XIII of the Federal Constitution, considering that it would restrict the free exercise of profession.

WHO VETOED: The Ministry of the Economy and the General Comptroller's Office.

### B) RULES VETOED FOR CREATING LEGAL INSECURITY



#### SHARING OF PERSONAL DATA BY PUBLIC ENTITIES

ARTICLE: Article 23, IV

RULE: Prohibited the sharing of personal data by public authorities and legal entities of private law.

REASON FOR VETO: Would create legal insecurity, considering that such sharing can be an essential measure to regulate the exercise of public policy activities. The veto highlighted that the sharing of data is not to be confused with breach of confidentiality of access by the public.

WHO VETOED: The Ministry of Science, Technology Innovation and Communication and the General Comptroller's Office.



#### PREDICTION OF ADMINISTRATIVE PENALTIES

ARTICLE: Article 52, X, XI and XII and paragraphs 3 and 6

RULE: Established administrative penalties of suspension or prohibition of the activity related to data processing.

REASON FOR VETO: Would create legal insecurity for the people liable for this information, which would make the use and processing of databases essential to several private activities difficult.

WHO VETOED: The Ministry of Science, Technology, Innovation and Communication; the Ministry of Health; the General Comptroller's Office; and the Central Bank of Brazil.

### C) RULES VETOED FOR VIOLATING THE TRANSITORY NATURE OF DIRECT ADMINISTRATION OF THE NATIONAL AUTHORITY OF DATA PROTECTION ("ANPD")



#### FINANCING OF THE ANPD

ARTICLE: Article 55-L, V

RULE: Determined that fees and charges would constitute the revenue of the ANPD.

REASON FOR VETO: Would violate the transitory nature of Direct Administration of the ANPD since it would not be possible for fees and charges to be encompassed by the ANPD's revenue. The Authority should handle its own resources.

WHO VETOED: The Ministry of the Economy and the General Comptroller's Office