

Guidance for Definitions of Personal Data Processing Agents and Data Protection Officers

VERSION 2.0



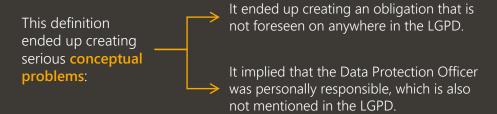


Published by the Brazilian Data Protection Authority (ANPD) on April 26, 2022, the new version of the guidance brought subtle, yet important, changes and clarifications.

NEW WORDING

70. In the exercise of their duties, the Data Protection Officer **CAN** play an important role in promoting and disseminating a culture of personal data protection in the organization.

• In the previous version of the guidance (which we did a legal update on, which can be accessed here), ANPD defined the Data Protection Officer as "the individual responsible for ensuring the compliance of an organization, public or private, with the LGPD."

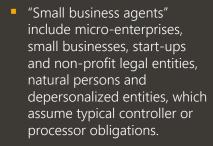


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RESPONSIBILITY

In the new version of the guidance, the suggestion was removed that the Data Protection Officer is personally responsible for the organization's compliance with the LGPD. And, thus, it follows that the civil and administrative responsibility for the collection and processing of personal data lies with the processing agent itself, not personally with the Data Protection Officer.

DATA PROTECTION OFFICER IN SMALL BUSINESS DATA PROCESSING AGENTS



The new version of the guidance references Resolution nº 02/2022 (on which we published a Legal Update, which can be accessed here), which approves the Regulation for the Applicability of the LGPD for small business data processing agents, exempting them from having to name a Data Protection Officer.



This was already expected based on the wording of the first version, which said that "future ANPD regulations may waive the need to appoint a Data Protection Officer, according to the nature and size of the entity or the size of its data processing operations.





COMMUNICATION OR REGISTRATION OF IDENTITY OF AND CONTACT INFORMATION FOR THE DATA PROTECTION OFFICER BEFORE THE ANPO

As with the previous version of the guidance, the new version does not require that the organization communicate to or register with the ANPD the identity of and contact information for the Data Protection Officer due to the absence of legal or regulatory provisions for this. However, the guidance emphasizes that this is the scenario at the moment, which may change with future ANPD regulations.



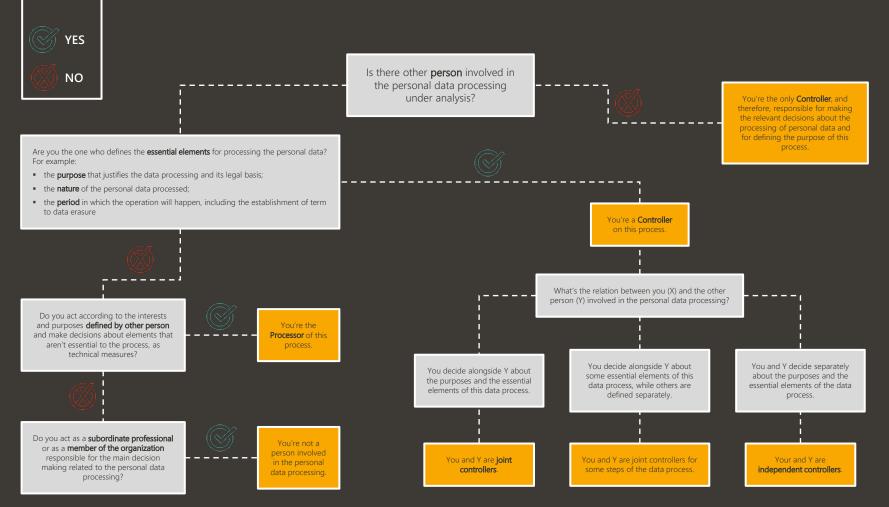
FUTURE REGULATION OF THE DATA PROTECTION OFFICER

The new version of the guidance reminds us that the subject of the Data Protection Officer is in the ANPD's 2021-2022 Regulatory Agenda and matters related to the role are still to be analyzed and better defined.



APPENDIX OF CONTROLLER AND PROCESSOR CONCEPTS

A new feature in the new version of the guidance is a graphic to help identify the processing agent profiles—whether, in a specific case, the agent is a controller (joint or singular controllership) or a processor.



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