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PUBLICATIONS

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EXECUTIVE ORDER CREATES THE BRAZILIAN DATA PROTECTION AUTHORITY AND POSTPONES ENTRY INTO FORCE OF THE BRAZILIAN DATA PROTECTION LAW TO AUGUST 2020

BY:

The Brazilian National Data Protection Authority (ANPD) was created today, through Executive Order (MP) 869/2018. The ANPD will be composed of 5 commissioners, to be appointed by the President of the Republic, and advised by a National Council for the Protection of Personal Data and Privacy, composed of 23 unpaid members -- 11 members from different spheres of government and 12 members divided between 4 from the private sector, 4 from academia and 4 from civil society.

Each commissioner of the ANPD will have a four-year term, with the exception of its first composition, which shall have commissioners with 2, 3, 4, 5 and 6-year terms. There is still no timeframe for the effective appointment of the commissioners of the ANPD or of the members of the Council by the Presidency of the Republic.

The ANPD has been assured technical independence, although subordinated to the Presidency of the Republic, and will have equivalent powers to the European DPAs, exercising the triple role of (i) investigation, being able to issue norms and procedures, deliberate on the interpretation of the Brazilian Data Protection Law (LGPD) and request information to controllers and processors; (ii) enforcement, in cases of noncompliance with the law, through an administrative process; and (iii) education, disseminating knowledge about the LGPD and security measures, stimulating standards for services and products that facilitate control of data subjects, and elaborating studies on national and international practices for the protection of personal data and privacy, amongst others.

The ANPD will have exclusive jurisdiction to apply the penalties provided for in the LGPD. With the creation of the ANPD, it is expected that crucial points of the LGPD will be addressed once its commissioners are appointed, such as international transfer mechanisms and practical application of legitimate interests, among others.

The MP postpones the entry into force of the LGPD to August 2020 and changes some important points of the law, in particular:

- a) sharing of sensitive health data in order to obtain an economic advantage is allowed when there is a need for communication for the adequate provision of supplementary health services and in the case of portability of data when consented to by the data subject;
- b) review of automated decisions, when requested by the data subject, does not necessarily need to be done by a natural person, and
- c) obligation to inform the data subject of the hypotheses regarding the processing of their personal data when based on compliance with a legal or regulatory obligation and for the execution of public policies was revoked.

MP 869/2018 is subject to modifications by the National Congress, which may submit amendments between February 4 and 11.