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FEATURED Q&A

Will a New Law Effectively Protect Brazilians' Data?



Businesses should not expect leniency from regulators enforcing Brazil's new data protection law, Andrew W. Szwec writes below. // File Photo: goodfreephotos.com.

Q Brazil's Senate on May 29 approved the latest iteration of the Brazilian General Data Protection Law, known as LGPD, which next requires President Jair Bolsonaro's nod to become law. The proposal would create a Brazilian Data Protection Authority. What are the most important aspects of the LGPD for companies doing business in Brazil? Do the new measures work well with existing Brazilian privacy laws and regulations? Have lawmakers struck the right balance in requiring more security and compliance with what foreign companies, small firms and start-ups can reasonably be expected to provide? Are fines and other sanctions the law sets out likely to be effective and enforceable? Will other countries in the region follow Brazil's approach to protecting data and individuals' rights?

A Andrew W. Szwec, senior managing director in the technology practice of FTI Consulting: "Brazil is at the forefront of this type of legislation in South America, and if current global trends are an indicator, other countries in the region will likely follow suit. For now, though, there is a lack of clarity surrounding the practicalities of the LGPD. It's possible we'll see a similar evolution to what has taken place in Europe with the GDPR over the last two years and what's currently happening in the United States with the California Consumer Privacy Act and other state-based privacy laws. This means companies in Brazil will likely represent a mix of wait-and-see and proactive preparedness. Also, like we've seen in Europe over the last year, once enforcement of the law kicks in, authorities may ramp up

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TODAY'S NEWS

POLITICAL

Guatemala, U.S. Discuss 'Safe Third Country' Designation

The designation would mean that the United States could send migrants who are denied asylum to Guatemala, where they would have guarantees not to be sent back to their home countries.

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BUSINESS

Brazilian State Banks Brace in Wake of Odebrecht Bankruptcy Filing

Brazilian state-run banks hold a considerable amount of debt of construction conglomerate Odebrecht, which has filed for bankruptcy protection.

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POLITICAL

Guaidó, Envoys Accused of Misappropriation

Venezuela's attorney general accused opposition leader Juan Guaidó and two of his representatives of involvement in the misappropriation of public funds.

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Guaidó // File Photo: Venezuelan Government.

POLITICAL NEWS

Venezuela's Saab Accuses Guaidó, Envoys of Corruption

Venezuelan Attorney General Tarek William Saab on Tuesday accused opposition leader Juan Guaidó of leading an alleged public corruption scheme, the Associated Press reported. Saab, a key ally of President Nicolás Maduro, said his office is investigating two of Guaidó's diplomatic representatives for alleged misappropriation of public funds. The two opposition activists, Rossana Barrera and Kevin Rojas, were helping Venezuelan security forces cross the border into Colombia under Guaidó's leadership when they allegedly stole money and falsified hotel bills, according to the report. They are accused of pilfering tens of thousands of dollars from funds that private donors and foreign governments had earmarked to support Venezuelan soldiers who had broken from Maduro, The Wall Street Journal reported. Barrera and Rojas have not been charged, and neither could be reached for comment. Saab claims the case is proof that Guaidó is the head of a "mafia of corruption." Guaidó in January invoked the Constitution to declare himself as the legitimate interim president of Vene-

zuela, calling Maduro's re-election last year fraudulent. More than 50 countries, including the United States and most Latin American nations, recognize him as Venezuela's president. Guaidó has also ordered an investigation into the accusations with assistance from Colombian authorities. His Colombia envoy, Humberto Calderón, said he had requested a probe because the opposition wants to differentiate itself from Maduro's government, which is accused of rampant corruption, The Wall Street Journal reported.

Guatemala, U.S. Discuss 'Safe Third Country' Designation

Guatemala and the United States are discussing the possibility of the Central American nation becoming a "safe third country" for refugees as part of U.S. President Donald Trump's latest move to crack down on migration, the Financial Times reported today. Guatemalan Interior Minister Enrique Degenhart told reporters that the terms had not yet been agreed upon, adding that the negotiators were trying "to find a measure that will suit both countries." The "safe third country" designation would mean U.S. authorities could send migrants who are denied asylum there to Guatemala instead,

NEWS BRIEFS

Nicaraguan Government Says it Has Released All Political Prisoners

Nicaragua's government said Tuesday that it has released all prisoners detained in connection to the violent anti-government protests that began in April of last year, the Associated Press reported. The government and the opposition had agreed that all political prisoners would be released by Tuesday, but the opposition says more than 80 remain behind bars.

Chile to Accelerate \$4 Billion Investment Plan to Boost Economy: Piñera

Chile's government will accelerate a \$4 billion infrastructure program this year to stimulate the country's slowing economy, President Sebastián Piñera said Tuesday, Reuters reported. He said the "powerful" plan for economic reactivation, which seeks to add investments of \$2 billion between 2018 and 2020, would create jobs and improve wages. Chile's GDP grew 1.6 percent in the first quarter, and the central bank in April cut its 2019 economic growth forecast to between 3 percent and 4 percent, down from the previous estimate of between 3.25 percent and 4.25 percent.

López Obrador Proposes Recall Referendum in 2021

Mexican President Andrés Manuel López Obrador on Tuesday proposed holding a referendum on his presidential mandate on March 21, 2021, if Congress does not pass a constitutional change allowing the vote during midterm legislative elections, Reuters reported. López Obrador, who took office in December, had promised to give the public the chance to vote him out halfway through his six-year term, but his proposal has met resistance in the Senate from opposition legislators concerned about its implications. The upper chamber is scheduled to debate on the president's plan this week.

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steadily, focusing on a few key industries or likely offenders. It's hard to say how severely sanctions will be handed down, but businesses should not bet on regulator leniency. At this point, corporations based in Brazil or operating in the country have a real opportunity to be forward-facing on this issue. We're seeing a lot of demand from clients in the region looking to ramp up their information governance and security posture and implement programs that will prepare their organization for compliance with the LGPD. While these programs can be a heavy lift, most companies will need to develop reasonable strategies for handling personal

data and ensuring they have established sound information governance despite uncertainties about emerging laws."



Ana Carolina Moreira Cesar, specialist in IT law and partner at Daniel Law in Brazil: "Com-

panies doing business in Brazil should be aware of the implications of the LGPD, given that in some aspects, the Brazilian law is even stricter than GDPR. The LGPD is ruled by the extraterritoriality principle, applied to organizations that have a physical presence in Brazil as well as to those that are not physically present but offer products

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where migrants would have the guarantee of not being sent back to their origin countries, Reforma reported. Safe third countries are also expected to offer security, employment, education and health services to migrants. More than 100,000 people have fled Guatemala in the last year, and the U.S. State Department advises U.S. citizens to “reconsider travel” there because of rampant violent crime, the Financial Times reported. Nearly 60 percent of Guatemala’s population lives in poverty. On Monday, Trump announced his administration was cutting hundreds of millions of dollars in aid to Honduras, Guatemala and El Salvador. He has said the countries are not doing enough to curb the flow of migrants to the United States.

BUSINESS NEWS

Brazilian State Banks Bracing in Wake of Odebrecht Filing

Brazilian state-run banks are bracing for possible heavy losses following construction conglomerate Odebrecht’s bankruptcy filing, The Wall Street Journal reported Tuesday. Brazil’s BNDES development bank holds almost a tenth of the company’s \$25.3 billion in debt, while Banco do Brasil and Caixa Econômica Federal also hold significant portions, Odebrecht said, the newspaper reported. Banco do Brasil’s CEO, Rubem Novaes, told reporters in early June that Odebrecht owes it about \$2 billion and that the bank had already made provisions for possible losses. Caixa Econômica Federal declined to comment to The Wall Street Journal. Odebrecht’s holding company filed for bankruptcy protection on Monday. It had admitted in 2016 to paying nearly \$800 million in bribes over more than a decade to win contracts, primarily in Latin America. Since then, tens of thousands of Odebrecht employees have lost their jobs, and several high-ranking politicians in multiple countries have been implicated, and some have been convicted and imprisoned. “This is terrible for Brazil,” Pedro Galdi, a stock analyst at Mirae Asset investment firm, told The Wall Street Journal following

THE DIALOGUE CONTINUES

How Can Tech Help in the Fight Against Corruption?

Q **Smartphones, combined with the use of social media, are being used on a growing scale in Latin America and elsewhere to gather evidence of corruption and other illegal acts and demand accountability, according to a new report by the Inter-American Dialogue and the Adrienne Arsht Latin America Center at the Atlantic Council. How has technology been used most effectively to combat corruption, and what are the most promising ways that it can be employed in the fight against graft in the future? Which countries in the region are making the best use of technology to promote clean and transparent government? What are the biggest obstacles that stand in the way of wider use of technology to fight corruption?**

A **Peter Hakim, member of the Advisor board and president emeritus of the Inter-American Dialogue:** “The question is framed too narrowly—asking only about the positive contribution that high tech can make to combating corruption. No one doubts that new technologies can allow for far greater transparency in a range of public and private transactions—and that transparency, as we all know, is perhaps the greatest adversary against graft and other forms

Odebrecht’s bankruptcy filing. “Creditors will be hit and the biggest ones are controlled by the government.” Luis Felipe Spinelli, an expert on bankruptcy proceedings at the Souto Correa firm in Porto Alegre, added that taxpayers are “the ones who, indirectly, will be paying for a lot of this.” In the bankruptcy filing, Odebrecht did not include some of its main assets in the restructuring process. Among them are its construction business and its petrochemical unit, Braskem. However, Braskem is likely to become part of the restructuring, as creditors

of cheating. Moreover, technical advances wielded by honest, law-abiding police, prosecutors and judges can greatly enhance their capacities to uncover and punish criminal violations. Still, high tech has its downsides in the battle against corruption. Smartphones and robots, for example, have created a wide range of new tools and opportunities for corrupt activities and mechanisms for hiding them. These innovative instruments have given new power to criminal organizations, graft-ridden judicial systems (and many other government agencies) and unscrupulous politicians and business leaders. And autocratic governments across the globe are using all kinds of advanced technologies to repress their populations, control the flow of information and hold on to power. Hate groups have found them very useful as well. In short, we need to know not only what all these technologies and devices can do to make life better, but also what damage they can cause, what regulations are needed to moderate or avoid their harmful impacts, and which of them should possibly be banned.”

EDITOR’S NOTE: The comment above is a continuation of the [Q&A](#) published in Monday’s issue of the Advisor.

have already been promised some of its shares as collateral, according to analysts. BNDES has said that “real and personal” guarantees secure all of its loans to the conglomerate. “The bank will present its case ... in order to obtain the correct value,” BNDES said. The São Paulo State 1st Court of Bankruptcy and Judicial Recovery said Tuesday that it had accepted Odebrecht’s bankruptcy filing, adding that its plan for restructuring its debt must be presented to the court within 60 days, the Associated Press reported.

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or services in national territory or process personal data in Brazil. Due to the specific legal provisions, it is important that companies start assessing gaps, considering the requirements of the law. These include the appointment of a data protection officer by the controller, the creation of a data protection compliance policy, the review of contracts with processors, international data transfer and the review of processes to respond to the data subjects' rights. The LGPD is a great advancement in Brazilian privacy framework legislation and will provide more legal certainty to business conducted in Brazil. Although the discussion on a specific bill lasted more than eight years, Brazil already had specific provisions in general and sectoral laws, such as the Constitution, the Civil Code and more recently in the Civil Rights Framework for the Internet, which should be interpreted considering the LGPD. Brazil has followed a necessary global trend in data protection, and foreign companies will have a competitive advantage due to the maturity of their processes. In South America, countries such as Argentina and Uruguay have legislation considered adequate by the European Commission, while Chile is in the process of updating its general data protection law."

A **Tatiana Campello, partner in intellectual property, data protection and cybersecurity at Demarest Advogados:** "Brazil's General Data Protection Law (LGPD) is applicable to data controllers and processors that process personal data in Brazil or process personal data for offering goods or services in Brazil. Companies will need to work on a project to be compliant with its provisions through the implementation of policies and adoption of best practices. The main

instruments for adjustment for compliance with the LGPD are privacy policies, data leakage and security policies and impact-assessment reports on the protection of personal data. The LGPD works well with the general principles on privacy set forth in

“**The LGPD works well with the general principles on privacy set forth in the Constitution ... and other laws and norms currently in force.**”

— **Tatiana Campello**

the Constitution, the Internet Act, the Civil Code and other laws and norms currently in force, such as the Consumer Defense Code and Banking Norms. One of the roles of the Brazilian Data Protection Authority will be to establish norms that simplify procedures for micro- and small-sized businesses and start-ups. In the eventuality of breach of the processing agents' obligations, the LGPD establishes several effective and enforceable sanctions, such as fines (which are of up to 2 percent of the income of the legal entity or group in Brazil, limited in total to 50 million reais for each infraction). Most countries in Latin America also have a data protection law, and those are generally similar to the LGPD. However, there are also some substantial differences, such as Chile not requiring a data protection officer and not having a national authority for data protection."

The Advisor welcomes comments on its Q&A section. Readers can write editor Gene Kuleta at gkuleta@thedialogue.org.

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