

ANPD Publishes Resolution on International Data Transfer of Personal Data



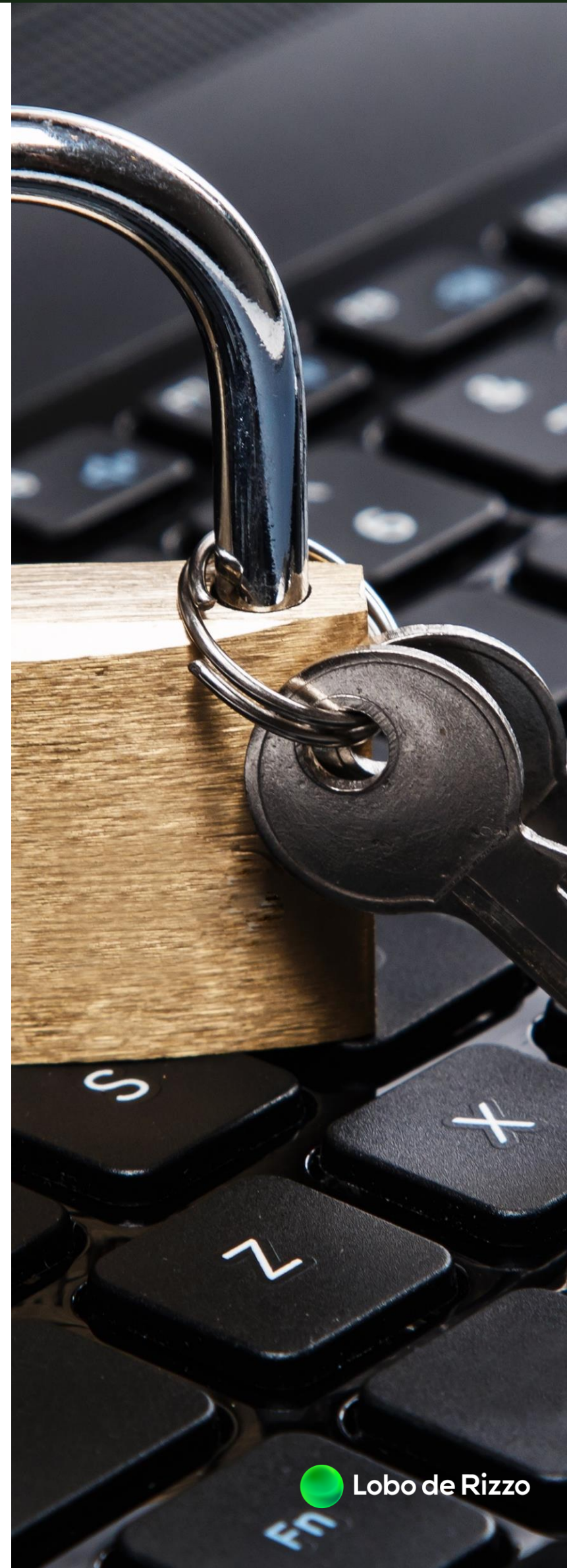
Since the **LGPD** came into effect in September 2020, the regulation on international data transfer (as outlined in Articles 33 to 36) has been highly anticipated. Following a public consultation in 2023, the National Data Protection Authority (ANPD) published, on Friday, August 23, 2024, Resolution CD/ANPD No. 19/2024, which approves the Regulation on International Data Transfer and the content of the standard contractual clauses.

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It is important to note that international data transfer, according to the **LGPD**, occurs when personal data is sent from Brazil to another country or to an international organization of which the country is a member.

The transfer is only permitted under the following legal circumstances:

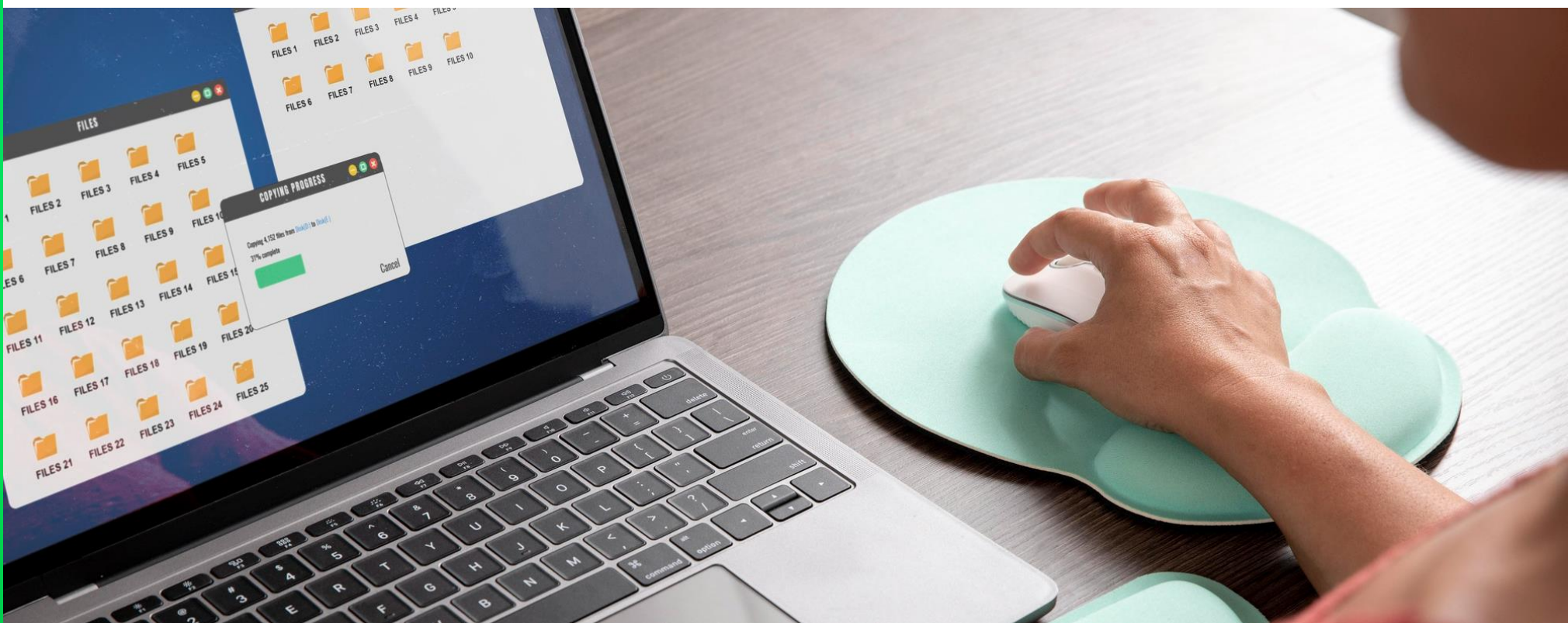
- To countries or international organizations with an adequate level of protection.
- When the controller provides guarantees of compliance with the principles, data subject rights, and data protection regime outlined in the LGPD, through: **(i)** Specific contractual clauses for a particular transfer; **(ii)** Standard contractual clauses; **(iii)** Global corporate rules; **(iv)** Seals, certificates, and codes of conduct regularly issued.
- When necessary for international legal cooperation as provided by international legislation or commitments made in an agreement.
- For the protection of the life or physical safety of the data subject or a third party.
- With specific authorization from the ANPD.
- In the case of an existing commitment made in an international cooperation agreement.
- For the execution of public policy or legal assignment of public service.
- When there is specific and highlighted consent from the data subject for the transfer, with prior information about the international nature of the operation.
- For compliance with a legal or regulatory obligation by the controller.
- For the execution of a contract or related preliminary procedures.
- For the regular exercise of rights in judicial, administrative, or arbitration proceedings.



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Resolution No. 19/2024 regulates only **the first two scenarios** of international data transfer: **(i)** transfer to countries or organizations with data protection considered adequate by the ANPD and **(ii)** transfer with guarantees provided by the controller (specific contractual clauses, standard clauses, or global corporate rules). In other words, Resolution No. 19/2024 does not prevent international data transfers using other mechanisms listed above that do not require regulation, as long as the applicable legal requirements are met.

One of the objectives of the regulation is to ensure that Brazil is properly included in international data flows, preventing obstacles to relevant exchanges. To achieve this, Resolution No. 19/2024 provides key guidelines and definitions related to international transfers, as well as criteria that will be considered by the ANPD in determining the adequacy of the country or international organization receiving personal data from Brazil.



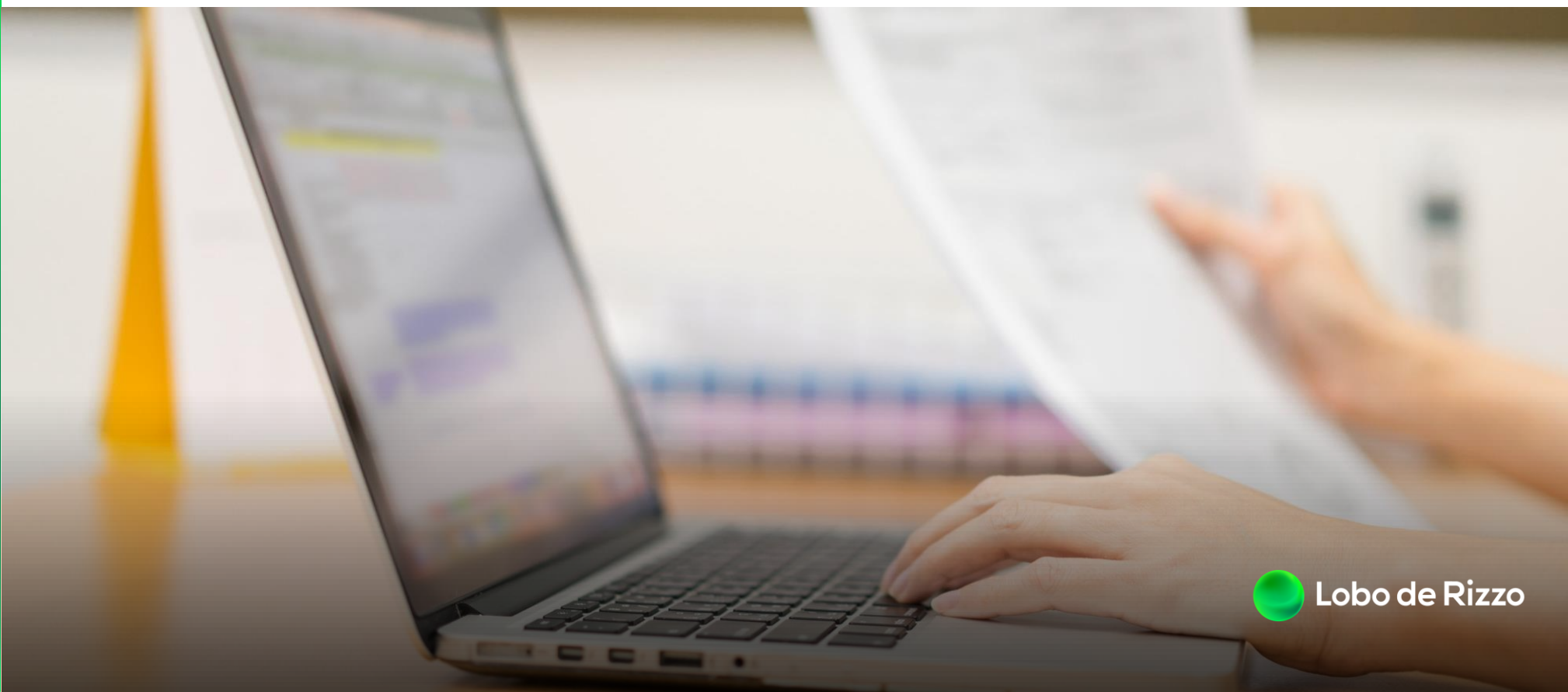
Additionally, Resolution No. 19/2024 details the situations in which each of the contractual solutions can be used, specifying the content of the standard contractual clauses.

International data transfer is one of the most complex aspects of data protection, with understandings that are not yet fully consolidated even in more mature jurisdictions such as the European Union (which Resolution No. 19/2024 clearly draws inspiration from). This requires special attention from data controllers to ensure compliance with legal requirements.

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Below, we highlight some **key points of attention** and **practical measures recommended** in light of the new regulation:

- Implement robust security measures to protect data during and after international transfer.
- Provide the data subject with clear information about the international data transfer, including its purpose and destination.
- Analyze personal data flows to identify which activities involve international data transfers and select the appropriate legal basis.
- To use the legal basis of certified adequate body or international organization, verify whether the destination for personal data has an adequacy decision issued by the ANPD that ensures protection equivalent to the LGPD.
- To use Standard Contractual Clauses, ensure that they replicate the exact text as approved by the ANPD and are incorporated into contracts within the next 12 months.
- Comply with the 15-day deadline to provide the standard contractual clauses to the data subject if this is the legal basis and the data subject has requested them.
- Verify if standard contractual clauses from other countries are recognized as equivalent by the ANPD before using them; otherwise, they will not support the transfer.
- Only request ANPD approval for specific clauses if the standard contractual clauses are insufficient to establish the obligations and rights of the parties.
- Publish on your website a document containing information in Portuguese, in simple, clear, precise, and accessible language about the international data transfer.



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Below, we highlight some **key points of attention** and **practical measures recommended** in light of the new regulation:

- To use global corporate rules as a legal basis, ensure that prior approval from the ANPD has been obtained; otherwise, they will not support the transfer.
- To use global corporate rules as a legal basis, link them to a privacy governance program within the organization.
- Notify the ANPD of any changes to specific contractual clauses or global corporate rules that affect data protection guarantees.
- Regularly review global corporate rules and ensure that any changes are pre-approved by the ANPD.
- Notify the ANPD if a group member is subject to laws that prevent compliance with global corporate rules.
- Monitor whether the ANPD will establish simplified procedures for the approval of changes to specific contractual clauses or global corporate rules.
- Be aware of the 10-business-day deadline to request reconsideration of ANPD decisions related to international data transfers.
- Be aware that there are currently no seals, certificates, or codes of conduct recognized by the ANPD.

The measures above are a starting point, but a detailed analysis of international data flows, on a case-by-case basis, is crucial for effective risk mitigation.