

LEGAL FRAMEWORK FOR **AI IN BRAZIL**

AI Legal Framework approved in the Senate

- Main points of attention of the approved text, by chapters
- Obligations of AI Agents
- What companies can do right now
- History in Congress and next steps



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Inovação
& Tecnologia

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ABOUT US

VLK Advogados sees law as a tool to drive innovation, business success, and a more prosperous and just society.

We actively participate in the development of regulatory frameworks and hundreds of innovative projects, which allows us to anticipate trends and provide legal security to enable business in the following areas:

- Ethical Governance and Data Protection
- Artificial Intelligence
- Cybersecurity and Incident Response
- Creative Economy, Legal Marketing, and Intellectual Property
- Legal Design and Visual Law
- Advocacy and Strategic Technology Regulation
- Strategic Litigation

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E-book "Legal framework for IA in Brazil", from March 2025.

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SUMMARY

Following the global trend of regulation of Artificial Intelligence (AI), PL 2.338/2023 ("Legal Framework for AI"), according to the wording^[1] developed by the Temporary Commission on AI (CTIA^[2]), was approved yesterday (10.12) in the Senate plenary. As a result, the text goes to the Chamber of Deputies for consideration. If approved, it will return to the Senate for a final review before the eventual presidential sanction.

Influenced by the European Regulation on Artificial Intelligence ("EU AI Act"), but with its own peculiarities, the proposal establishes general national rules for the design, development, implementation, use, adoption and responsible governance of AI systems in Brazil, with the aim of protecting fundamental rights, stimulating responsible innovation and ensuring the implementation of safe and reliable systems, for the benefit of the human person, the democratic regime and social, scientific, technological and economic development.

^[1] Check [here](#)

^[2] With editorial adequacy of the Plenary in article 44 of the Substitute



1. MAIN TOPICS ADDRESSED IN THE APPROVED TEXT, BY CHAPTER

CHAPTER I

Preliminary Provisions:

The law does not apply to AI systems in testing, development, and research activities, nor to those not placed on the market, provided they are exclusively intended for scientific research and development.

- **Relevant foundations:** centrality of the human person; access to information and the dissemination of data, in an open, structured and secure way;
- **Relevant principles:** effective and adequate human oversight in the life cycle of artificial intelligence, considering the degree of risk involved; transparency and explainability, observing commercial

and industrial secrecy; due diligence and auditability throughout the entire life cycle of the artificial intelligence system, according to the risk involved and the state of the art of technological development; accountability, accountability and full reparation of damages; prevention, precaution and mitigation of risks and damages; and transparent, participatory governance oriented to the protection of individual, social, collective and economic fundamental rights;

CHAPTER II

Rights:

The chapter presents some rights of the

affected person (or group of people affected) by AI systems, which are divided into two categories:

a) Rights applicable to any AI include:

- (i) obtain information about its interactions with AI systems, except for those dedicated exclusively to cybersecurity and cyberdefense;
- (ii) privacy and data protection, under the terms of the LGPD and other applicable legal rules; and
- (iii) right to non-discrimination

b) Rights applicable to high-risk AI include:

- (i) explanation regarding the decision or recommendation;
- (ii) the right to contest and request a review of the decision or recommendation; and
- (iii) human oversight of decisions.

CHAPTER III

Categorization of Risks:

In summary, the chapter presents a list of AI systems classified as excessive risk (prohibited use) and high risk. It also allows the National System for Regulation and Governance of Artificial Intelligence (SIA) to edit the list, adding new systems and defining the criteria for doing so.

CHAPTER IV

Governance of Artificial Intelligence Systems:

The chapter presents the set of controls that must be adopted in the development or application of certain AI solutions, in the following terms:

a) Governance Measures for High-Risk AI Systems:

a set of controls that must be implemented for high-risk AI, differentiated based on the role of the AI agent (applicator, i.e., user, or developer). Examples of actions under responsibility are:

- **By the applicator:** adequate documentation of the AI considering its entire life cycle, including tests on its reliability and safety, and records of the degree of human oversight that contributed to a given outcome.
- **From the developer:** conducting tests to assess appropriate levels of safety, adopting technical measures that make it possible to apply and interpret the results of AI, adopting measures to prevent discriminatory biases.

b) Measures for AI that produces synthetic content:

need to include, as a rule, an identifier of the artificial origin of the content.

c) Governance measures applied to the government: a set of controls to be adopted in the context of AIs developed, contracted, or adopted by the government, including the standardization of systems to ensure their interoperability and the publication of preliminary evaluations of AI systems.

d) Algorithmic Impact Assessment: a document on the management of risks to fundamental rights arising from AI, which must be carried out by the developer or applicator who introduces or puts high-risk AI into circulation on the market, considering its role in the AI value chain.

e) Governance Measures for General Purpose and Generative Artificial Intelligence Systems: set of controls that must be implemented by the Developer in the context of general purpose AI, including its documentation and preliminary assessment to verify whether the AI is systemic risk (which pose significant risks to individual and social fundamental rights). In this case, additional measures must be adopted, such as documenting non-mitigable risks, preparing instructions for use, preparing technical documentation, among others.

f) Accreditation, Certification and Conformity Assessment: the Competent Authority (SIS coordinator) and the sectoral authorities may accredit bodies that will carry out the conformity assessment of the systems, for a determined period to be set by the SIS.

It is important that organizations are aware of these governance obligations, anticipating as much as possible, as failure to comply with them may lead to consequences, including pecuniary ones, as we delve into in the following Chapters.

CHAPTER V

Civil Liability:

the rules of civil liability already applicable are maintained including a provision for reversing the burden of proof in cases of procedural disadvantage or excessive burden due to the practical characteristics of AI.

CHAPTER VI

Good Practices and Governance:

There is provision for the possibility:

a) That AI agents, by themselves or by their associations, establish codes of conduct and

AI ethical governance programs, in a manner close to that provided for in data protection legislation for data governance programs, which may be considered indicative of good faith on the part of the agent and will be taken into account by the competent authority and other sectoral authorities for the purpose of applying administrative sanctions.

b) For AI agents, through their associations, to establish self-regulations, with the aim of encouraging and ensuring better governance practices throughout the AI lifecycle.

CHAPTER VII

Reporting of Serious Incidents:

The AI agent must notify the relevant sectoral authority in the event of serious incidents, especially those involving risks to life, physical integrity, violations of fundamental rights, or the operation of critical infrastructure.

CHAPTER VIII

Public Database of High-Risk Artificial Intelligence:

Provides that the competent authority, in collaboration with the sectoral authorities, must maintain a public database of high-risk AIs, containing public documents of algorithmic impact assessments.

CHAPTER IX

Supervision and Inspection:

Chapter IX defines the composition and attributions of the SIA, distributing the competencies between the competent authority, coordinator of the SIA (in principle, the ANPD) and the sectoral authorities.

It will be up to the ANPD, in the context of the AI Framework: to exercise full normative, regulatory, inspection, and sanctioning competence for the development, implementation, and use of artificial intelligence systems for economic activities in which there is no specific sectoral regulatory body or entity.

Under the AI Framework, the ANPD will exercise full normative, regulatory, inspection, and sanctioning authority over the development, implementation, and use of artificial intelligence systems in economic activities lacking a specific sectoral regulatory body.

In addition, the regulation provides for sanctions for non-compliance which, in addition to being cumulative with those provided for in other regulations, including the LGPD, may result in fines of up to R\$50 million or 2%

of gross revenue, per infraction, which does not replace the application of administrative, civil or criminal sanctions defined in Law No. 8,078/90 (CDC), in Law No. 13,709/18 (LGPD), and in specific legislation.

CHAPTER X

Fostering Sustainable Innovation:

Chapter X establishes incentives and rules that aim to ensure that the development and application of AI operate in an economically and socially sustainable manner, including:

a) Sandbox: obligation of the competent authority and sectoral authorities to promote and authorize the operation of an experimental regulatory environment, with the aim of facilitating the development, testing and validation of innovative AI systems.

b) Protection of workers: obligation of the competent authority and sectoral authorities, with the support of the Ministry of Labor, to, in the context of AI, develop guidelines with the objective of mitigating potential negative impacts on workers, enhancing positive impacts on workers, valuing collective instruments and promoting training and qualification programs.

c) Incentive and sustainability measures: provides for the ability of federative entities to foster innovation and productive and technological development in AI, including through investment in research.

d) Copyright and related rights: regulates the use of protected content in AI development. It provides for the duty, as a rule, to remunerate authors residing in the national

territory (or in countries with equivalent rules) and the ability for authors to prohibit the use of their works for AI training^[3].

e) Incentive to microenterprises, small businesses and startups: provides for the possibility of defining, by the sectoral authorities, differentiated criteria for AI systems offered by this category of companies.

CHAPTER XI

On the Performance of the Public Power:

Establishes general guidelines for the performance of federative entities in the context of AI and the duty of such federative entities to adopt training and qualification programs.

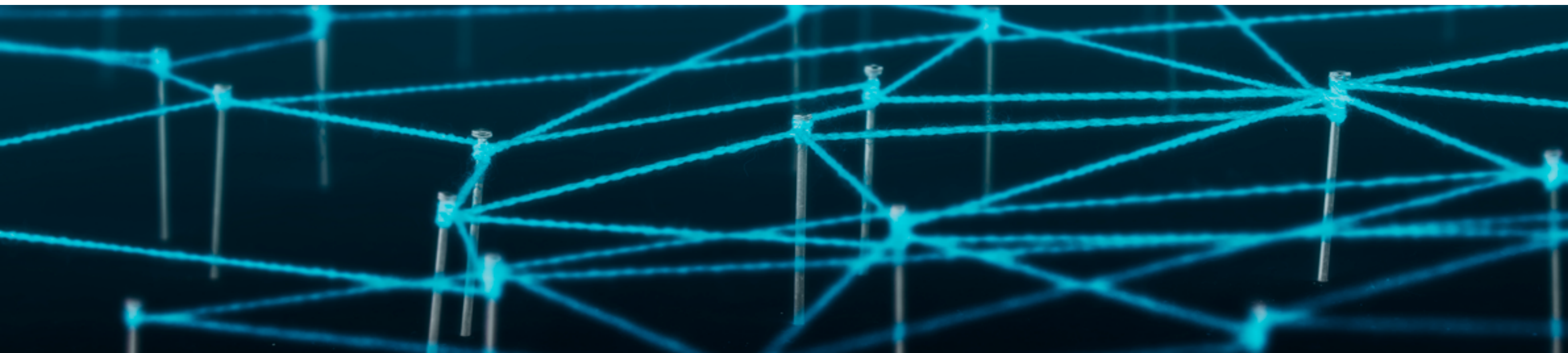
^[3] On the subject, read the article: [Copyright and artificial intelligence training](#).

CHAPTER XII

Final and Transitional Provisions:

In addition to defining the vacatio legis deadlines (which will vary according to the provisions, and may be up to 730 days), it provides for the cases in which the SIA must prepare simplified regulations, including:

- (i) open and free standards and formats, except if they were high-risk or general-purpose;
- (ii) national promotion;
- (iii) projects of public interest; and
- (iv) encouragement of innovation and scientific and technological research in the productive environment, for training and technological autonomy.



2. OBLIGATIONS OF AI AGENTS

AI Agents	AI Governance Measures to Adopt
AI agents, regardless of the degree of risk	<ol style="list-style-type: none"> 1. Ensure the safety of AI systems and the rights of affected persons, in accordance with requirements to be established in regulations; 2. Communication of a serious incident to the respective sectoral authorities.
Developers of AI systems, regardless of the degree of risk	<ol style="list-style-type: none"> 1. Inform about the copyrighted content used in the AI development process, through the publication of a summary on an easily accessible website, safeguarding commercial and industrial secrets, under the terms of the regulation. 2. Remunerate the owners of protected content used in AI mining, training and development processes, except for a legal exception to the contrary. 3. Adopt measures to curb the use of its systems for purposes prohibited by law ("excessive risk");
High-risk AI System Developers or Applicators introducing or placing such systems on the market	Designing the Algorithmic Impact Assessment

AI Agents	AI Governance Measures to Adopt
High-Risk AI Systems Applicators	<ol style="list-style-type: none"> 1. Documentation in an appropriate format, considering all relevant steps in the life cycle of the system; 2. Use of tools or processes of the results of the use of the system, in order to allow the evaluation of its accuracy and robustness and to determine potential illicit or abusive discriminatory results, and implementation of the risk mitigation measures adopted; 3. Documentation of the performance of tests to assess appropriate levels of reliability and safety; 4. Documentation in an appropriate format of the degree of human oversight that has contributed to the results presented by the AI-systems; 5. Measures to mitigate and prevent discriminatory biases, when the risk of discrimination arises from the application of the AI system; and 6. The provision of adequate information that allows, respecting industrial and commercial secrecy in accordance with its technical capabilities, the interpretation of the results and operation of AI-systems introduced or put into circulation on the market.

AI Agents

AI Governance Measures to Adopt

Developers of
High-Risk AI Systems

1. Keeping a record of the governance measures adopted in the development of the artificial intelligence system, in order to provide the necessary information to the applicator so that the latter fulfills its obligations determined above, in accordance with the legal relationship established between the parties and subject to commercial and industrial secrecy;
2. Use of tools or processes to record the operation of the system, in order to allow the evaluation of its accuracy and robustness;
3. Carrying out tests to assess appropriate levels of safety;
4. Adoption of technical measures to enable the applicability of the results of AI systems and the provision of adequate information that allows the interpretation of their results and operation, respecting industrial and commercial secrecy;
5. Measures to mitigate and prevent discriminatory biases, when the risk of discrimination arises from the application of the AI system; and
6. Transparency on management and governance policies to promote social and sustainable responsibility, within the scope of its activities.

AI Agents

AI Governance Measures to Adopt

Distributors

They will have to support and verify that the AI governance measures provided for in the law are in place before putting the system on the market.

General Purpose and
Generative AI System
Developers

In addition to the pertinent documentation on the development of the systems, carry out a preliminary assessment of them, in order to identify their respective levels of expected risk, including potential systemic risk, considering the purposes of use reasonably expected and the criteria provided for in the Law.

If the system is made available as a resource for the development of services by third parties (e.g., through integration models such as APIs), they must cooperate with the other AI system agents throughout the period in which this service is provided and supported, in order to allow adequate mitigation of risks and compliance with the rights established in the Law.

In addition to the above measures for General Purpose System, it must ensure the implementation of the following measures:

1. Describe the general-purpose AI model;
 2. Document the tests and analyses carried out in order to identify and manage reasonably foreseeable risks, as appropriate and technically feasible;
 3. Document the remaining non-mitigable risks after development;
 4. Only process and incorporate data sets collected and processed in accordance with legal requirements, subject to appropriate data governance, in particular, when it comes to personal data, in accordance with the LGPD.
 5. Publish a summary of the set of data used in the training of the system, under the terms of the regulations;
 6. Design and develop using the applicable standards to reduce, taking into account the context of use, energy use, resource use and waste, as well as to increase energy efficiency and overall system efficiency
- IV Prepare intelligible technical documentation and instructions for use, in order to allow developers, distributors and applicators to be clear about the operation of the system.

General Purpose System
and Generative AI with
Systemic Risk Developer



3. WHAT CAN COMPANIES DO AT THIS TIME?

Based on this approved wording, companies may seek to anticipate specific governance points, making gradual adjustments, including, but not limited to:

- **Strategic Priority:** Commitment to AI governance must be made at the highest level of the organization. The board of directors must establish strategies aligned with the foundations and principles provided for in PL 2338/2023, such as the centrality of the human person, ethics in the development and use of AI, and the promotion of fundamental rights. That is,

companies must align AI with corporate objectives, ethical values, and regulatory frameworks.

- **AI literacy:** implement continuous training programs for boards, executives, and operational teams to improve organizational culture, leading people to understand the benefits and limitations of AI technologies, to identify application opportunities, and to assess ethical and compliance risks.
- **Mapping:** identify all AIs used by the company, categorizing them according to the degree of risk (high risk or excessive risk).

- **Value Chain:** evaluate the roles played by the organization as an 'AI agent' (including AI developer, distributor, or applicator - art. 4). This analysis allows you to define specific responsibilities and obligations, according to the functions performed in each practical case.
- **Risk Management:** classify AI systems according to established criteria (impact on fundamental rights, potential harm and reversibility of damage - art. 15). Prioritize systems classified as high risk, to implement robust and effective mitigation measures.
- **Third-Party Systems Management:** verify the compliance of AI systems acquired from third parties, especially general-purpose or generative ones, confirming that they are aligned with the requirements of the Bill, such as security, transparency, and governance (articles 3 and 14).
- **Structured Governance:** establish a governance program that includes: Ethics and Compliance Committees, focused on supervising the AI life cycle; internal policies aligned with the principles of the General Data Protection Law (LGPD) and PL 2338/2023; clear contractual clauses for the management of suppliers and partners.
- **Algorithmic Impact Assessments:** perform detailed analysis for high-risk AI applications, as provided for in art. 12. Evaluations should address impacts on fundamental rights, proposing preventive and corrective measures, storing and documenting all steps taken and to be carried out.



4. HISTORY IN CONGRESS & NEXT STEPS

For a better general understanding of the legislative path in our country, the following is a quick summary addressing the main milestones, updated until December 2024:

1. PL 21/20^[4] (principle) approved in the Chamber of Deputies on 09/29/21;
2. PL 2.338/23^[5] (prescriptive), after the work of the Committee of Jurists, was presented on 05/03/23 by the President of the Senate, Rodrigo Pacheco;
3. CTIA^[6] installed on 08/16/23 to evaluate Bills No. 2338/2023, 21/2020, 5051/2019, 5691/2019, 872/2021, 3592/2023, 145/2024, 146/2024, 210/2024 and 266/2024;
4. The Preliminary Text of the CTIA substitute proposal^[7] was presented on 04/24/24, with a deadline for receiving contributions from society until 05/22/2024
5. Three substitute proposals were presented by CTIA between June and July 2024: 06/07 Report^[8], 06/18 Report^[9] and 07/04 Report^[10];
6. To deepen the discussions, CTIA held four Public Hearings^[11] and had its operating period extended three times between 06/18/2024 and 11/13/2024, the last extension being valid until 12/14/2024;
7. The Report with the most recent proposal for a substitute for the CTIA^[12] was presented on 11.28.2024 – 25 more amendments were presented, of which 5 were accepted, 4 partially accepted and 16 rejected.
8. Presentation of the new version of the substitute by CTIA on 11.28.2024;
9. Vote and approval of the text in the Senate plenary on 12.10.2024.

NEXT STEPS

The text will be analyzed in the Chamber of Deputies, where it will be discussed and voted on, before returning to the Senate for further evaluation. Then, if approved, it goes to the President of the Republic for eventual sanction, which is expected to occur during the year 2025.

^[4] [PL 21/20](#)
^[6] [CTIA](#)
^[7] [The Preliminary Text of the CTIA substitute proposal](#)
^[8] [06/07 Report](#)

^[9] [06/18 Report](#)
^[10] [07/04 Report](#)
^[11] [Public Hearings](#)
^[12] [The Report with the most recent proposal for a substitute for the CTIA](#)

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