

Chapter 4

The post-Covid world legacy: Business digitisation in Brazil and the development of data protection

Ricardo Luiz Sichel

Universidade Federal do Estado do Rio de Janeiro
e-mail: ricardo.sichel@unirio.br
ORCID: 0000-0002-8055-1384

Gabriel Ralile de Figueiredo Magalhães

Universidade Federal do Estado do Rio de Janeiro
e-mail: ralilegabriel@gmail.com
ORCID: 000-0002-0453-155x

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4.1. The legacy of the pandemic period for the digitisation of businesses

The Covid-19 pandemic, which started at the beginning of 2020, shifted society's ways of connecting. Due to the need for social distancing, the primary way to combat the contagion of the virus, the virtual environment has taken a leading role, thus accelerating the process of the digitisation of society. On the one hand, there was an increase in the efficiency and agility of processes, including in the field of business. On the other hand, risks such as cyberattacks, misuse of personal data and an uncontrolled information market increase as the use of so-called digital solutions grows.

In this context, the Brazilian General Data Protection Law¹ entered into force in 2020, making the subject of digitisation gain prominence and, combined with the impetus of business virtualisation, developing the theme among companies.

¹ Lei Geral de Proteção de Dados in Portuguese – LGPD.

Based on this, the present work analyses the legacy left by the pandemic period for the digitisation of businesses, especially in Brazil, as well as its contribution, through said virtualisation process, to the development of data protection in the referred country. This chapter is divided as follows: the second part takes a brief look at the digitisation process around the world, mainly in five selected countries (Brazil, Estonia, Poland, India, and Taiwan); the third part, in turn, addresses the data protection legacy regarding business in Brazil; and, finally, the fourth part brings the relevant conclusions. The study was based on material from articles, news, laws and official data relevant to the subject.

4.2. Business digitisation around the world

Digital governance grows increasingly globally, led by the most developed countries in technology, mainly ICT. In the United States, for example, 18% of the economy is digitised (McKinsey & Company, 2016, p. 12). However, unlike in other periods, the technological gap is not so exacerbated as to make different digitisation processes unfeasible. For example, the delay in the diffusion of technology related to infrastructure by global region in the cases of Internet, computer and mobile are much smaller than the technologies present until the beginning of the 20th century, since these took decades to spread while the former needed on average less than ten years (Cavallo, Powell, & Serebrisky, 2020, p. 135).

Also, in 2018, the population coverage of 4G in the Organization for Economic Cooperation and Development (OECD) countries was 97%, an essential factor for implementing digital services and solutions (Cavallo et al., 2020, p. 141). In turn, this percentage in Latin America and the Caribbean was 62%, but with a download speed available 10 times slower than in OECD countries (Cavallo et al., 2020, p. 141).

Finally, it is worth highlighting the initiative carried out by the Organization for Economic Cooperation and Development (OECD), which largely contributed to the state's digitisation agenda. In 1982, the Committee on Digital Economy Policy was created in Argentina, South Africa, Brazil, Singapore, Colombia, Costa Rica, Egypt, Russia and Thailand. According to the resolution approved by the European Council in 2018, providing for a term of office of up to 2023, the Committee stressed (Thortensen & Zuchieri, 2020, p. 5):

It is responsible for creating evidence-based policy from multi-stakeholder processes aimed at stimulating the growth of an accessible, innovative, open, reliable and comprehensive digital economy, promoting prosperity and providing policymakers with the right tools to do so. At the same time, the Committee should strengthen cooperation between OECD Mem-

bers and partner countries in areas of interest with a view to stimulating and promoting the exchange of experiences and policy coordination at national and international levels.

In addition to this, the OECD develops several other initiatives, such as the OECD Going Digital, for visualising interactive data and the reports *Measuring the Digital Transformation*, *Going Digital: Shaping Policies, Improving Lives* and *Digital Government Review of Brazil: Towards the Digital Transformation of the Public Sector*, the latter carrying out an extensive assessment of the Brazilian Federal Government's digital government policies, programs and projects.

During the Covid-19 crisis, according to a McKinsey Global Survey (McKinsey & Company, 2020), companies interviewed have accelerated the digitisation of their customer and supply-chain interactions and their internal operations by 3 to 4 years, and the share of digital or digitally enabled products in their portfolios has accelerated by a shocking 7 years. The average share of customer interactions that are digital in the world grew from 20% in May 2018 to 58% in July 2020, and the average share of products that are partially or fully digitised in the world grew from 28 to 55% in the same period (McKinsey & Company, 2020).

That said, it is notable that the process of digitisation is a phenomenon that is growing around the world. Some examples of its implementation can be seen in countries such as Estonia, Poland, Taiwan, India, and, finally, Brazil, which represent different regions of the planet.

Estonia

The digitisation process in Estonia began in 1994 with the publication of a document called *Principles of Information Policy*. To this end, goals were set for the development of information technology. Since then, Estonia has managed to constitute an agile system, devoid of bureaucracy, that facilitates the environment for establishing business companies. The digital residency was created to make this activity viable. Also, foreigners can open companies entirely through virtual processes, making it possible to operate and trade in the country without a physical branch (Republic of Estonia, 2019). That process of business opening for foreigners, through a computerised procedure, takes only 3 hours and corresponds to 98% of companies registered in the country (Invest in Estonia, 2022).

Estonia is a case of success. First, it is important to observe that a part of the digital revolution declared Internet access as a fundamental human right in 2000 (Makarychev & Wishnick, 2022, p. 5). It enabled the Estonians to have access to a large number of public services, even if they were outside the country. As for the financial market, the policymakers came to the idea of a cryptocurrency called Estcoin to add benefits to the e-citizens (Makarychev & Wishnick, 2022, p. 5).

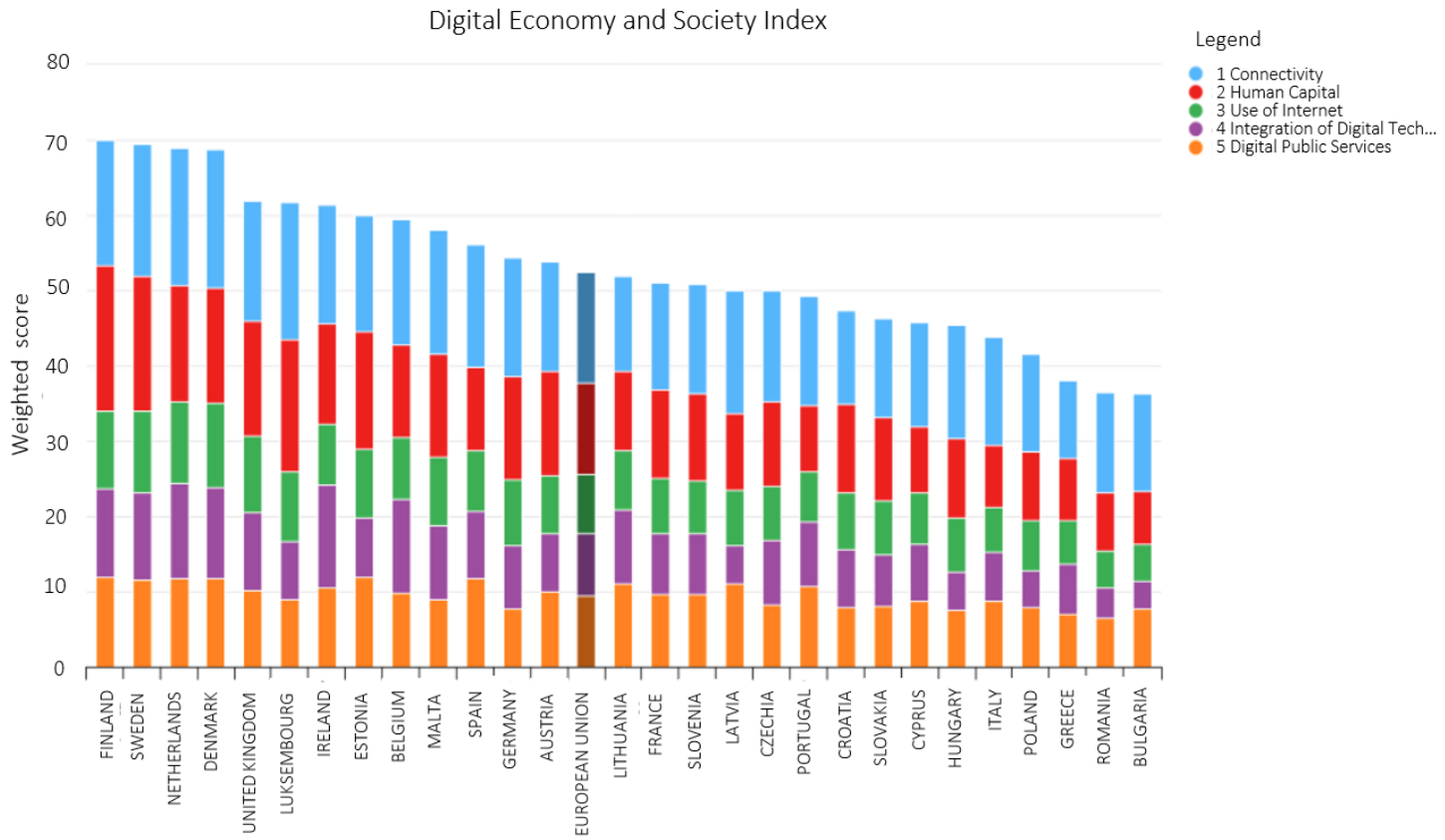


Figure 4.1. Digital Economy and Society Index

Source: (Emerging Europe, 2019).

Estonia has performed well considering several aspects related to human capital. This development is shown in the Digital Economy and Society Index (Figure 4.1). According to the UN e-Government survey 2020, Estonia is considered to be the world's third most digitally developed country (Lea, 2020).

Poland

Over the last 25 years, the Polish economy has doubled in terms of real GDP *per capita*, with its success largely dependent on low-cost skilled labour. However, with the advancement of the digitisation process, labour costs increasingly lose space to generate competitiveness for the country. According to the analysis made by McKinsey (2016, p. 9), over the next decade, Poland could increase the economic value added of its entire economy by 13–22% through digitisation, closing the productivity gap regarding more advanced economies in Western Europe (12–21%) and the so-called 'Europe of the 15' (27–47%). Poland has a strong structure for the development of its digitisation process.

Furthermore, between 2011 and 2016, the growth of digitally advanced sectors was almost three times faster than the others (McKinsey & Company, 2016, p. 27). In this way, the great productivity, as well as investment, of the countryside in the country stands out.

Regarding specific sectors, it is possible to verify the following progress in the digitisation process (McKinsey & Company, 2016, pp. 28, 32–35): (i) in the telecommunications sector, there is an excellent opportunity for expansion, as well as high expectations return; (ii) in retail, the advancement of tools to support the end-to-end process has enriched the shopping experience, with the country's e-commerce penetration being higher than in cases such as France; (iii) the Polish banking sector is well developed, including a fully integrated real-time customer relationship management system; (iv) the manufacturing sector, as well as the mining sector, has had initiatives for the development of predictive technologies, that is, those that seek to predict the useful life of a product.

Furthermore, the country has been following recent regional and global discussions on the subject, as is the case of joining the 'Global Partnership on Artificial Intelligence', an international initiative to boost cooperation in the sector and participation as a co-creator in the project of 'European Cloud Federation' on cloud services in the public and private sector (Chancellery of the Prime Minister, 2020). The country also has a series of digital services for companies or citizens.

Taiwan

Taiwan has the Digital Nation & Innovative Economic Development (DIGI+) 2017–2025 Program to improve digital infrastructure, rebuild a service-oriented digital

government and build fair, active and rights-equal internet governance (*DIGI+ Taiwan*, 2020). The movement is currently led by the Minister of Digitisation Audrey Tang, a professional in the sector, in power since 2016. According to the Minister, democracy and digitisation go hand in hand, which is visible in that 4G internet coverage is guaranteed in 98% of Taiwan's territory and is considered a human right (Aceri, 2019). This open access and open-source policy led the country to rank first in The Global Open Data Index (Aceri, 2019). Furthermore, e-commerce stores represent 53% of Internet users and 43% of the population (United Nations Conference on Trade and Development [UNCTAD], 2019), thus showing a relationship between connectivity and business.

Because of this, different initiatives have been implemented, covering areas such as social inclusion, education, environment, agriculture, artificial intelligence, and economics. Regarding the last point, the digitisation of the business opening process is worth mentioning. For example, national or foreign companies can register businesses online in just eight steps through the so-called One Stop Shop Online (Enspyre, 2021). The procedure can be done through a virtual office and lasts between 4 and 8 weeks (Leanpub, n.d.).

India

India has implemented different initiatives regarding the digitisation of society, covering areas such as social inclusion, education, environment, agriculture, artificial intelligence and economics. The last point worth mentioning is the digitisation of the business opening process. According to information from the Ministry of Corporate Affairs, the standard procedure for starting a business can be carried out digitally through a simplified process, thus facilitating new business (Ministry of Corporate Affairs. Government of India, n.d.).

Brazil

Brazil recognises the need to digitise increasingly and seeks to develop in this environment. The 'Digital Government Strategy' for 2020 to 2022, instituted by the Decree 10.332/2020, aims at the total digitisation of federal services. In 2019, to centralise its official services and information digitally, the country also launched the Single Government Portal (gov.br), bringing together about 3000 services which resulted in 50% of the services being digital (Agência Brasil, 2019).

Undoubtedly, one of the areas most affected by the pandemic was the economy, and because of this, it ended up being one of the sectors that generated the most concern for the population and government. According to the Brazilian Institute for Geography and Statistics (Instituto Brasileiro de Geografia e Estatística [IBGE], n.d.),

in the second half of August 2020, 33.5% of the companies in operation reported that the pandemic harmed them, against only 28.6% that indicated a positive effect; 8.1% reduced their employee numbers, 32.9% indicated a decrease in sales or services marketed, 31.4% showed difficulty in manufacturing products or serving customers and 21.4% adopted at least one measure with government support.

Government initiatives were essential to face the moment, either for creating new digital resources or improving previously established ones. A notorious case is a process of establishing corporate companies, something too complex and bureaucratic in Brazil, as is the compliance with tax obligations. For example, at the State level, some Boards of Trade allow registering companies completely digital. Because of the pandemic, states such as Rio de Janeiro accelerated their digitisation process, while states such as São Paulo, which had already completed this transition previously, could take advantage of their tools.

For example, in the case of São Paulo, the opening process is 100% digital and self-declaratory, reducing its completion time from 100 to 3.5 days (Prefeitura de São Paulo, 2020). According to the city's website, the 'Empreenda Fácil', the following steps are part of the process of opening a company: 1) feasibility analysis; 2) national collector; 3) registration (DBE); 4) municipal registration; and 5) licensing. It is worth noting that, for formalisation as an individual microentrepreneur (MEI), it is possible to perform this process online throughout Brazil.

In addition to business opening, several activities can be done digitally with the Brazilian Internal Revenue Service (RFB), such as the realisation of income tax returns, the opening of processes, consultation of information and adhering to special regimes. These services facilitate business management in the face of the limitations brought by Covid-19.

Another relevant point was foreign trade, a sector initially greatly affected by the pandemic. It should be noted that Brazil had already innovated in this field, serving then as a model for other countries. The activities of registration, monitoring and control of exports and imports of goods and services are made virtual by the Integrated System of Foreign Trade (SISCOMEX) and Integrated System of Foreign Trade of Services (SISCOSERV) respectively. With the pandemic, measures to facilitate the use of the system and its improvement were adopted.

Finally, two more initiatives are highlighted. The first, on the judicial level, where the establishment of electronic proceedings and its regulation through law no. 11.419/2006 allowed a containment of the impact of the pandemic on the judiciary. In the administrative sphere, a recent initiative of digitising processes related to intellectual property is also worth mentioning.

In 2019, the National Institute of Industrial Property (INPI) launched the 'Digital PI Plan' which includes 24 actions to decrease the bureaucracy of citizen service by implementing new information and communication technology resources and becoming fully digital (Ministério da Economia, 2019). Services include trademark applications, patents, the topography of integrated circuits and industrial designs; consultation of registered and protected assets; contracts; consultation of statistics and manuals; and follow-up of processes.

That said, it is vital to notice that strategies adopted for the execution of public services digitally were considered very successful and efficient, with the country achieving the seventh position in the World Bank's Digital Government ranking, mainly due to the portal gov.br (Governo do Brasil, 2021).

4.3. The development of data protection: Post-Covid world legacy for business in Brazil

The General Data Protection Law – LGPD (Law 13.709/2018) entered into force on September 18, 2020, and has the function of promoting the protection of the personal data of every citizen who is in Brazil by changing some articles of the Civil Framework of the Internet (*Marco civil da internet* in Portuguese) and establishes new rules for companies and public agencies about the treatment of the privacy and security of the information of users and customers. The punishments provided by the LGPD have begun to be applied in August 2021. They may reach up to 2% of the billing of the infringing entity up to the limit of BRL 50 million.

According to the LGPD, personal data allows for the living person's identification, directly or indirectly. Examples of personal data are (Tribunal Regional Federal da 3ª Região [TRF3], 2021): the first and last name; the address of a residence; an e-mail address; the number of an identification card; location data, such as the location data function on the mobile phone; an IP address (Internet Protocol); connection testimonials (cookies); the advertising identifier of your phone; the data held by a hospital or doctor, which allows you to identify a person unequivocally.

In addition, among personal data, there are those which are subject to specific treatment conditions: those about children and teenagers and the 'sensitive' ones, which are those that reveal racial or ethnic origin, religious or philosophical convictions, political opinions, trade union membership, genetic, biometric and about the health or sexual life of a person. In the case of children and adolescents, it is essential to obtain the unambiguous consent of a parent or guardian, ask only for the strictly necessary content, and not pass anything on to third parties. Without consent, data may only be collected for urgent cases.

On sensitive data, processing depends on the person's explicit consent and for a defined purpose. Without the holder's consent, the LGPD defines that this is possible when it is indispensable in situations related to, for example (TRF3, 2021): a legal obligation; public policies; studies via research figures; a right, in contract or process; to the preservation of a person's life and physical integrity; to the guardianship of procedures performed by sanitary or health professionals; and the prevention of fraud against the holder.

Furthermore, according to the Art. 7 of the LGPD, personal data may become public with the holder's consent. Good faith and the public interest must be present in the data's provision and in line with the constitutional principle of advertising. Finally, there is also the so-called anonymised data. Anonymisation is a data processing technique that removes or modifies information that can identify the person, a hypothesis in which the LGPD will not apply to the data (TRF3, 2021).

The principles of the LGPD are (TRF3, 2021): adequacy, need for transparency, free access, data quality, security, prevention, responsibilities and accountability, non-discrimination and purpose.

According to the Art. 17th of the LGPD, every natural person has ensured the ownership of their personal data and guaranteed the fundamental rights of freedom, intimacy and privacy. Furthermore, the Art. 18th lists such rights (TRF3, 2021): confirmation of the existence of processing; access to data; correction of incomplete, inaccurate or outdated data; anonymisation, blocking or deletion of unnecessary, excessive or processed data in non-compliance with the provisions of the LGPD; portability of the data to another service provider or product, upon express request, following the regulations of the national authority, observed the trade and industrial secrets; deletion of personal data processed with the consent of the holder; information of the public and private entities with which the controller has made shared use of data; information on the possibility of not providing consent and on the consequences of the negative; and withdrawal of consent.

Thus, the word that permeates the reality of protection created by the LGPD is 'consent'. It is through it that:

The holder of the personal data is able to issue conscious authorisations for the various processing applicable to his/her data – and can therefore exercise full control over what should or should not be made available, as well as to whom and for what purpose. Ultimately, it may even revoke such consent when it no longer agrees to any of the forms of use of your data.

(Grossi, 2020, p. 23)

Also, on February 10, 2022, the Brazilian National Congress enacted a proposal for an Amendment to the Constitution (PEC) that includes the protection of personal

data in the list of fundamental rights listed in article 5 of the Federal Constitution, making it a stony clause (Garcia & Resende, 2022).

This topic is of great importance to Brazilian society, and it is no different in the field of business, mainly due to the changes brought about by the pandemic. For example, it should be noted that, in 2020, the Brazilian e-commerce market revenue grew by 47%, driven by companies that took steps to convert their sales to digital channels and ensure their survival (Morais, 2021). It has happened, because 87.5% of companies in the country, according to Dell Technologies Digital Transformation Index, accelerated their digital transformation projects in 2020, and about 50% started their ventures in the following year (Martins, 2021). In addition, according to a survey by Infobase Interativa, since the beginning of the pandemic, 13% of Brazilians have made purchases over the internet for the first time, 24% have started to make more purchases online, and 52% have consumed more content over the internet (Gasperini, 2021).

The benefits of this phenomenon include a greater range of products disposed of, lower costs, greater agility and, from the consumer's point of view, greater convenience for purchasing goods and services. According to Leonardo Carvalho, coordinator of the MBA's in Agile Project Management and Business Management at Faculdade Newton Paiva, the most significant advantage of the virtual enterprise is that it is a great way to start a business, as it is much cheaper and accessible, although there are natural risks to business failure, as well as gigantic competition on the internet (Martins, 2021). In addition, according to a Dell Technologies survey, among the respondents listed, 45% are concerned that the transition is not fast enough, 27.5% fear they will not survive the next two years, and 67.5% believe they will not go bankrupt, but they will lose many jobs and take years to return to profitability (Época Negócios, 2020).

Whether for survival or greater competitiveness, the reality is that the business world inherits high virtualisation from the time of the Covid-19 pandemic. However, in the face of this, several risks emerge, such as leakage and misuse of data, cyberattacks, scams and fraud, among other risks linked to the digital environment, a space of broad scope and complex inspection. For example, a study by the Brazilian Institute for Consumer Protection (IDEC) found that complaints about problems with transparency and inappropriate use of personal data increased by 1134% between 2015 and 2017, with the main complaint, 63% of the total, being about consultation and publication of personal information without consumer authorisation (Gasperini, 2021).

Because of this, companies need to adopt internal policies and strategies to adapt to the LGPD and preserve themselves in the face of virtual risks. Initiatives can start from the most basic and inexpensive, such as the definition of guidelines and internal

awareness, to the most advanced and costly, such as the adoption of cryptography in virtual instruments. Within this list of actions, we can mention:

- internal mapping of areas with exposure to data-related risks;
- mapping of sectors that have already adopted initiatives to adapt to the LGPD;
- creation of an SOP (Standard Operating Procedure) for the treatment of complaints received;
- preparation of reports provided for in legislation, RIPD and LIA for each process of the company;
- the hiring of the DPO (Data Protection Officer), that is, a person in charge of taking care of issues related to the protection of the organisation's and its customer's data;
- identification of all types of data storage in the company, since not all data are the same, which gives rise to different controls;
- contractual adjustments and safeguards, such as the inclusion of clauses that regulate data protection;
- adjustments to internal rules;
- periodic training;
- use of reporting channels; and
- use of automation, data-driven digital access technologies and cloud computing services.

In addition, companies can focus on marketing strategies that attract the customer's legitimate interest in trusting and authorising data collection, as the LGPD can positively impact consumer trust. That is, the LGPD should not be seen as an obstacle to companies, but as an integral part of healthier commercial relationships, especially from the perspective that respects citizens' rights, as well as an opportunity to leverage business.

It should be noted that the society that emerges after the pandemic scenario is even more inserted in the digitisation of products and processes. Before that, the digitisation process was fuelled by the various benefits it had brought. However, the limitations brought by the Covid-19 pandemic caused the quick virtualisation of society, which was driven by the urgent need for adaptability.

Following a worldwide phenomenon, Brazil also adopted the virtualisation process as a part of its reality (for instance, in the business sector). On the one hand, the measure provided hope and new horizons for Brazilian companies, but, on the other hand, it brought to light new risks linked to the digital world, such as cyberattacks and data leaks.

In this scenario, the legal framework for protecting personal data, centred on the LGPD, has become fundamental. However, companies still struggle against

several obstacles, including the lack of knowledge on the subject and difficulties in implementing measures consistent with the provisions of the LGPD.

Given this, the post-covid world requires a more significant and better preparation of companies for the processing of personal data, as well as the development of its legal-regulatory framework for the deepening of the virtualisation of society since the digital environment is a reality that is replacing more and more the previous model of relationship in social and economic dynamics. Thus, it should be noted that, in addition to promoting the process of virtualisation of society, Brazil inherited from the pandemic a greater and more urgent need to develop the framework for protecting personal data.

There is also to consider the implications of that transformation on the legal regulations. These standards will change, and a new legal approach should be considered. The virtual relations in society will transform it, considering several aspects of daily life, such as consumer relations, how to sue at the Courts of Justice or the procedures at several different administrative entities. All those aspects should be considered when developing new legal relations.

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