Country Guide
Brazil

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LEGAL ASPECTS OF **DOING BUSINESS IN BRAZIL**

A SUMMARY
2024

About Demarest

In April 1948, João Batista Pereira de Almeida, a Brazilian, and Kenneth E. Demarest, an American, both lawyers dedicated to the legal profession, combined their expertise to establish what would become one of the leading law firms in Brazil and one of the largest in Latin America. Over time, other lawyers joined the firm, bringing diverse legal backgrounds and specialties, and contributing to the development and growth of the full-service firm that it has become today.

After more than 75 years providing first-class professional services, Demarest continues to grow. Today, this highly respected law firm has much to offer to the community, to its satisfied clients, and to its dedicated professionals.

With offices in São Paulo, Brasília, Rio de Janeiro and New York, Demarest is progressing into the future with talented professionals and state-of-the-art technology.

The firm handles highly complex and progressive areas of law, as well as traditional corporate, commercial, banking, civil, tax and labor law. It takes pride in its commitment to professional excellence and efficiency in providing services to clients.

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The firm shares institutional values based on democracy and participation, which stimulate teamwork and cultivate the spirit and the principles that inspired its founders. The firm is responsive and creative in developing viable approaches, which enable its clients to achieve their objectives and to overcome their challenges.

For more information about Demarest, please visit www.demarest.com.br/en.

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Index

AN OVERVIEW OF BRAZIL	4
BRAZIL: BUSINESS, REGULATORY AND LEGAL OVERVIEW	15
AGRIBUSINESS	18
AVIATION LAW	30
BANKING AND FINANCE	38
BUSINESS OPERATION TAXES	54
CAPITAL MARKETS	63
COMPETITION LAW	92
COMPLIANCE	103
CONTRACT LAW	113
CORPORATE CRIMINAL LAW	116
ENVIRONMENTAL LAW	139
ESG AND SUSTAINABLE BUSINESS	152
FOREIGN INVESTMENT	171
FORMS OF BUSINESS ORGANIZATIONS	175
INSOLVENCY, BANKRUPTCY AND REORGANIZATION	183
INSURANCE, REINSURANCE, HEALTH, AND PRIVATE PENSION	194
INTELLECTUAL PROPERTY RIGHTS	201
INTERNATIONAL TRADE	213
INVESTMENT INCENTIVES	224
LABOR ASPECTS	227
LIFE SCIENCES & HEALTHCARE	234
LITIGATION AND ARBITRATION	239
MARITIME LAW	243
MERGERS, ACQUISITIONS, JOINT VENTURES, AND PRIVATE EQUITY	249
MINING SECTOR	254
OIL AND GAS	265
POWER AND RENEWABLES	273
PRIVACY, TECHNOLOGY AND CYBERSECURITY	283
PUBLIC LAW AND FINANCING	290
REAL ESTATE	305
TELECOMMUNICATIONS, MEDIA, AND TECHNOLOGY (TMT)	325
VENTURE CAPITAL AND STARTUPS	339
VISAS AND INDIVIDUAL INCOME TAX	342
WATER AND SANITATION LAW	348

AN OVERVIEW OF BRAZIL

1 Political Structure

The Federative Republic of Brazil is the largest country in Latin America and the fifth largest in the world. It covers more than 8.5 million square kilometers and occupies more than half of South America. Brazil borders all countries in South America, except Chile and Ecuador. Brasilia is the capital, Portuguese is the official language, and the Real (BRL) has been the currency since 1994.

Brazil has about 208.5 million inhabitants, representing one-third of the population of Latin America. Approximately 84% live in urban areas along the Atlantic Coast, although the expansion of agribusiness and industrial activity into the interior of the country has led to the population expanding further and further away from the coast.

The economic forecast for Brazil at the end of 2024, according to Deloitte, indicates modest GDP growth, projected at between 1.9% and 2.2%, driven mainly by domestic consumption and a stronger labor market. Inflation is expected to remain within the targets set by the Brazilian Central Bank, while the Selic rate is expected to be further reduced in order to stimulate the economy. However, public debt is a growing concern, with projections indicating that the government's gross debt could reach 77.3 % of the GDP by the end of 2024. These factors suggest a stable economic environment, but with significant fiscal challenges that need to be managed to ensure long-term sustainability.

Brazil's largest states in terms of GDP are São Paulo, Rio de Janeiro and Minas Gerais, all located in the southeast region, with a combined population of around 83.37 million. The city of São Paulo contributes approximately 32.1 % of Brazil's GDP. B3 S/A (“BRAZIL, BOLSA, BALCÃO”), located in São Paulo, is one of the largest infrastructure companies in the global financial market and the largest stock exchange in South America, trading a large part of Brazilian production. In 2023, B3 recorded an Average Daily Turnover of BRL 24.3 billion, representing a significant variation compared to 2022.

The combined GDP of Mercosur, including Argentina, Brazil, Paraguay, Uruguay and Bolivia, is around USD 5.195 trillion in Purchasing Power Parity (PPP) terms and approximately USD 2.638 trillion in nominal terms. This places Mercosur in 5th position, just behind the United States, China, Japan and Germany; considering Brazil alone, we are the 10th largest economy in the world. Its four members have been modernizing and opening up their national economies. In 1996, Mercosur signed agreements with Chile and Bolivia, in force from October and February 1997, respectively, for the development of free trade between the countries. Mercosur also signed free trade agreements with Israel in 2007 and Egypt in 2010. The Mercosur agenda, however, goes far beyond economic and trade issues, covering also education, employment, the environment, consumer protection and culture.

Brazil is divided into 26 states and a Federal District (within which Brasilia is located). This table shows the 5 regions, their populations and the percentage of the population living in urban areas:

Region	States	Population	Urban population
North	7	17,350,000.00	73.5%
Northeast	9	54,600,000.00	73.1%
Southeast	4	84,800,000.00	92.9%
South	3	29,930,000.00	84.9%
Center-West	3	16,290,000.00	88.8%

The largest city in Brazil and South America is São Paulo, with more than 12 million inhabitants. This number increases to about 20 million when it includes urban centers - the metropolitan region - around São Paulo, known as Greater Sao Paulo. Another 14 cities, including Rio de Janeiro, have a population of over 1 million.

2 The political system

Brazil is a democratic federative republic, composed of the Union, states, municipalities and the Federal District. It has a representative form of government with universal elections for the Executive and Legislative Powers.

A new constitution was introduced in October 1988. It provided a presidential type of government with three independent powers: The Executive, the Legislative and the Judiciary. A national referendum held in 1993 confirmed the presidential system as the preferred regime and the republic as the preferred form of government.

After more than 10 years of military dictatorship, Brazil readopted multiparty democracy in 1979. However, the Armed Forces maintained control over the Executive Branch until 1985, when the first civilian president was elected through indirect vote by an electoral college. Direct 4-year elections for governors and mayors were readopted in 1982, and for the Presidency of the Republic in 1988.

Brazilian democracy is open to various forms of political participation. In addition to voting, there is participation from political players such as sectoral associations, unions, social movements and non-governmental organizations. There are also several mechanisms for direct participation by citizens in decision-making processes and in the exercise of control of power, for example, popular consultations and referendums, impeachment processes of the Executive Branch, and forums and public hearings involving the general voting public and companies.

The free press is a social and constitutional right, censorship is prohibited and the right to public opinion is granted.

2.1 The Executive

At the federal level, the Executive is headed by the President. The President and the Vice-President are elected by direct vote for four-year terms. It is worth noting that since the implementation of direct elections in Brazil, voting is mandatory for citizens between 18 and 70 years of age. Both the president and the vice-president can run for re-election. Key responsibilities of the Executive include:

- sanctioning and approving laws, as well as issuing decrees and regulations for their application;
- propose and implement public policies;
- signing of treaties, conventions and acts (which need to be approved by the National Congress);
- maintaining national security, public security and public services allocated by the Union; and
- executing the annual budget approved by Congress.

The Executive also occasionally takes over the legislative functions of the Legislative Branch, adopting provisional measures ("MPs") in urgent cases. MPs have the force of law, but they need to be approved by the National Congress within 60 days of its publication[4]. Congress may extend the validity of MPs only once, for another 60 days. If this is not done, the MP will no longer produce effects.

Congress may, by resolution, delegate the power to legislate to the President. The resolution can determine that Congress must examine the topic of the proposed law.

The Vice-President assists the President, when requested, and performs other functions assigned to the position through complementary laws. The Vice-President will replace the president if he or she is incapacitated, impeached or leaves office.

The President appoints and dismisses Ministers of State. They have two general functions: First, to run their ministries, and second, advise the head of government on the policies of their department. However, the responsibility for these policies lies with the president. They remain subordinate to the president, who is solely responsible - after consulting his ministers - for the federal administration.

The Executive exercises direct and indirect administration. The direct administration includes the Ministers of State and their respective administrations, secretariats, chambers and committees, as well as the administration of the President. Indirect administration comprises government administrative organizations, state-owned enterprises and state-owned companies with private investors, federal foundations and federal regulatory agencies.

2.2 The Legislative Branch

The Legislative Branch consists of a two-chamber National Congress (the Senate and the House of Representatives). The Senate is composed of 81 Senators representing the states of the Federation (three Senators for each State and the Federal District). They fulfill eight-year staggered mandates. The House of Representatives consists of 513 deputies representing their electorate and have simultaneous mandates of four years. Members of the Senate and the House of Representatives are elected by direct popular vote. The House of Representatives employs a system of proportional representation, that is, each state and the Federal District elect between 8 and 70 deputies each.

The legislature approves and oversees the implementation and effectiveness of the annual budget and exercises the legislative functions of the State, approving:

- constitutional amendments;
- complementary, ordinary and delegated laws;
- legislative decrees and resolutions; and
- Provisional Measures.

Before any bill becomes law, it needs to be approved by both chambers and receive presidential sanction.

The Federal Constitution provides for matters of exclusive competence of the House of Representatives and the Senate. It enables both bodies to establish their own rules on the organization, regulation and appointment of workers. The Federal Constitution also sets out the functions of the National Congress, establishing which matters must be submitted for approval by the President of the Republic and which are within his own competence.

Each house has committees that analyze and report their conclusions on the specific matters that are submitted to them. The House of Representatives has 20 permanent committees, while the Senate has 12. In addition, temporary committees, such as the Parliamentary Committees of Inquiry, can be set up to investigate certain issues. Both states and municipalities have legislative powers.

The Senate also has the mandate to approve the appointment by the president of the Supreme and Superior Courts, directors of regulatory agencies, the president of the Central Bank and other government officials, as defined in specific legislation.

2.3 The Judiciary

The Judiciary Branch is composed of Federal and State Courts, and is headed by the Federal Supreme Court (“STF”). The STF is the highest court of appeals for federal and state courts in matters of the Federal Constitution. The 11 STF members are appointed by the president following an absolute majority of the Senate.

Within the scope of the STF are the special courts. These are the highest courts of appeal for non-constitutional issues:

- Superior Court of Justice (STJ): judges appeals on the interpretation and application of federal law;
- Military Superior Court (STM);
- Superior Electoral Court (TSE); and
- Superior Labor Court (TST).

Below these special courts are the Federal Regional Courts and the State Courts. These hear appeals against decisions taken by both the lower Federal Courts and the lower State Courts (which are generally the first instance courts). The Federal Court can judge cases in which the Union or any of its companies or governmental entities are a party. State Courts judge cases involving individuals or legal entities not linked to the Union, or to state or municipal entities or authorities.

Finally, there are the Courts of First Instance for Labor matters; the Regional Courts of Labor Appeals (which deal only with labor issues); the Public Electoral Courts and the Regional Electoral Courts (organization, supervision and summary of elections) and the Lower Military Courts (military crimes). All these courts are part of the federal judicial system.

At the base of the court hierarchy are:

- Labor Courts and Regional Labor Courts (only for labor disputes);
- Regional and Lower Electoral Courts (for organization, oversight and electoral summary); and
- Low Instance Military Courts (for military crimes).

The Judiciary is fiercely independent in its role of enforcing the law, providing fair and equal justice and protecting the individual rights of citizens.

3 Political divisions

3.1 States

Brazil is divided into 5 regions and 26 states, consisting of:

- North: Acre, Amapá, Amazonas, Pará, Rondônia, Roraima and Tocantins;
- Northeast: Alagoas, Bahia, Ceará, Maranhão, Paraíba, Pernambuco, Piauí, Rio Grande do Norte and Sergipe;
- Southeast: Espírito Santo, Minas Gerais, Rio de Janeiro and São Paulo;
- Center-West: Goiás, Mato Grosso e Mato Grosso do Sul, and
- South: Paraná, Rio Grande do Sul and Santa Catarina.

Each has its own constitution, governor and state legislature. The Federal District, located on the border of the State of Goiás, in the Center-West region, also has its own governor and legislature.

The governor exercises the executive powers of each state. The governor and the vice-governor are elected by direct vote for four-year mandates. Secretaries of State assist the governor in the exercise of his duties. Their number and powers vary from state to state, but according to state laws and the State Constitution, they all govern the state. The Legislative Assembly, composed of state deputies - also elected by direct vote - exercises legislative power. The number of deputies for each State Assembly is proportional to its population.

The organization of the State Judiciary is the responsibility of each state, and is carried out by the highest court of the state, the State Court of Justice. The State Court of Justice is subject to both the Federal Supreme Court (STF) and the Superior Court of Justice (STJ).

3.2 Municipalities

The municipalities, which make up the states, are the smallest autonomous units in Brazil. They elect their own chief executives (mayors), deputy mayors and members of the legislature (councilors), and control local public services.

Municipalities are created by state law and are subject to the requirements of federal law regarding minimum population size, public revenue and consent of the population. The mayor governs the municipality, with the help of municipal secretaries or departmental directors. The Council is the municipality's legislative body. It can legislate on certain local matters authorized by the Federal Constitution.

The State Court has competence over the municipalities.

4 The legal system

Brazil is a civil law country, and its legal system is based on laws issued by the National Congress, State Assemblies and Municipal Chambers according to the procedures provided for in its constitution or organic law, as the case may be.

The courts base their decisions on this promulgated law. If, however, a case does not fall under a specific rule or law, the Law of Introduction to the Rules of Brazilian Law establishes that the courts can base their decisions on case law, general principles of law, analogy, custom and[1] usage.

4.1 The Federal Constitution

As mentioned previously, Brazil is composed of the Federal Union, states and Federal District, and municipalities. Each may pass laws and regulations on matters under its respective jurisdiction, in accordance with the Federal Constitution, and in accordance with its provisions. The Federal Constitution of 1988 addresses the legal system and ensures the fundamental rights of citizens. It also defines the political and administrative organization of the country. The Constitution defines the roles of the Executive, the Legislative and the Judiciary Branches. Legislation on tax, socioeconomic and economic policies, civil and commercial law, employment relations and criminal law.

[1] Article 4 of the Law of Introduction to the Rules of Brazilian Law (Decree-Law No. 4,657/1942)

Article 1 of the Constitution also enshrines essential principles such as national sovereignty, citizenship, dignity of life, social values of employment, freedom of association and political pluralism.

The Federal Constitution is divided into different titles covering:

- Titles I and II – ESSENTIAL PRINCIPLES: Chapter I of Title II describes individual rights and freedoms. It also guarantees the inviolability of the right to life, freedom, equality, security and property;
- Title III – the organization of the State;
- Title IV - The organization of the Legislative Branch and the National Congress, among other public bodies, including the Executive and Judiciary;
- Title V – the defense of the State and democratic institutions;
- Title VI – Tax and Tax Budget;
- Title VII – economic and financial order;
- Title VIII – social order; and
- Title IX – general provisions.

Each state has its own constitution and each municipality has its own organic law, which must be in accordance with the principles and rules established in the Federal Constitution.

There is a hierarchy in the application of laws in the Brazilian legal system based on legal criteria such as (i) temporality, (ii) jurisdiction, (iii) specificity, among others. These criteria are used to prevent conflicts between laws or misuse of current legislation.

5 Recent political and economic history

Brazil began as a Portuguese colony and had the unique experience of being host to the Conquering Royal Family that left its heir as ruler of the country. This ruler declared independence from Portugal before he later returned to Portugal and left his son in Brazil. During his reign, his military leaders declared Brazil an uncontested republic and kept the Royal Family safe and prosperous.

The Republic alternated between democratic and not-so-democratic periods, but at no time was there an outright rebellion or significant internal war.

Over the last half century, Brazil has lived a varied political life. After the military regime, which ruled from 1964 to 1985, there was a period of 'transition', instigated and governed by the military government, which led Brazil to full democracy through the approval of the current Federal Constitution in 1988, thus laying the foundations for a Democratic Republic that respects the due process, checks and balances, the independence of Congress and the Judiciary, free press and social and civil rights. Since the reinstatement of direct elections to choose the President of the Republic, there have been seven presidential elections, with alternation of power between political parties and the proper functioning of democratic institutions, including the impeachment of two presidents.

5.1 Current scenario

Since the 1990s, Brazil has been undergoing a process of institutional modernization with a major impact on the business environment. The stabilization of the currency with the Real Plan in 1994, together with increased fiscal responsibility, introduced better management of public spending, which has been improved by successive governments. The Fiscal Responsibility Law of 2001, the constitutional amendment establishing the spending ceiling in 2016, the Pension Reform approved in 2019 and the New Fiscal Framework created in 2023 demonstrate the federal government's long-term commitment to Brazil's fiscal stability. The Pension Reform, for example, introduced a number of changes to the Brazilian pension system, including new retirement ages, a new minimum contribution period and transition rules for those who are already insured, generating savings of around BRL 800 billion for the Federal Government over 10 years.

The autonomy of the Central Bank, approved in 2021, is also a significant milestone in ensuring the institution's role in price stability, as regulator of the system, and guaranteeing that monetary decisions are made based on technical criteria, regardless of political cycles.

Over the last three decades, a framework change has also taken place to allow the private sector to take an increasing part in the provision of public services and infrastructure. In-depth regulatory reforms were implemented, allowing for the privatization of state-owned companies and the participation of the private sector in the provision of services and the construction and operation of infrastructure. To this end, laws were passed that sought to guarantee legal certainty for delegation contracts, which established new regulatory frameworks providing guidelines for private participation in different sectors, and 11[2] independent regulatory agencies were created with the power to issue new regulations and supervise partnership contracts.

Public service concessions in infrastructure sectors have come to represent a fundamental strategy for the country's development and modernization. The General Concession Law, in force since 1995, was a decisive step towards reforming the state and fostering private sector participation in the management of essential services. This legal framework has enabled significant advances in sectors such as transport, telecommunications, energy and sanitation. Concessions are carried out through competitive tenders, ensuring that capable companies take over the operation of services, with a commitment to invest and improve quality, always under the supervision of the granting authority. The model has been crucial in attracting investment, optimizing resources and guaranteeing the provision of efficient and sustainable public services for the population.

[2] National Electricity Agency - ANEEL (created in 1996), National Telecommunications Agency - ANATEL (1997), National Petroleum, Natural Gas and Biofuels Agency - ANP (1997), National Health Surveillance Agency - ANVISA (1999), National Water Agency - ANA (2000), National Film Agency - ANCINE (2001), National Land Transport Agency - ANTT (2001), National Water Transport Agency - ANTAQ (2001), National Civil Aviation Agency - ANAC (2005), and National Mining Agency - ANM (2017).

The initial milestone for the entry of the private sector into assets that were managed by public authorities was the National Privatization Program (PND), set up in 1990, initially aimed at privatizing state-owned companies and later expanded to include the delegation of public services and movable and immovable federal property. In 2016, the Investment Partnership Program (PPI) was created to structure the governance of federal government projects in partnership with the private sector. Both are still running today, even with the various changes of government, demonstrating the commitment to reducing government participation in the economy.

In 2017, Brazil enacted the Labor Reform, which represented a substantial change to the Consolidation of Labor Laws (CLT) in Brazil. With the aim of modernizing labor relations and stimulating the economy, the reform introduced intermittent work, made working hours more flexible, and changed rules on holidays, pay and collective bargaining.

Two important milestones for improving the business environment were approved in 2019. The first was the Regulatory Agencies Law, which improved the institutional framework for federal regulatory agencies in Brazil, providing for the management, organization, decision-making process and social control of these entities, and fostering greater functional, decision-making, administrative and financial autonomy. The law also amends several previous pieces of legislation relating to regulatory agencies, with the aim of improving transparency, governance and the stability of directors, as well as reinforcing the absence of hierarchical subordination in relation to the executive branch.

The second milestone was the Economic Freedom Act, which established rules to protect free enterprise and the free exercise of economic activities. It also defines rules on the actions of the state as a normative and regulatory agent, ensuring economic freedom, good faith and respect for contracts and property. The law also amends various existing laws and repeals others, aimed at guaranteeing a freer and less bureaucratic market environment, fostering the country's economic development and growth. It is important to emphasize that these two laws instituted regulatory impact analysis as mandatory for all federal regulators, and must be part of the process for drafting new rules.

The measure with the greatest capacity to impact the business environment in Brazil is the tax reform. An important part of it was approved in 2023 and aims to simplify the tax system, unifying taxes on consumption and creating a more transparent system. The main change is the introduction of the Value Added Tax (VAT), which will replace five existing taxes (PIS, Cofins, IPI, ICMS and ISS) with two new ones: the Contribution on Goods and Services (CBS) and the Tax on Goods and Services (IBS). In addition, a Federal Excise Tax will be created on specific products such as alcoholic drinks and cigarettes. The reform provides for a transition period until 2033, when it will be fully implemented, and includes measures such as a tax ‘cashback’ for low-income families and a basic food basket with tax exemption for essential items.

6 International treaties

Given the influence of the American and French Constitutions, in Brazil the Executive and the Legislative branches jointly approve, ratify and promulgate international treaties.

According to the Federal Constitution, the president has the power to sign international treaties. He or she may also delegate these powers to appointed plenipotentiaries. With the exception of less formal treaties, known as executive agreements, all other forms of treaty, after signed by the Executive representative, must go to Congress for approval. Once a treaty has been approved - by Legislative Decree - the Executive will decide whether to ratify it. If the President decides to ratify, he or she will sign the instrument of ratification and exchange it with that of the other signatory (for bilateral treaties) or forward it to the depositary mentioned in the treaty. The treaty must then be approved in Brazil by Presidential Decree and published in the Federal Official Gazette.

There have always been discussions in Brazil about whether international treaties are binding on domestic legislation. The STF has decided that the treaties incorporated into the Brazilian legal system have the same force as ordinary laws. Therefore, if a treaty conflicts with a domestic law on the same subject, the most recent one will prevail[3]. The exception is in tax matters: The National Tax Code expressly states that treaties override ordinary laws. In addition, human rights treaties may have the same status as a constitutional amendment, depending on the approval quorum of Congress.

Brazil has revised its foreign trade policy and now focuses on negotiating new free trade and preferential agreements. The Free Trade Agreement between the South Common Market (Mercosur[4]) and the European Union (EU) appears to be a priority for Brazil. This trade agreement could intensify already dense economic relations with the EU - Brazil ranks sixth as the EU's main investor (excluding offshore companies) and is the third destination for EU investment actions worldwide[5]. In June 2019, the agreement was politically announced and now awaits approval and ratification by the member countries of both blocs.

There are other advances in Mercosur trade negotiations, such as the joint declaration signed in June 2018 with the Pacific Alliance [6], which signaled the shared intention to increase trade relations between the two blocs. Another important achievement was the launch of negotiations with the Republic of Korea in May 2018, with Canada in March 2018, and ongoing negotiations with the EFTA countries (Iceland, Liechtenstein, Norway and Switzerland). It is also worth mentioning the recent analysis of a possible economic partnership agreement with[7] Japan.

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[3] It should be noted that Brazil is subject to the principles established by the Vienna Convention on the Law of the Treaties, such as those relating to the observance and application of the Treaties. After years of debates in Congress, the Vienna Convention was ratified by Brazil in 2009 and published under Presidential Decree No. 7,030/09 (before that, the convention was informally valid in Brazil, because its rules were considered applicable as international practice).

[4] Created in 1991 with the aim of establishing a common market in the South American region, Mercosur represents today the 5th largest economy in the world with all of the participating countries combined (USD 2.78 trillion in 2017, ahead of the United Kingdom with USD 2.62 billion and India with USD 2.61 trillion). The founding members of the bloc were Brazil, Argentina, Paraguay and Uruguay. Venezuela joined the bloc in 2012 but has been suspended since December 2016 for failing to comply with its accession protocol.

[5] See . http://www.itamaraty.gov.br/en/speeches-articles-and-interviews/other-high-ranking-officials-articles/19403-the-eu-mercosur-negotiations-ambassador-everton-vieira-vargas-europe-s-world-23-04-2018

[6] Created in 2011, the Pacific Alliance is formed by Chile, Peru, Colombia and Mexico.

[7] See Joint Report of the National Confederation of Industry (CNI) and Keidanren (Japan Business Federation).

Mercosur is also expanding its preferential trade agreement with India and conducting trade negotiations with Lebanon and Tunisia. In addition, Brazil isn't currently negotiating the expansion of the Economic Complementation Agreement No. 53 (ACE No. 53) (with Mexico).

Furthermore, official sources indicate that there are dialogues with a view to opening trade negotiations with other partners, such as Singapore and New Zealand.

As part of the Brazilian government's broader plan to improve the business environment, align its public policies with the best international practices and strengthen its position on the global economic stage to attract foreign investors, Brazil has already signed up to 120 of the Organization's almost 250 instruments. The country's collaboration with the OECD began in the 90s and gradually deepened. In 2007, Brazil and other emerging economies became the organization's "Key Partners". Currently, Brazil participates in numerous OECD committees and working groups, including as a member of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and as a member of the Global Forum on Exchange of Information and Transparency for Tax Purposes. Currently, Brazil has signed up to at least 108 of the Organization's almost 250 instruments.

BRAZIL: BUSINESS, REGULATORY AND LEGAL OVERVIEW

1 Political Structure

Brazil is a Federative Republic, consisting of the Federal District, 26 states, and over 5,000 municipalities. The country's capital is Brasília, located in the Federal District.

The Brazilian legal order functions under the Civil Law system and is based on codification and legislation enacted by the appropriate legislative powers at the federal, state, and municipal levels.

The predominant law of the country is the Federal Constitution, which establishes:

(i) the system of government;
(ii) the attribution of competencies to the Legislative, Executive, and Judiciary powers; and
(iii) the legislative authority of the federal, state, and municipal administrations.

In 1990, through the implementation of a National Privatization Program ("Privatization Program"), the Brazilian government started to withdraw from activities that had been constitutionally reserved for it or other areas in which free enterprise would potentially perform more efficiently than the government.

As a result of the Privatization Program, many regulatory agencies were created aiming to regulate all activities that are considered essential to the country's economy and population. Accordingly, all Brazilian regulatory agencies play a crucial role in regulating the performance of activities that involve, for example, Health, Agriculture, Food Supply and Livestock, Telecommunications, Energy, Oil & Gas, land, air, and waterway Transportation, Mining, Water resources, etc.

In respect of agreements entered into with the government, Law 8,666/1993 (Public Bidding Law) is the main legal instrument that regulates all agreements entered into between private parties and the government, establishing a series of principles, procedures, and requirements that must be observed by the private party and Public Administration body involved in the public bidding process. Additionally, state-owned companies and public companies must observe Law 13,303/2016 which provides for specific rules for the bidding process and execution of agreements for such companies, regardless of the nature of their activity.

Another important aspect of the Brazilian regulatory system is that any individual or legal entity intending to carry out commercial activities (Industries, General Commerce, and Service Providers) must obtain a series of registrations and licenses to legally operate. These registrations and licenses are analyzed and granted by Public Administration bodies at the Federal, State, and Municipal level. Such enrollments will vary according to the development of the activity and locality.

2 Judicial Structure

The Brazilian Judiciary system is organized in accordance with Brazil's Federal Constitution, which divides the judicial structure into federal and state courts. In general terms, Brazilian courts have jurisdiction over any litigation in any way related to Brazilian territory. Federal courts have exclusive jurisdiction over any lawsuit where the federal government or any of its agencies or quasi-governmental bodies is a party to or has an interest in, as well as over cases involving foreign states or international agencies. All labor and electoral courts are also under federal jurisdiction. Nonetheless, the bulk of all private commercial litigation is adjudicated before the state courts.

Regardless of whether a lawsuit is filed in a federal or a state court, the parties have a constitutional right to appeal to an appellate court. In the state system, every federation unit (state) has its own state court of appeals. The federal appellate system, on the other hand, consists of five circuit courts of appeals.

At the next level of the judicial structure sits two superior courts, which are called the "*Superior Tribunal de Justiça*" (Superior Court of Justice) and the "*Supremo Tribunal Federal*" (Brazilian Supreme Court), both located in Brasília. Broadly speaking, the former has jurisdiction over any case decided by state or federal courts of appeals if the decision rendered by any of these courts violates federal law. The latter has jurisdiction over constitutional issues and may also revisit decisions rendered by any court if the Constitution is found to have been violated.

Brazil is a civil law jurisdiction and decisions are based on the application of statutory laws. Where there is no specific statutory provision, the courts may decide either based on analogy and general uses and practices or by applying general principles of law. In general, precedents are not binding but tend to be respected by lower courts.

All civil procedure rules are federal and applicable throughout the country, allowing lawyers to practice nationally. In general, civil procedure emphasizes expert evidence and documentary evidence over oral testimonies and concentrates much of the evidence gathering in the judge's hands. Brazil grants more powers for judges to control proceedings and to obtain evidence than is normally found in other civil law countries. Hence, discovery is not allowed and lawyers, for instance, cannot privately collect depositions or make requests for admission. In addition, the Brazilian system permits a multiplicity of appeals, particularly interlocutory appeals, that can delay proceedings for lengthy periods. Finally, all decisions are made by judges. Jury trials are only permitted in crimes committed against a person's life, such as cases of first-degree murder.

3 Arbitration

In Brazil, enforcement of domestic arbitration decisions has been provided for by specific legislation since 1996. In 2001, the Brazilian Supreme Court finally upheld the constitutionality of the Brazilian statute validating contractual arbitration provisions, thus removing lingering doubts about the Brazilian courts' stance in this regard. Arbitration, however, is only permitted regarding pecuniary and waivable rights, which cover most commercial transactions, and if it involves an agreement executed with the Public Administration, the judgment must be according to the rules of law and the arbitration procedure must respect the principle of publicity.

Foreign arbitration awards are also enforceable in Brazil. However, despite Brazil's having ratified the New York Convention on Enforcement of Foreign Arbitral Awards, foreign arbitration awards must still be ratified by the Brazilian Superior Court of Justice in order to be enforced in Brazil.

AGRIBUSINESS

1 Concept and Importance of the Sector in the Economy

From 2000 to 2023, agribusiness has shown continuous growth in its exports. The accumulated value of the sector's foreign sales increased 4.3% compared to 2022 (IVE-Agro/ Cepea). The expectation for 2024 is that Brazilian agribusiness will continue to grow in comparison to 2023.

Agribusiness is of great importance to the Brazilian economy. Besides the generation of employment and income, it has strongly contributed to the Brazilian macroeconomic stability through its foreign sales, given that the foreign exchange inflows mitigate the trade deficit from the other productive sectors.

Between December, 2022 and December, 2023, the export volumes (IVE-Agro/ Cepea) of almost all products considered in export indexes increased by 15.6%. The products that registered the largest increase in exports within the period mentioned above, considering volume, were corn (+29.4%) and soybeans (+29.4%); pork (+9.2%) and chicken meat (+7.7%); sugar (+13.2%); as well as soybean oil (+4.8%) and soybean meal (+6.3%). In dollar prices, there was an increase in sugar (+13.2%), orange juice (+16.1%) and fruit (+16.6%).

Drops in the values shipped for cotton (-12%), forestry products (-13%), coffee (-13%) and beef (-19%) were assessed when comparing the results for 2022 and 2023.In 2023, agribusiness exports nearly reached the historic USD 166 billion mark, which represented a share of approximately 49% of the country's total exports and contributed decisively to a trade surplus of USD 98 billion (MIDC). Grains were mainly responsible for this performance, as corn was the product with the highest growth rate – with a 29% increase in the volume shipped – while soy complex products remained the leaders in terms of the value generated by shipments, which reached approximately USD 67 billion in revenue in the period, or 40% of the total (IVE-Agro/Cepea).

Agribusiness is a strategic sector for the Brazilian economy, and it has contributed strongly to the macroeconomic stability of the country. Despite the 3% decrease in the agribusiness share of the Brazilian Gross Domestic Product (GPD) in 2023, and that the sector's share in the total GPD reached 23.8% in 2023, lower than the 24.8% registered in 2022, agribusiness continues to represent an important portion of that metric (CNA/ Cepea).

In 2024, demand for food, fiber and energy is expected to remain steady, despite prospects of lower growth rates for the world's main economies, such as China, given that advances in the world's population and the incomes of importing countries should support the demand (IVE-Agro/Cepea).

On the supply side, while the Northern Hemisphere is starting to prepare for the new sowing season, in the Southern Hemisphere, the harvest period is beginning, and no significant increase in the area is expected in the new production cycle (2023/24) in Brazil, which should limit the growth of the national supply. The area is also expected to suffer some loss in 2024 due to the adverse weather at the end of 2023 (IVE-Agro/Cepea).

Moving past the old agrarian concept and the traditional barriers between the production, manufacturing and services sectors, the agribusiness industrial complex comprises a group of activities aimed at agricultural and animal husbandry production. Such production processes involve a group of interrelated activities, represented by agricultural and animal husbandry production, fishing, forestry, agribusiness, logistics and food distribution, domestic and foreign trade, stock markets, public policies, end consumers, input manufacturing and technical services rendering and consulting companies. The agro-industrial systems or chains include all the players involved in the production, processing, and marketing of a specific product. The same systematic view of the agricultural business also applies to the financing structures, the futures and commodities exchange and specific public policies.

Therefore, “Agribusiness” can be defined as “an organized group of economic activities comprising the manufacturing and supply of input, production, processing, storage and distribution for foreign and domestic consumption of products of agricultural and animal husbandry origin, as well as the stock and futures markets and the appropriate forms of financing, organized according to specific public policies”. The term “agribusiness” is very close to the concept of an agro-industrial complex, which includes all companies that produce, process, and distribute agriculture and animal husbandry products.

2 Ministry of Agriculture and Livestock (MAPA)

The Ministry of Agriculture and Livestock (Ministério da Agricultura e Pecuária - MAPA) is a federal department in Brazil. The role of MAPA is to formulate and implement policies for agribusiness development, integrating the aspects of market, technological, organizational and environmental care for the consumers of the country and abroad, promoting food security, income generation and employment, while reducing inequalities and increasing social inclusion.

All companies and products related to agribusiness must have the operating authorization issued by MAPA if they are producing, storing, transporting, fractionating, commercializing, importing, or exporting. These companies must obtain the operating authorization before the product registration for sale.

There are some products related to agribusiness that must be registered with and/or are regulated by MAPA, for example: wines and beverage, animal food, fertilizers, animal origin products, and seed.

3 Rural Credit and Private Agribusiness Financing System

The National Rural Credit System (“SNCR”) is more than a credit system, given that it also acts as a planning instrument for production in order to avoid bottlenecks in the supply of primary assets to the co-related sectors, including the supply of foreign currency for the import of capital goods. In this case, credit is the incentive mechanism that complements the market to guide production and long-term investment. For a qualified loan, the borrower must be a rural producer and the borrowed amount must be specifically destined for agriculture.

The SNCR was highly criticized starting in the 1980s. The main arguments behind such criticism were that its effects were not very significant on the growth of agricultural production, on the technologies adopted by producers and on productivity increases.

Beginning in 1988, the government introduced rules to regulate and reduce government intervention in the farming and animal husbandry markets.

In this context, the actual reorganization of the agricultural policy began on August 22, 1994, when the Law No. 8,929 was enacted and provided for the Rural Product Note ("CPR"). In addition, Law No. 11,076 was enacted on December 30, 2004, in line with the guidelines set forth in the 2004/2005 Farming and Animal Husbandry Plan, whose intention was to provide the sector with new sources of financing through the creation of new financial instruments to drive and support agribusiness, such as the Agricultural Certificate of Deposit ("CDA"), the Agricultural Warrant ("WA"), the Agribusiness Credit Rights Certificate ("CDCA"), the Agribusiness Letter of Credit ("LCA") and the Agribusiness Receivable Certificate ("CRA"), within a truly new system.

Based on the new formulation of agribusiness credit instruments, the government's conducting role, through economic law in its planning method, has pursued the definition of specific instruments in order to benefit the real integration between the agro-industrial market and the financial and capital markets, which would be less dependent on scarce government resources and more resistant to the usual adversities of this segment (within such new system).

Law No. 11,076/2004 created a new financial regulation for agribusiness with the direct cooperation with the private sector. The government strengthened the pillars of Private System for the Financing of Agribusiness almost 40 (forty) years after the implementation of the SNCR.

The government, which used to intervene directly in the rural activity, is now one that encourages private initiatives as a source of funding. Hence, by means of instruments with their own characteristics and specific legal regime, the role of the main agribusiness financer has shifted to the private financial market.

With the new financial instruments, the financial market is now equipped with more adapted instruments, and the capital market has become an alternative to finance agribusiness, increasing the long-term liquidity of the production chains. Furthermore, these new financial instruments have provided refinancing for agribusiness companies, thereby becoming instruments to limit risk and to raise funds to increase the supply and to reduce credit cost for Brazilian agribusiness. In relation to this new context and financing system for the sector, it is important to mention that the Brazilian legal framework had long required the existence of a modern legal system, necessary for all the private credit instruments, in order to limit the potential for legal disputes that might eventually increase insecurity with respect to compliance with the agreements, thereby increasing the interest rates and reducing credit offers.

Law No. 13,331, dated September 01, 2016, still under such new system, allowed CDCA and CRA to be subject to exchange-rate fluctuation, which is an advantage for exporters. To this end, the CDCA and the CRA should (in alignment with exporters needs):

(i) be integrally backed by agribusiness credit rights subject to exchange-rate fluctuation for the same currency, as established by the CMN;

(ii) be negotiated exclusively with non-resident investors in accordance with the laws and regulations in force; and

(iii) observe other applicable CMN rules.

Nowadays, the local exporting agro-industries will be able to take on international financing with lower interest rates.

On April 07, 2020, Law No. 13,986 ("Agribusiness Law") introduced important innovations to the financing of the Brazilian agribusiness market. The purpose of the Law was to update certain rules governing instruments intended for the promotion of the agribusiness in Brazil.

The Agribusiness Law created some new financing instruments, such as: **(i)** the solidarity guarantee fund (*fundo garantidor solidário*), **(ii)** rural property segregation regime (*regime de afetação de imóvel rural*), and **(iii)** rural real estate note (*cédula imobiliária rural*); and brought important changes with regards to certain existing credit instruments that are widely used for agribusiness funding, such as **(i)** Bank Credit Note issued in Book-Entry Form (*cédula de crédito bancário emitida – CCB – sob forma escritural*), **(ii)** Bank Deposit Certificate issued in Book-Entry Form (*certificado de depósito bancário – CDB – eletrônico*), **(iii)** Certificate of CCBs, **(iv)** Rural Product Note (*cédula de produto rural – CPR*), **(v)** Certificate of Agribusiness Credit Rights (*certificado de direitos creditórios do agronegócio – CDCA*), and **(vi)** Certificate of Agribusiness Receivables (*certificado de recebíveis do agronegócio – CRA*).

Finally, the Agribusiness Law amends Federal Laws No. 5,709/71 and No. 6,634/79 with respect to the creation of collateral over rural real estate property in favor of a foreign creditor or of a Brazilian legal entity controlled by a foreigner. The new rule now makes expressly possible **(i)** the granting of real estate collateral, including the transfer of fiduciary property, in favor of foreign natural persons or foreign legal entities, or Brazilian legal entities whose majority capital is owned by foreigners; and **(ii)** the receipt of rural property in settlement of a transaction, payment-in-kind or any other form. Therefore, there are now four situations authorized by law for a foreigner to acquire the ownership of rural properties in Brazil: creation of collateral, transaction, payment-in-kind or "other form".

On December 21, 2022, Laws No. 13,986, No. 8,929, No. 11,076, and No. 8,668 (the latter mentioned below), were amended by Law No. 14,421, dated July 20, 2022. Law No. 14,421 introduced a series of measures that facilitate the business environment of the agribusiness productive chain and provided a regulatory framework for the financing of the sector.

The main provisions brought by Law No. 14,421 include:

- Broadening of the **definition of rural products** that can be the subject of a CPR and expansion of **the list of individuals and legal entities** that are entitled to issue such note;
- Clarifications regarding the required format of **electronic signatures** in CPR issuance;
- Extension of the **deadline for CPR registration or deposit** with an entity authorized by the Central Bank, for all securities issued after August 11, 2022;
- Transfer of the **competence for registration of the agricultural fiduciary lien to** the Real Estate Registry Office where the assets given in guarantee are located;
- Improvement of provisions that address the Rural Assets in Segregation (*patrimônio rural de afetação*), fast-tracking the **expropriation procedure**, and adjusting **regulations that address rural pledges**; and
- Possibility of using the **Solidarity Guarantee Fund (FGS) to guarantee any financial operation linked to the rural business activity**, including those resulting from debt consolidation and those carried out within the scope of capital markets.

Law No. 14,421 represented an important improvement to the pre-existing credit instruments and brought greater legal certainty to the development operations of productive chains, seeking to attend to the growing scarcity of credit and guarantee instruments.

In addition, on October 30, 2023, Law No. 14,711 ("Legal Framework for Guarantees") was enacted, amending several Brazilian laws, and allowing changes on regulations relating to loans, with the aim of making it easier for the creditor to retake the guarantee in the event of the debtor's default and, therefore, reducing the cost of credit. Among the main innovations brought in by the Legal Framework for Guarantees are the extrajudicial foreclosure on mortgages and the authorization of a second fiduciary sale using property that has already been sold. In this case, the fiduciary sale in a "*second degree*" or successive modality allows the same property to be used as collateral in more than one transaction.

The figure of the "*collateral agent*" was also introduced by the Legal Framework for Guarantees. Although it was already common in the market, the collateral agent is now regulated by a specific legal provision and must act under a collateral management contract. Once appointed by the creditors, the collateral agent will be responsible for placing the lien on the asset, managing it, and enforcing the collateral, even if out of court.

These innovations allow new contractual mechanisms, such as debt renegotiation, contributing to complex transactions, especially in the agribusiness sector.

3.1 New instruments for the financing of agribusiness

3.1.1 Rural Product Note (*Cédula de Produto Rural* – CPR)

The CPR was introduced by the Law No. 8,929, dated August 22, 1994. Originally, such Law only provided for the modality referred to as "Physical CPR", in which the issuer undertakes the obligation to deliver certain quantity of product on a certain date and at a certain place. Monetary values are not mentioned. This modality represents an obligation of physical delivery of products. Additionally, considering it is a representative instrument of the products, the Law provides that it can be traded on stock and over-the-counter markets.

The "Financial CPR" (CPR-F) is a CPR modality established by Law No. 10,210, dated February 14, 2001, which included Article 4-A to the Law No. 8,929/2000. Similar to the Physical CPR, the CPR-F includes the description of the product and the respective amount negotiated; the difference lies in the settlement method. The CPR-F does not provide for the physical delivery of the product, only for the settlement upon payment, on due date, of the amount corresponding to the specified amount of product multiplied by the fixed price or the index applicable to such product, which will be described in the instrument.

The Agribusiness Law changed several provisions regarding the legal framework governing Rural Product Notes, by amending Federal Law No. 8,929/94. Among the modifications, the Agribusiness Law created the CPR in book-entry form and made it mandatory to register or deposit any CPR, before an entity authorized by the Brazilian Central Bank to perform the activity of centralized deposit of financial assets or securities, for CPRs issued as from January 01, 2021.

Lastly, Law No. 14,421 (which regulates the CPR) extended the list of products that can be issued. The new legislation expands the concept of rural product and allows the financing of other elements in the production chain, such as suppliers of inputs, equipment, and processors. Funds can also be raised for environmental conservation and preservation, the Green CPR. Furthermore, Law No. 14,421 allows pledged assets to be subject to a new pledge at a level after the pledge originally constituted, thus exempting the issuer from drawing up and signing an amendment when the CPR is extended.

3.1.2 Agricultural Certificate of Deposit (*Certificado de Depósito Agropecuário* - CDA) and Agricultural Warrant (Warrant *Agropecuário* - WA)

The Agricultural Certificate of Deposit (CDA) was introduced by Law No. 11,076/2004. It was created for the trading phase of the agricultural and animal husbandry production. The CDA represents a commitment to deliver agricultural and animal husbandry products, their by-products, sub-products, and residues with economic value, deposited in warehouses that are part of the warehousing system for agribusiness product. The Agricultural Warrant (WA) was created together with the CDA. The WA is a credit instrument that grants right of pledge over the products described in the CDA.

3.1.3 Agribusiness Credit Rights Certificate (*Certificado de Direitos Creditórios do Agronegócio* - CDCA)

The Agribusiness Credit Rights Certificate (CDCA) was introduced by Law No. 11,076/2004. It is a freely traded credit instrument that represents a commitment to pay in cash the correspondent amount indicated therein. It is an extrajudicial executive instrument. Only rural producers' cooperatives and other legal entities that carry out trading, processing or industrialization of agricultural and animal husbandry products and input or machinery and implements used in agricultural and animal husbandry production can issue such an instrument. It must be registered with the registration and cash settlement system of assets authorized by the Brazilian Central Bank and held in custody by financial institutions or other institutions authorized by the Brazilian Securities and Exchange Commission to render custody of securities services.

The regime for issuing the CDCA with an exchange-rate clause has undergone significant changes. Since 2016, when Law No. 11,076/04 was amended to allow the nominal value of the security to be changed by the exchange rate, it was established that: (a) the credits that underpin the CDCA would also have to be linked to exchange-rate variation; (b) trading can only be performed among non-resident investors; and (c) the editing of regulations by the CMN is allowed, which had not been the case until the provisional measure leading to the Agribusiness Law.

Pursuant to the Agribusiness Law, the holder of the CDCA may also be, in addition to the non-resident, the securitization company that will issue the CRA backed by CDCA. Regulation of the CMN is no longer an essential requirement for the issuance of CDCA, but a way of creating new conditions.

3.1.4 Agribusiness Letter of Credit (Letra de Crédito do Agronegócio - LCA)

The Agribusiness Letter of Credit (LCA) is also a freely traded credit instrument that represents a commitment to pay in cash. It is also an extrajudicial executive instrument, but only financial institutions can issue LCAs. It must be registered with registration and cash settlement system of assets authorized by the Brazilian Central Bank and held in custody by financial institutions or other institutions authorized by the Brazilian Securities and Exchange Commission to render custody of securities services. It is also important to mention that the value of this instrument cannot exceed the total value of the credit rights attached thereto. Furthermore, the LCA grants right of pledge over the credit rights tied to them.

In addition, through Resolution No. 5,119, of February 1, 2024, which amended CMN Resolution No. 5,006, of March 24, 2022, the CMN, from July 1, 2024, prohibited the funds raised through agribusiness bills from being used to grant rural credit that benefits from a financial subsidy from the Federal Government. The CMN also decided to prohibit any overlapping of tax benefits or specific government policies in the issuance of LCAs and extended the minimum maturity of LCAs from the current 90 days to 9 months, in order to encourage longer funding periods.

3.1.5 Agribusiness Receivable Certificate (*Certificado de Recebíveis do Agronegócio* - CRA)

The Agribusiness Receivable Certificate (CRA) is a freely traded credit instrument, exclusively issued by Securitizing Companies of Agribusiness Credit Rights, representing a commitment to pay in cash and that constitutes an extrajudicial executive instrument.

After months under a public hearing, the CVM Regulation 600 was issued on August 1, 2018, and it is the first CVM resolution that regulated CRA. Before such regulation was issued, financing through CRA had been under the umbrella of CVM Regulation 414, applicable to CRI.

The Agribusiness Law delegated the powers to the Brazilian Monetary Council (CMN) to authorize the acquisition of CRA with exchange variation clause by resident investors. Until the enactment of such Law, these CRA were to be issued only by non-residents, in addition to the fact that their issuance depended on regulation by the CMN, which had not been approved until then.

On December 23, 2021, CVM Regulation 600 was repealed by CVM Regulation 60, seeking to establish a specific legal regime for credit securitization companies, which were previously regulated by the legislation of publicly traded companies, without distinction. It also provides for the public issuance of securitization bonds, defined as the securities issued by securitization companies within the scope of securitization operations. As a result, most of the provisions of Regulation 600 referring to CRAs were incorporated into CVM Regulation 60 and addressed in its Normative Annex II.

On November 17, 2023, the CVM amended CVM Resolution 60 through CVM Resolution 194. All changes were made without conducting a regulatory impact analysis, as they were intended to regulate rights and obligations defined in a higher-ranking rule, as well as representing low-impact changes or simple wording adjustments or improvements. As a result, the process that resulted in CVM Resolution 194 did not involve debates on the merits of the new securitization regulation, but rather on a better adaptation of the regulation to the legislation and other market regulations.

Recent regulations published by the CMN introduced new rules governing the issuance of CRA and CRI. CMN Resolution 5,118 of February 01, 2024, established the restrictions for the backing of CRA and CRI, prohibiting the inclusion of:

- Debt securities of:
    - a publicly-held company or parties related to it, unless the main sector of activity of the publicly-held company is real estate(in the case of CRI), or agribusiness (in the case of CRA); or
    - a financial institution or entity authorized to operate by the BCB, or a party related to it; and
- Credit rights arising from:
    - transactions between related parties; or
    - financial transactions whose proceeds are used to reimburse expenses.

There is also an impediment to transactions in which institutions and companies retain risks and benefits.

However, CMN Resolution 5,118 exempts CRA and CRI from complying with this rule, provided that **(i)** certificate was distributed before CMN Resolution 5,118 came into force; or **(ii)** the certificate has already been submitted for registration with the CVM. It is worth noting that if there are any extensions of the deadline for CRA and CRI that have already been distributed, they must comply with CMN Resolution 5,118.

Resolution No. 5,121, of March 01, 2024, amended CMN Resolution 5,118 to clarify that companies typical of agribusiness or the real estate sector, and which do not have a direct link with financial system institutions, are able to carry out securitization operations through the issuance of CRI and CRA, with the aim of promoting public policies in the real estate and agribusiness sectors through debt operations compatible with their purpose.

3.1.6 Solidarity Guarantee Fund (*Fundo Garantidor Solidário* – FGS)

The Solidarity Guarantee Fund (FGS) is a new instrument in the Brazilian legal framework created by the Agribusiness Law that aims at consolidating resources to be granted as guarantee for credit and debt consolidation transactions carried out by rural producers, as well as in financing transactions for the implementation and operation of rural connectivity infrastructure.

The FGS must be incorporated and governed according to its own bylaws, which must provide for the form of incorporation, management, compensation of the fund manager, use of funds, form of monetary adjustment, active and passive representation, among others. The Agribusiness Law also provides for specific features and requirements to be observed by the Solidarity Guarantee Fund.

In addition, as mentioned above, Law No. 14,421 allowed the FGS to guarantee any financial operation linked to the rural business activity, including those resulting from debt consolidation and carried out within the scope of capital markets.

3.1.7 Rural Real Estate Note (*Cédula Imobiliária Rural* – CIR)

The Agribusiness Law introduced in the Brazilian legal system a new type of credit instrument, the Rural Real Estate Note (CIR). Among other interesting points about the CIR, it represents both (i) the promise to pay the amount arising from the credit transaction, and (ii) the obligation to deliver to the creditor, in case of default, the rural real estate property (or its portion), subject to the segregation regime, which is an innovative measure in the Brazilian legal system, since it removes, at least in this case, the prohibition from the so-called "*commissory pact*"(*pacto comissório*). In addition, the CIR may be issued within the scope of any credit transaction, not necessarily contracted with financial institutions.

Also, the CIR may use the segregated estate structure (*patrimônio de afetação*) in its entirety or in part for collateral purposes. The linkage of the CIR to the segregated estate (or part thereof) depends on its registration or deposit before an entity authorized by the Brazilian Central Bank to exercise the activity of centralized registration or deposit of financial assets and securities. Additionally, the legal text allows the issuance of the CIR in book-entry form.

3.1.8 Agribusiness Investment Fund ("FIAGRO")

In March 2021, the Brazilian Senate approved the Draft Bill No 5,191-A ("PL 5,191") that proposes the creation of Agribusiness Investment Funds ("FIAGRO"), as another mechanism for the development of the agro-industrial sector through fundraising in the capital markets. As a result of this Draft Bill, Law No. 14,130, of March 29, 2021, was approved in June 2021. This law amended Law No. 8,668/93, which provides for the incorporation and tax treatment of Real Estate Investment Funds ("FII"), and also regulated the creation of FIAGRO.

The major innovation of the agribusiness financing structure is that FIAGRO allows investment in multiple assets within the agribusiness chain. According to the Law, FIAGRO can invest in the stake of companies of the sector, in the purchase and sale of rural real estate, credit rights, securitization bonds such as CRA and CRI - if the receivables are related to the sector - , quotas of investment funds in receivables and in real estate, that invest more than 50% of their portfolio in assets related to the agribusiness sector, and also in all the several agribusiness securities.

In addition, CVM regulated this fund category on a provisional and experimental basis, through CVM Resolution 39, of July 13, 2021 ("CVM Resolution 39"). Through CVM Resolution 39, the CVM provided regulation for three types of FIAGRO:

(i) **FIAGRO - Receivables**, whose investment policy must follow the rules for asset portfolio composition and diversification provided for in CVM Instruction No. 356, dated December 17, 2011, as amended;

(ii) **FIAGRO - Real Estate**, whose investment policy must follow the rules of composition and diversification of asset portfolio provided for in CVM Instruction No. 472, dated October 31, 2008, as amended; and

(iii) **FIAGRO - Equity,** whose investment policy must follow the rules for asset portfolio composition and diversification provided for in CVM Instruction No. 578, dated August 30, 2016, as amended.

In addition to the specific regulations, all types of FIAGRO must follow the general rules provided for in CVM Instruction No. 555, of December 17, 2014. However, it is important to highlight that all CVM resolutions and instructions mentioned in this item will be repealed by CVM Resolution No. 175, dated December 12, 2022, as amended, the New Fund Regulation of the CVM, which provides for the incorporation, management, operation, and disclosure of information of investment funds.

The New Fund Regulation came into force on October 2, 2023, however CVM Resolution 200, published on March 12, 2024, amended the New Fund Regulation in order to extend the adaptation deadlines for the different types of funds:

(i) For the adaptation of funds in operation when CVM Resolution 175 was published, except for Receivables Investment Funds ("FIDC"), with subsidiary application for FIAGRO (in the case of **FIAGRO - Real Estate** and **FIAGRO – Equity)**: from **December 31, 2024** to **June 6, 2025**; and

(ii) For the adaptation of FIDC in operation when CVM Resolution 175 was published, with subsidiary application for FIAGRO (in the case of **FIAGRO - Receivables**): from **April 1, 2024** to **November 29, 2024.**

On October 31, 2023, the specific rules that will comprise the FIAGRO regulatory annex were put up for public consultation, which ended on January 31, 2024. The initial draft of the public consultation proposes important changes to the regulatory scope of FIAGRO, especially with regard to the administration and management of these funds, and, now, the market is looking forward to the CVM's next moves regarding such matter, expected to occur in 2024 and/or 2025.

4 Land statute and agrarian contracts

In order to give appropriate legal structure, principles, and specific rules to business relations in rural areas, special legislation was created that now governs the commercialization of land and the use of other people's work in the achievement of such — the Land Statute (Law No. 4,505/64 as ruled by the Decree-Law No. 59,566/66).

The Land Statute rules the sharecropping and livestock, agriculture, agro-industrial or extractive partnership. The farmer can commercialize the rural activity using third-party land by lease or partnership, using his experience, and sharing the results/profits.

The so-called agrarian contracts are provided for in the Land Statute and are divided into two distinct types of contract: the rural lease and the agricultural partnership. Both contracts are “bilateral, onerous, consensual and non-solemn” and may be executed in writing or verbally.

Thus, the agricultural partnership agreement and the leasing aim to regulate the possession or temporary use of land or property, between the owner of a rural property and the one that exercises any agriculture, livestock, agro-industrial, mining, or mixed activity on it.

4.1 Agricultural partnership

The agricultural partnership is regulated by the Article 4 of Decree-Law No. 59,566/66. According to such Decree-Law, consisting of the "*agrarian contract by which a person undertakes to assign to another, for a certain period of time or not, the specific utilization of a rural property, its part or parts, including or not, improvements, other goods and/or facilities, for the purpose of being engaged in agricultural, livestock, agro-industrial, extractive or mixed farming activities; and/or for the delivery of animals for breeding, rearing, wintering, fattening or extraction of raw materials of animal origin, by sharing, alone or cumulatively*".

In this modality, the utilization of the land is made available by the owner, named by the law as the "*partner-grantor*", to the one who will directly develop the rural activity on the land, called the "partner-grantee", with a specific purpose, prohibiting the partner-grantee from utilizing the land for any other purpose than the one determined by the partner-grantor.

The main characteristic of this contract is the sharing of risks among the contractors. They share the risk in relation to the products, profits and even losses arising from the contractual relationship. In fact, when signing a partnership contract, both parties will only be entitled to receive the products if the activity is successful; otherwise, the parties shall bear the losses resulting from unsuccessful production. In other words, in the partnership contract there is the sharing of advantages, such as products, profit and crops, as well as risks, such as Act of God cases and force majeure events. It is important to emphasize that the sharing must necessarily cover the cases of production failure, whether due to the destruction of a crop by pest or other similar adversities, or due to variations in the price of the products. In these cases, in addition to the partner-grantee not receiving any amounts, the partner-grantor shall not require any payments from the other party. Thus, by means of the agricultural partnership contract, there is only the concession of a certain rural property and goods for a specific use, with the purpose of economic development and consequent sharing of the results, whereby the accessories are also affected by this contract.

The agricultural partnership agreement has distinct modalities (agricultural, livestock, extractive, agro-industrial. For each of these modalities, the law requires that a percentage be stipulated for each partner regarding their respective participation in the results of the partnership, observing, therefore, the limits established in article 96, item VI, of the Land Statute from 20% to 75% of the results obtained with the partnership.

4.2 Rural lease

The rural lease is regulated by the Article 3 of Decree-Law No. 59,566/1966, as the "*agrarian contract in which a person undertakes to assign to another, for a certain period of time or not, the use and enjoyment of a rural property, its part or parts, including other goods or not, improvements and/or facilities, with the objective of developing agricultural, livestock, agro-industrial, extractive or mixed activities, upon certain remuneration or rent, observing the limits of percentage defined in the Law*." Unlike the partnership, the lease allows the lessee not only the use, but also the enjoyment of the rural property since the inherent risks of production are the sole responsibility of the lessee.

It is a contractual modality characterized by the stipulation of a fixed income to the lessor, but which must always observe the limits established in Article 95, XII, of the Land Statute, so that the established value does not exceed the limit of 15% of the registral value of the property, in the case that the lease covers the totality of the property, including its improvements, and the limit of 30% for the partial lease covering only selected portions of land for the purpose of developing "*intensive and highly profitable*" activities.

Therefore, unlike what occurs in a partnership, the lease is a contract that allocates the risk of the agricultural activity only to the lessee, as the direct developer of the right over the land.

5 Storage system for agribusiness products

The dependency of the agribusiness sector, in relation to the storage of its products, is further hindered by the insufficient storage capacity of the Brazilian rural property stimulated the creation of a more professional warehousing system.

The establishment of the Agricultural and Animal Husbandry Products Storage System (SAPA) through Law No. 9,973/2000 and the enactment of Law No. 11,076/2004, which allowed the issuance of CDA and WA, forced the general warehouses that only stored agricultural products to adapt themselves to the new regulations in order to continue storing the referred products.

Such legislation, which governs the registration of agricultural and animal husbandry products warehouses, provides for a series of registrations to be obtained so that the warehouse is considered an agribusiness warehouse. Registration is concluded with the certification issued by the Ministry of Agriculture, Livestock and Supply (MAPA).

6 Agricultural insurance

Agricultural production and revenue are strongly associated with natural events, and are also variable, which renders medium and long-term planning difficult. The risk of agriculture has increased, either because of climatic instability, associated with global warming and the intensification of capital in the composition of the product, or because of the effects of the fluctuating exchange rate on the sector's income. Agricultural insurance is an important instrument for risk management.

Agricultural insurance is also an important instrument for agricultural policy, since it enables the producer to be protected against losses resulting especially from adverse weather phenomena. However, it covers not only agricultural activity but also animal husbandry activity, the rural producer's estate, products, credit for trading thereof, in addition to life insurance for the producer. The most important objective of agricultural insurance is to provide coverage which simultaneously protects the producer, as well as provides guarantee for the producer's financers, investors, business partners, all parties interested in the greatest possible dilution of risks, through the combination of several insurance lines.

AVIATION LAW

1 General Rules

Aviation activity in Brazil is governed primarily by the Brazilian Aeronautical Code, adopted by Federal Law No. 7,565/1986 (the "Aeronautical Code"), which applies the principles and rules adopted by International Conventions, such as the Warsaw Convention of 1929 (modified by the Hague Convention of 1955), the Chicago Convention of 1944, the Geneva Convention of 1948, the Rome Convention of 1955, the Tokyo Convention of 1963, and the Montreal Convention of 1999.

Although Brazil is subject to the most relevant International Conventions, the Aeronautical Code provides an overview of concepts applicable to Brazilian air navigation, air traffic, aeronautical infrastructure, aircraft, crew, and services directly or indirectly related to flight.

Considering the depth of private relationships related to flight, a code of laws regulating those issues was necessary to unify the Brazilian legal system of civil aviation activity. Among the abovementioned matters, the Aeronautical Code addresses the concept of Brazilian air space, construction and operation of airports, air safety, aircraft, certification, registry, liabilities, and many other important topics for transporting people and cargo by air.

However, considering that the Aeronautical Code was enacted in 1986 and that, since then, several innovations were introduced in the sector - for instance, the use of unmanned aerial vehicles known as *drones* - a Bill is currently under discussion in the Federal Senate for an amendment and updating of the Aeronautical Code.

While a new Aeronautical Code is not approved, various changes are being proposed and some of them have been approved in order to adjust the legislation in line with the current landscape of the sector, especially in order to open up the market to other players or to reduce operating costs and legislative risks.

In June 2024, legislative discussions have advanced regarding matters such as loans for airlines to be guaranteed by the National Civil Aviation Fund (FNAC), the prevention of compensation awarded by courts for presumed moral damages or punitive damages, and the authorization to foreign airlines to operate domestic flights under cabotage nature.

To provide an overview of the aviation scenario in Brazil, a few considerations of relevant aviation institutions and topics are required.

2 Brazilian National Civil Aviation Agency- ANAC

Brazil's air transport market has been regulated by ANAC since Federal Law No. 11,182/2005 came into force. ANAC initiated operations in 2006, replacing the Air Force Civil Aviation Department (DAC). ANAC is an autonomous federal body currently linked to the Ministry of Ports and Airports. ANAC plays a fundamental role in the market by regulating, supervising, and controlling air transport services rendered by private entities, including the operation of airports.

ANAC has the competence of authorizing companies to manufacture and repair aeronautical products and aircrafts, to provide air services at Brazilian airports by issuing a Certificate of Approval of Air Transport Company (CHETA) and of recognizing services applicable to foreign air carriers.

Certain related activities require prior registry with ANAC through a simpler statement instead of an actual certification (*e.g.,* air auxiliary services). ANAC is also responsible for granting permission for air services on specific routes and for registering flight times for all airlines flying in and/or from Brazil, through issuance of an approval (SIROS system).

Additionally, ANAC plays a special role in the legislative process concerning technical issues of the field and can enact bidding rules addressed to players of the sector directly or indirectly involved in aviation activities. Several changes have been made to ANAC's regulations in the past few years in order to update provisions, reduce red tape, increase efficiency and attract investments to the airline industry.

This process started mainly with the enactment of Law No. 14,368/2022 (*Lei do Voo Simples*), which repealed approximately 100 obsolete provisions, bringing the country's aviation market in line with international best practices. Over time, it has already achieved significant matters such as the registry and authorization of airstrips and aerodromes and aero-agricultural operations in line with the responsive regulation.

ANAC also acts as an administrative dispute resolution body for air carriers and airport operators. Until 2011, almost all public airport infrastructure was controlled by *Empresa Brasileira de Infraestrutura Aeroportuária* (Brazilian Airport Infrastructure Company - INFRAERO), a state-owned company responsible for managing, operating, and controlling all government-operated federal airports. Since then, a huge concession program transferred to private companies the operation of 49 airports, responsible for 95% of air traffic in Brazil.

Moreover, Brazilian air traffic is controlled by the Air Traffic Control Department of the Brazilian Air Force (DECEA), which is responsible for air traffic management, meteorology, communications, aeronautical information, cartography, implementation, flight inspection and staff training for all aeronautical systems.

3 Airline Companies

Law No. 13,842/2019 amended the Aeronautical Code and suspended all restrictions on foreign ownership interest in airline companies and in the management of Brazilian airlines, which motivated the expansion strategy. Nonetheless, general corporate rules over foreign investment still apply in this case.

The new ruling enables foreign groups to incorporate a fully-owned air transportation company in Brazil, and to obtain a concession from ANAC for operating the so-called "*serviços públicos aéreos*" (*free translation* – public air services), which includes operating domestic passenger and cargo flights, currently a highly concentrated market.

As anticipated, although domestic passenger and cargo flights are restricted to Brazilian airlines, the Brazilian government is evaluating strategies to allow foreign airlines to operate domestic flights in Brazil. Bill 539/24, for example, authorizes South American companies to provide domestic air transport services in the Amazon region. The bill, which is currently under discussion, amends the Aeronautical Code in order to authorize cabotage.

Open-sky systems are also applicable to foreign companies interested in having their respective registration countries linked to Brazil. In order to be eligible to fly to Brazil, the foreign airline must be designated by its country and if so, duly authorized by ANAC. After the completion of legal requirements before ANAC, the foreign airline company may set up a branch office in Brazil, which requires all due commercial registrations. Foreign airline companies authorized to operate in Brazil must have permanent agents onsite, with full powers to address and resolve any issues, including powers to receive service of process on behalf of the company.

Following the completion of commercial registration requirements, the airline company must request authorization to operate in Brazil and have its flights duly authorized by ANAC.

After authorization and certification from ANAC are obtained, if applicable, Brazilian and foreign airline companies must abide by all technical and legal regulations issued by the agency, subject to the imposition of fines.

On June 26, 2018, the Brazilian Aviation Sector achieved an important advancement through the enactment of the Open Skies Agreement between Brazil and the United States. In addition to the liberalization of the rules, there will be a reduction of government intervention in American-Brazilian relations. As is well known, for Open Skies policies to be effective, it is essential to have bilateral and even multilateral Air Transport agreements ratified between nations.

The agreement represents an expansion in the entire offer of Air Services between Brazil and the United States, resulting in a lower cost to fly, making it easier for travelers and entrepreneurs.

Following the enactment of the Open Skies treaty with the USA, ANAC also announced the execution of Open Skies treaties with other countries such as the United Kingdom, The Netherlands, Luxembourg and Argentina.

4 Aircraft Registration

The most important element of aviation activity is the aircraft itself. As such, the aircraft's nationality is a relevant point to consider when providing air services.

According to the terms of the Aeronautical Code, a Brazilian aircraft must be registered with the Brazilian Aviation Authority, also called the Brazilian Aeronautical Registry ("RAB"), located in Rio de Janeiro.

Such registration is concluded once the aircraft's nationality and enrollment certificate have been issued.

Certain contracts related to the aircraft, such as leasing agreements and mortgages, must be registered with the RAB in order to guarantee their legal effects against third parties.

Brazilian law is applicable to every aircraft registered with the RAB, even if flying from foreign territories and in cases where international law does not provide otherwise.

5 Tax Benefits

5.1. Aircraft Maintenance and Repair

To develop the national aviation industry, the Brazilian Government has consistently granted tax benefits for acquiring parts, equipment, and inputs in general for aircraft production and repair.

In this regard, at the federal level, Article 28 of Law No. 10,865/2004, as amended by Law No. 11,727/2008, reduces to 0% PIS and COFINS taxes levied on revenue from the local sales of aircraft classified in the Mercosur Common Nomenclature (NCM) positions 88.02 and 88.06.10, as well as parts, pieces, tools, components, inputs, hydraulic fluids, paints, anticorrosive materials, lubricants, equipment, services, and raw materials to be used in its maintenance, conservation, modernization, repair, review, conversion and industrialization, its engines, parts, components, tooling and equipment. The same law also establishes a 0% PIS/COFINS import rate on transactions for importing these aircraft and parts if the importer is the aircraft's owner, maintenance or repair shop, or assembler, provided that the necessary documents and licenses are obtained.

In general, the importation of products intended for the aeronautical sector, such as helicopters, airplanes, and unmanned aerial vehicles, as well as various parts of some of these products, is currently subject to a 0% import tax ("II") rate due to the General Taxation Policy for the aeronautical sector established under GECEX/CAMEX Resolutions No. 272/2021 and 310/2022. However, transactions with the same products classified under Chapter 88 of the NCM are generally subject to the federal excise tax ("selective taxation") on industrialized products ("IPI"), with reduced rates depending on the product (aircraft or parts), its intended use, and the acquirer.

The IPI rates on products classified under Heading 88.02 of the NCM (except those under code 8802.60.00) are reduced to zero:

a. when acquired or leased by a regular air transportation company;
b. when acquired or leased by an aerial photogrammetry company, authorized by the Ministry of Defense; and
c. for agricultural aircraft registered with the RAB.

Additionally, the IPI rates on products classified under Heading 88.02 are reduced to 3.25% when acquired or leased by a company that operates air taxi services, and the IPI rates for products classified in Subheading 8802.1 are reduced to zero when acquired or leased by public security bodies.

Similarly, Brazilian legislation allows states to grant ICMS tax benefits (such as exemptions and tax basis reduction). In general terms, states grant ICMS tax benefits to transactions with aircraft and its related goods under the scope of ICMS Agreements No. 75/1991, No. 65/2007, and No. 26/2009.

As such, these agreements authorize states to grant ICMS exemption, reduction of its tax base, and grant other applicable tax benefits operations to companies within the national aviation industry, its suppliers, distributors, importers of parts, and maintenance or repair shops.

In December 2023, ICMS Agreements Nos. 75/1991, 65/2007, and 26/2009 term was extended to April 30, 2026. It is important to mention that the applicability of the ICMS Agreements would depend on specific operational aspects (such as the States involved in the operation and NCM codes).

5.2. Other tax benefits

Following the same policy and given international practice, several tax benefits are granted to those operating in the aviation field.

In cross-border transactions, withholding income tax ("WHT") was historically levied at 0% on payments made by regular public air transport companies (passenger and cargo) in Brazil to capital goods leasing companies for the leasing of aircraft or aircraft engines ("*arrendamento mercantil*"). However, more recently, Law No. 14,355/2022 established its gradual increase from 0% (2022 and 2023) to 1% (2024), 2% (2025), 3% (2026), and then 15% (as of 2027).

A 0% WHT rate also applies to income derived from non-resident beneficiaries – authorized to operate by the competent authorities - from freight, charters, rental, or lease of foreign aircraft or foreign aircraft engines. Other income derived from foreign air transport companies is taxed at a 15% WHT rate, except if there is proof of reciprocity, in which case the income is exempt from taxation in Brazil. A 25% WHT rate applies if the beneficiary resides in a low-tax jurisdiction.

In addition, a 0% PIS/COFINS-Import rate applies to the amount paid, credited, delivered, employed, or remitted abroad as consideration for commercial leasing of machinery and equipment, vessels, and aircraft used in the activities of a Brazilian company.

Locally, foreign air transport companies are exempt from corporate income tax ("IRPJ") if there is proof of reciprocity in their country of residency when it comes to Brazilian companies (either in local legislation or treaty-based).

Revenue arising from the following activities is also exempt of benefits from a 0% PIS/COFINS rate:

I. the supply of goods or services for use or consumption on board vessels and aircraft in international traffic when the payment represents an inflow of foreign currency (art. 14, IV of MP No. 2,158-35/2001);
II. international transport of cargo or passengers, when contracted by an individual or legal entity, resident or domiciled in the country (art. 14, V of MP No. 2,158-35/2001); and (c), until, December 31, 2026, regular air transportation of passengers (art. 2 of Law No. 14,592/2023). There are also specific PIS and COFINS tax benefits on the sale and importation of aviation fuel.

5.3. Tax Reform on Consumption

On December 15, 2023, in a vote held in the Brazilian House of Representatives, the National Congress definitively approved Constitutional Amendment Proposal ("PEC") No. 45/2019, which proposes a broad reform in taxation on consumption in Brazil.

PEC No. 45/2019 introduced a dual version of the VAT (Value-added Tax) on consumption taxes. The Federal VAT will be called Contribution on Goods and Services ("CBS") and will replace the IPI, as well as PIS and Cofins.

In addition, a subnational VAT will also be created, with shared competence between states and municipalities, called Goods and Services Tax ("IBS"), bringing together the ICMS and the Services Tax ("ISS"). The IBS will focus on transactions with tangible and intangible goods (including rights), or services, and will be charged by summing the rates of the state and municipality where the operation is going to take place. Also, there is a provision on the incidence on the import of goods, rights or services.

According to the text, specific regimes for operations provided for ib=n international treaties or conventions may benefit from special payment arrangements for collecting the CBS and IBS. These arrangements, depending on the case and according to the supplementary bill, may establish changes in rates, credit regulations, calculation bases and collection on revenue or billing.

Thus, the supplementary bill presented by the Brazilian Government (PLP No. 68/2024) only provided that the levy of IBS and CBS on international treaties or conventions will be regulated by a joint act of the highest authority of the Ministry of Finance and the Committee IBS manager, after consulting the Ministry of Foreign Affairs.

What is more, PLP No. 68/2024 did not include further provisions on treaties or tax exemptions, which could impact foreign airlines, especially due the PIS/COFINS exemption and ICMS tax benefits currently in place, as mentioned above.

Through the extinction of the ICMS by 2032, the use of the ICMS tax benefits will be ensured until 2032, as addressed by Supplementary Law No. 160/2017. However, there is a pro-rata cut on benefits while the ICMS is reduced, from 2029 to 2032.

6 AIR SERVICES

On December 13, 2016, ANAC approved Resolution No. 400/2016, which defines the new General Conditions of Air Transportation (CGTA), and the new rights and obligations of passengers. The Resolution establishes rules for passengers assistance, luggage, ticket purchasing, among others.

Through this Resolution, and consolidation of the rules, all General Conditions of Air Transportation and assistance rights guaranteed to all passengers must be centered in a single instrument. According to ANAC, the main goal of this change is to revitalize passengers rights, ensuring that Brazilian rules are compatible with international market standards. Furthermore, such change aims to encourage competitiveness among the airline companies and the growth of the market, which will enable the entry of low-cost services companies and the unification of air transportation.

On August 07, 2019, ANAC Resolution No. 526 was published, which brought important changes related to passenger and cargo transportation services:

(i) Extinction of the operation types provided in RBAC No. 119;
(ii) Creation of 2 operation modes: regular/scheduled and non-regular/unscheduled;
(iii) Establishment of new parameters for technical and operational airworthiness requirements in certification processes for aircraft and airlines;
(iv) Aircraft operators of up to 19 seats and 3,400 kg or helicopters must follow RBAC No. 135 regulation for regular (scheduled) and non-regular (unscheduled) operations. On the other hand, operations of aircrafts of over 19 seats and more than 3,400 kg, must follow the rules of RBAC No. 121.

These changes and the constant amendments to RBAC No. 135 and 121 aim to modernize and simplify certification processes by harmonizing concepts and adopting coherent technical parameters, thus establishing an even more favorable environment for the development of the sector.

Recently, on February 02, 2022, ANAC Resolution No. 659 was also published, providing for new rules on the operation of air services by Brazilian companies, including:

(i) A list of services to be considered as air services for purposes of the applicable regulation;
(ii) Prior evidence of tax, social security and labor regularity;
(iii) Regular presentation of incorporation acts and amendments upon registration with the competent board of commerce.

7 DRONE Regulation

The fast-growing number of unmanned aircrafts in Brazil gave rise to a need to regulate the sector in order to ensure operational safety and control of the equipment that has been used in the Brazilian territory, as well as a demand for qualified professionals to operate this technology.

As a result, the following rules were published:

- ANAC: (RBAC-E) No. 94 – provides for drone operational technical requirements, such as flight guidelines, equipment registration/classification, pilot obligations and operational restrictions.
- DECEA: provides for regulation of matters involving: the use of drones (i) in Public Security Operations, Civil Defense and Federal Revenue Inspection; (ii) for the benefit of the bodies linked to the Federal, State or Municipal Government; (iii) for recreational purposes; (iv) for implementation of regional committees to discuss drone matters.
- ANATEL: provides for all drone regulation related to telecommunication matters, in order to avoid any kind of interference with the different kinds of media.
- Drones and other unmanned flying regulations such as balloons are better explored and ruled in the Bill for amendment of the Aeronautical Code under discussion in the Federal Senate. In the meanwhile, most regulation is enacted by DECEA.

BANKING AND FINANCE

1 Industry Overview

Brazil has an open economy, which makes international trade and investment elements of paramount importance to the Brazilian economy. The Brazilian Financial Sector has benefited from several key improvements introduced to its legal and regulatory framework in recent years, driven by strong market players and seeking to improve conditions of the economic environment that can boost the confidence of investors.

Regarding the basic principles of the Financial Sector, both the Federal Constitution and Law 4,595, which created the National Financial System ("SFN"), set forth the applicable legislation and complementary regulation. Accordingly, the SFN is headed by the National Monetary Council ("CMN"), which is the administrative body responsible for establishing the monetary and credit policies that ensure the constant stability of the local currency. The CMN is complemented by the Central Bank of Brazil ("BACEN"), which has the legal duty of controlling inflation and financial stability. In regard to the securities market, the Brazilian Securities and Exchange Commission ("CVM") is the federal autonomous authority in charge of regulating the respective structure, operation, and activities of the market.

As far as M&A deals and other relevant financial activities are concerned, BACEN and the Brazilian Administrative Council for Economic Defense ("CADE") have adjusted and entered into a cooperative agreement in order to oversee transactions involving financial institutions and their potential financial and market competition impacts. In accordance with the Federal Constitution, prior authorization from the Federal Government is required for the participation of foreign capital in the form of direct investment in capital stock of financial institutions. Furthermore, on September 26, 2019, the Federal Government enacted Decree 10,029. Such Decree, authorized BACEN to consider direct foreign investment in Brazilian financial institutions as an interest of the Federal Government.

Although Brazilian governmental agencies do not provide direct financial support to foreign investors, the Federal Constitution ensures equality of rights between national and foreign investors residing in the country. In this regard, the Brazilian National Bank for Economic and Social Development ("BNDES") requires that borrowers have head offices and administration in Brazil, regardless of whether their capital stock is held by foreign investors.

The legal definition of "financial institution" takes into consideration three activities solely reserved for banks, namely: (i) fundraising, (ii) intermediation and investment of resources of their own or of third parties, in domestic or foreign currency, (iii) and custody of financial assets owned by third parties. Public banks are fundamental players in the market and BNDES, Caixa Econômica Federal ("CEF") and Banco do Brasil ("BB") are responsible for providing the majority of financial resources for the country, mostly in connection with economic and social development activities, as well as activities related to the agricultural sector.

The legal entities authorized by law to operate — contingent upon prior approval granted by BACEN — are multiple banks, commercial and investment banks; investment, finance, and credit companies; leasing companies; securities brokers and distributors, dealers, and consortium administration companies, which are self-financing legal structures aimed at organizing the acquisition of durable goods and services.

In addition to the respective prior authorizations from the BACEN to operate, securities brokers (CTVMs) and securities distributors (DTVMs) also need permission from the CVM to operate. Such entities generally perform intermediation of securities purchase and sale operations, in addition to investment analyses, management of securities portfolios and other services related to capital markets. Additionally, "home broker" tools have become very popular, enabling clients to access such services online, and benefit from real-time support and assistance. As a result, there has been a significant expansion of activities in the investment service market in recent years.

Equally relevant, the industry of payment methods has been experiencing an enormous expansion over the last years, and payment institutions have played a key role in this process. Since 2013, a great number of new institutions have been authorized by the BACEN to operate in this market.

Meanwhile, in regard to Fintechs, the BACEN has also been very active in setting up new regulation, which has successfully provided a sturdy base for the development of the market and for the creation of services and products. As a result, the Central Bank of Brazil has led the process of implementation of Open Finance for the local market, whose central proposition is based on the integration and exchange of customers' information among the players. Such players include authorized banks and financial institutions, as well as other legal entities, including Fintechs, on a voluntary basis.

As a way to better interact with the market, the Central Bank of Brazil has focused its efforts on public consultations concerning regulatory bills. Such stance has been providing the players of the market with the opportunity to submit suggestions that can potentially encourage the seeking of constant updates and improvements to the regulation.

2 Investment Policies

Brazil welcomes foreign investment, which is an important source of capital for the development of strategic sectors of the Brazilian economy, including, but not limited to, infrastructure. Such transactions are subject to the statutory principles and rules concerning the allocation of foreign investment and remittance of funds abroad established in Law No. 4,131/1962, as amended. At the end of 2021, the federal government enacted Law No. 14,286, which provides for the Brazilian foreign exchange market, the foreign capital in Brazil and the Brazilian capital abroad. The Law entered into force on December 30, 2022.

There are several agencies in Brazil, mostly governmental, that are devoted to fostering investment. The main examples include the National Bank of Economic and Social Development (*Banco Nacional de Desenvolvimento Econômico e Social* - BNDES), the Special Agency for Industrial Financing (*Agência Especial de Financiamento Industrial* - FINAME), the Superintendency for the Development of the Amazon (*Superintendência de Desenvolvimento da Amazônia* - SUDAM), the Superintendency for the Development of the Brazilian Northeast (*Superintendência do Desenvolvimento do Nordeste* - SUDENE) and the South Region Development Bank (*Banco Regional de Desenvolvimento do Extremo Sul - BRDE*).

According to Brazil's Federal Constitution, foreign capital is prohibited in the following activities:

(1) Development of activities involving nuclear energy. The Brazilian federal government has a monopoly over the exploring, exploiting, processing, industrializing, and selling of radioactive minerals and the respective by-products of such proceedings, with only a few exceptions in relation to radioisotopes in certain circumstances. This restriction applies to both domestic and foreign private investment (Federal Constitution, Article 21, item XXIII);

(2) Development of activities involving oil and natural gas. The Brazilian federal government has a monopoly over the research and exploration of natural deposits of oil and natural gas, as well as over their refining and transportation. Imports and exports of oil and natural gas by-products are also part of a monopoly of the Brazilian federal government. These restrictions apply to both domestic and foreign private investment. However, the federal government may engage public or private companies in carrying out the aforementioned activities, provided that they abide by the conditions set out in the legislation (Federal Constitution, Article 177, items I, II, III and IV); and

(3) Health services. Brazil's Constitution prohibits the direct or indirect participation of foreign companies or foreign capital in healthcare, except under circumstances provided for by law (Federal Constitution, Article 199, Paragraph 3). Federal Law 13,097, of January 19, 2015, authorized foreign capital for investment in certain fields of healthcare.

Foreign investment is permitted with certain restrictions in the following sectors:

(1) Ownership and management of newspapers, magazines, and other periodical publications, radio, and television networks. At least 70% of the total capital and the voting capital of newspapers, magazines, and other periodical publications must be held by Brazilian residents, with foreign investment therefore limited to a maximum of 30% (Federal Constitution, Article 222, First Paragraph);

(2) Airlines with concessions for domestic flight routes. In June 2019, the president of Brazil, Jair Bolsonaro, approved a bill permitting (i) foreign carriers to operate domestically in Brazil and (ii) 100% foreign ownership of airlines. Prior to this, at least 80% of the voting capital of companies offering public air services had to be held by Brazilian residents, with foreign investment therefore limited to a maximum of 20% of such voting capital. In addition to the enactment of the Open Skies treaty, passed in 2018, and which increases the number of flight routes between Brazil and the U.S., the increase of foreign ownership in the country will also encourage competition and foster economic growth.

(3) Financial institutions. Foreign investments in the capital stock of financial institutions domiciled in Brazil require prior authorization of the federal government derived from international treaties, reciprocity treaties or governmental interest (Federal Constitution, Article 52 of the Act of Transitory Constitutional Provisions);

(4) Mineral resources. The research and extraction of mineral resources, as well as the use of potential of hydraulic energy, can only be carried out upon authorization or concession from the federal government to Brazilians or companies incorporated under Brazilian law and headquartered in Brazil (Federal Constitution, Art. 176, paragraph I); and

(5) Rural properties. Federal Law 5,709/1971 restricts foreign individuals and foreign companies authorized to operate in Brazil from owning rural properties in Brazil. However, such matter is a subject of much debate and changes are under discussion within the political realm to liberalize the existing legal treatment.

3 Brazil's National Financial System

3.1 The CMN and BACEN

Brazil's National Financial System consists of the following regulatory and supervisory bodies:

(i) the National Monetary Council ("CMN");
(ii) the Central Bank of Brazil ("BACEN");
(iii) the Brazilian Securities and Exchange Commission ("CVM");
(iv) the Superintendence of Private Insurance ("SUSEP"); and
(v) the Brazilian National Office of Supplementary Pensions.

The CMN regulates the Brazilian banking industry in collaboration with the BACEN and the CVM, which specifically oversees capital markets, and whose main activities are summarized in section VI of this report.

Financial and monetary policies in Brazil are the responsibility of the CMN. The CMN oversees monetary, credit, budgetary, fiscal, and public debt matters. In addition, the CMN sets out regulations on:

(i) credit;
(ii) lending and capital limits;
(iii) issuance of Brazilian currency (*real*);
(iv) gold and foreign exchange reserves;
(v) savings, foreign exchange, and investment policies; and
(vi) capital markets.

The BACEN and CVM, in turn, are responsible for enforcing the implementation of such regulations in the market and its subsequent supervision. The law states that the BACEN must:

(i) enforce the currency and credit guidelines established by CMN;
(ii) regulate and supervise Brazilian financial institutions, both public and private;
(iii) control the inbound and outbound flow of foreign currency; and
(iv) supervise Brazilian financial markets.

3.2 Main Types of Financial Institutions

Brazilian law defines financial institutions as entities that carry out activities that involve raising, brokering, or investing their own financial resources, or those of third parties, in domestic or foreign currency, and the custody of financial assets owned by third parties. They can be public or private.

The BACEN is the constitutional authority responsible for admitting the incorporation and operation of financial institutions. Should financial institutions consider foreign capital equity investments, they must obtain a previous authorization from the Federal Executive Branch in the form of a Presidential Decree, according to the Federal Constitution.

The public financial sector consists primarily of the following entities:

(1) *Banco do Brasil*, a listed, private and public joint-stock company, controlled by the federal government and currently one of the country's largest commercial banks. *Banco do Brasil* acts as a financial agent for the federal government, including for implementing the official rural credit policy, among others;

(2) National Bank of Economic and Social Development (BNDES), whose capital is fully held by the federal government. The BNDES is the government's development bank, primarily engaged in providing medium and long-term financing (either directly or through other public and private financial institutions) to the private sector, mainly for manufacturing;

(3) Federal Savings Bank (CEF), also a state-owned financial institution, which is responsible for implementing the federal government's policy regarding low-income housing and low-income workers.

The private financial sector consists of multiple-service banks; commercial banks; investment banks; investment, finance, and credit companies (*financeiras*); leasing companies; direct credit companies; peer-to-peer lending companies; securities brokerages and securities dealers.

Foreign exchange banks and brokers, mortgage companies, credit cooperatives, cooperative banks, associations for savings and loans, and microcredit institutions are also regulated and supervised, respectively, by the CMN and the BACEN.

3.2.1 Multiple banks

Multiple banks must be incorporated with, at least, either a commercial or an investment portfolio, development (exclusively for public banks), housing loans, investment, finance, and credit companies (*financeiras*) and/or leasing are the other types of authorized institutions.

3.2.2 Commercial banks

The core business of commercial banks is the supply of funds for trade, industry short and medium-term financing of service companies and individuals; demand and time deposits; management of securities portfolios; drafts; special rural credit; foreign exchange and trade transactions; customer on-lending of official funds provided by public sector credit institutions; and issuance and management of credit cards.

3.2.3 Investment banks

The core business of investment banks are:

(i) investments in companies by holding temporary equity interests in such companies;
(ii) financing production by supplying fixed and working capital;
(iii) management of third-party resources;
(iv) purchase and sale of precious metals on the physical market, on its own and on the behalf of third parties, and of any securities on the financial and capital markets;
(v) trading on stock futures exchanges as well as on organized over-the-counter markets, on its own and on the behalf of third parties;
(vi) participating in the process of issuance, subscription for resale, and distribution of securities;
(vii) foreign exchange transactions (only upon specific authorization granted by the BACEN); and
(viii) coordinating reorganizations and restructurings of companies by providing advisory services, holding equity interests, and/or lending.

Investment banks can also provide management-advisory services to businesses whose corporate purpose is directly tied to financial market transactions, including bookkeeping, asset and liability management, and custody.

3.2.4 Investment, finance, and credit companies (*financeiras*)

Investment, finance, and credit companies (*financeiras*) loan money in order to finance goods and assets for individuals and legal entities, and/or provide working capital to the latter.

3.2.5 Leasing companies

Leasing companies engage in leasing activities – with special tax treatment — concerning national or foreign movable assets, and real properties acquired for the leaseholder's own use.

3.2.6 Direct Credit Companies and Peer-to-Peer Lending Companies

The Brazilian National Monetary Council issued on November 25, 2022, Resolution No. 5,050 ("Resolution"), regulating the authorization to operate, the transfer of corporate control, the corporate reorganization, and the liquidation of fintechs specialized in loan and financing transactions through an electronic platform.

The new regulation created frameworks for Direct Credit Companies (*Sociedades de Crédito Direto - SCD*) and Peer-to-Peer Lending Companies (*Sociedades de Empréstimo entre Pessoas - SEP*).

The main goal of the Resolution is to create an environment of diversification among the economic agents that operate in the credit segment and, as a result, foster greater competitiveness and a higher degree of innovation within the sector. For this purpose, the Resolution seeks to confer legal certainty to credit transactions intermediated by worldwide electronic platforms also present in Brazil. Credit transactions formalized through electronic platforms in Brazil, as operated by fintechs, intend to be structured by market experts and legal advisers grounded in regulation addressed to the traditional financial market, which has entailed the need for involvement of traditional banks and equivalent financial institutions.

Under the terms of the Resolution, the purpose of the SCDs is to carry out loan and financing transactions and to acquire credit rights exclusively through an electronic platform. SCDs can only carry out transactions out of its own equity, or funding from BNDES. The SEPs, in turn, are used to intermediate lending and financing transactions between parties, known as P2P (peer-to-peer) operations, also exclusively through an electronic platform. SEPs will collect financial resources from creditors and, after carrying out negotiations via electronic platform, will allocate such funds to their respective debtors. Under no circumstances can the SEPs use the company's own resources to carry out credit operations. Therefore, an SEP must execute certain instruments that will form a link between the funds made available by creditors to the SEP and the corresponding credit operation with the debtor.

3.2.7 Open Finance

A practice that has been paving the way for technology innovation to thrive within the Brazilian financial market is the joint operation of digital banking systems (using open platforms) and an array of finance-related businesses of different, which brings with it an upsurge of Fintechs forging their place in the Open Finance segment in Brazil.

From the BACEN's perspective, Open Finance consists of the "sharing of data, products and services by financial institutions and other institutions authorized to operate, contingent upon the grant of consent by the institutions' clients, by way of opening and integration of platforms and infrastructures of informational systems, on a safe, swift and convenient basis." (BACEN Communiqué No. 33,455, dated April 24, 2019).

On May 04, 2020, in light of the intersection of the banking system with all the new services and products offered by Fintechs to the public, BACEN and CMN enacted Joint Resolution No. 1, as amended, which established the implementation of Open Finance by financial institutions, payment institutions and other entities authorized to operate by the BACEN.

The implementation of Open Finance was carried out throughout four phases along the year of 2021:

(i) Phase I started in February, 2021, - financial institutions made available to the public standardized information about their client service channels and the main features of their banking products;

(ii) Phase II started in August, 2021, – at this stage, clients were able to request the sharing of clients' personal data and information about transactions carried out via their bank accounts, credit cards and credit products, among the participants of Open Finance;

(iii) Phase III started in October, 2021, – enabling the sharing of payment initiation services via PIX – the payment network powered by BACEN; and

(iv) Phase IV started on December 15, 2021 – involving the sharing of information regarding investment, insurance, foreign exchange products, acquirers, among others that are offered and distributed in the market.

Open Finance in Brazil aims at increasing the efficiency in the credit and payment markets in order to encourage competitiveness and the social and financial inclusion of the population that will ultimately benefit from the access to new financial products and services. Additionally, Open Finance in Brazil helps clients and users of the banking sector gradually gain a better understanding of the importance of practices such as budgeting, as well as looking for and carrying out more profitable financial deals. All of this safeguarded by a regulated and safe digital environment.

The mechanisms of Open Finance encompass financial institutions, payment schemes players and other BACEN-authorized entities, which must work together to the extent consented by each individual client and user based on data sharing, considering data concerning:

(i) services and products (location of support points, characteristics of products and services, contractual terms and conditions as well as financial costs associated with each type of service and product);

(ii) client's personal data and information (contingent upon client's prior consent, as applicable, in accordance with the Brazilian LGPD);

(iii) transactional data pertaining to each client (deposit, checking and investment accounts, credit operations, among others); and

(iv) money transfer, use of payment services.

Along with the expected official BACEN regulation, self-regulation of the banking system entities (chiefly represented by the Brazilian Bank Federation FEBRABAN) plays a fundamental role in the Open Finance launch process. This is particularly the case of technological and operational proceeding standardization, including cybersecurity and systems interface integration, required to always comply with the thresholds and protocols established in the official BACEN rulings.

4 Bank Accounts

Only Brazilian legal entities are required to maintain a bank account in the country to receive funds from a foreign investor or a financial institution. Generally, foreign investors are not required to have a bank account in the country in order to invest in Brazilian companies.

However, for sophisticated investment structures and instruments, a case-by-case analysis must be carried out in order to identify whether a bank account is required.

Foreign entities or non-resident individuals are allowed to open and maintain accounts denominated in Brazilian currency at authorized Brazilian banks. Accounts denominated in foreign currency are available for residents and non-residents only in a few specific cases.

5 Lending

Brazilian banks provide financing through various types of credit transactions, such as revolving credit facilities, forfeiting trade notes and receivables, working capital financing, loans, consumer loans, vendor/compror (credit operations for financing purchases of goods and services carried out by companies) financing, checking accounts, credit assignments, leasing, export finance, real estate finance, rural credit transactions, and others.

Corporations can obtain financing domestically and internationally. International loan transactions must be registered with SISBACEN (the Electronic System of Registration of the BACEN) through the Foreign Capital Reporting System – Foreign Credit (*SCE – Crédito*).

The Government and governmental agencies do not provide direct financial support to foreign investors. However, given that the Federal Constitution provides for the equality of rights between national individuals and foreign individuals residing in Brazil, the BNDES requires that borrowers have head offices and administration in Brazil regardless of whether their capital stock is held by foreign investors.

With the exception of the situations mentioned above, in terms of BNDES loans, there is no general restriction for an investor residing outside of the country to receive loans from financial institutions domiciled in Brazil.

6 Export Financing

6.1 Export Prepayment Financing

Export prepayment financing basically consists in the structure according to which the importer or a financial institution prepays for exports with certain tax benefits. The exporter bears the commercial debt, which must be repaid upon export of the related products, without the need for further financial flows in the future.

In practice, the payment is usually carried out in advance by a financial institution located outside of the country; i.e., the bank carries out the payment in foreign currency to the exporter prior to the shipping of the purchased products.

The importer is notified to pay the agreed purchase price directly to the bank into a collection account located outside of Brazil.

The agreed-upon interest can be paid from Brazil by the exporter (either in cash, by shipping goods or by rendering of services).

Transactions with terms longer than 360 days require prior registration with BACEN.

In the event that goods are not shipped, the credit from the original transaction can be converted into a direct investment or currency loan. In such case, tax benefits are canceled and the exporter is subject to the payment of all unpaid taxes, plus the relevant ancillary charges provided for in applicable laws.

Export prepayment financing can be structured as a club deal, allowing for credit risk to be shared among various participants.

6.2 Advance on Exchange Contracts (*Adiantamento sobre Contratos de Câmbio - ACC*)

An ACC consists of partial or total advance of payment in Brazilian currency equivalent to the foreign currency to which an exporter has the right to upon exportation. In other words, an ACC is an advance of national currency to exporters, financed in foreign currency.

The purpose of this form of financing is to provide advanced funds for the exporter to produce and sell goods to be exported in the future.

According to current regulations, ACCs can be provided up to 360 days prior to the shipping of the goods.

6.3 Advance on Delivered Shipping Documents (*Adiantamento sobre Cambiais Entregues - ACE*)

The ACE mechanism is similar to an ACC, except for the time at which the funds are provided to the exporter: an ACE can be provided once the goods are manufactured and shipped.

According to current regulations, ACEs can be liquidated until the last business day of the twelfth month subsequent to the shipment of goods.

6.4 Brazilian Government Export Financing Program (*Programa de Financiamento às Exportações - PROEX*)

PROEX is a program created by the federal government to provide conditions equivalent to those available on international financial markets for Brazilian export transactions.

Banco do Brasil is the financial agent in charge of managing PROEX.

The two types of financing under PROEX are:

(1) PROEX *Financiamento* ("financing"); and

(2) PROEX *Equalização* ("equalization").

PROEX *Financiamento* is allocated to exporters (supplier credit) and to importers (buyer credit) exclusively through *Banco do Brasil*, with funds supplied by the National Treasury.

PROEX *Financiamento* finances 85% of exports in any incoterm category in transactions whose financing period ranges from two to ten years. The remaining 15% of costs are to be paid by the importer, on demand, or financed by an offshore bank. In transactions with a financing period limited to two years, the financed percentage can reach 100%.

PROEX *Equalização* allows financial institutions, located in Brazil or abroad, to equalize financing rates for export or import transactions of certain qualified Brazilian goods, services, and software. Through equalization, ultimate interest rates paid in export or import of Brazilian goods and services financing transactions can reach levels similar to those charged on international markets.

Under PROEX *Equalização*, an entity financing exports,' or imports of Brazilian goods or services can receive from the Brazilian Treasury the difference between the interest rate charged in the export or import financing transaction, in addition to part of the interest rate normally charged in the event that the export or import transaction was not being financed under PROEX.

Such benefit is paid by the National Treasury (*Tesouro Nacional*), providing exporters and importers of certain Brazilian goods and services with access to financing conditions similar to those available to exporters or importers of non-Brazilian goods or services on international markets, which makes Brazilian exports more competitive internationally.

6.5 BNDES- Exim Credit Facilities for Foreign Trade

The BNDES also offers a few credit facilities aimed at creating competitive conditions for the internationalization of Brazilian companies.

Financing of export goods and services is divided into two categories:

(1) Pre-shipment: finances the production of internationally competitive companies established under Brazilian law; and

(2) Post-shipment: finances goods and services abroad either by refinancing the exporter or through the buyer's credit category, in accordance with international standards.

The available guarantees are the same as those offered by export credit agencies (ECAs) to facilitate access to export credit. For instance, a transaction can include export credit insurance as a guarantee, thus covering commercial, political, and extraordinary risks. In Brazil, such guarantees are offered by private insurance companies in the short term and by the federal government in the long term.

Requests can also be submitted to foreign banks that provide international guarantees for financing operations.

The information provided in this section, along with further information regarding BNDES-Exim, can be found on BNDES's website at www.bndes.gov.br.

7 Security

The main types of security interests available to lenders in Brazil are mortgages (in Portuguese, *hipoteca*), pledges (in Portuguese, *penhor*) and fiduciary transfers/assignments (in Portuguese, *alienação/cessão fiduciária*, respectively).

It is important to note that, in theory, any contractual provisions that authorize a lender to keep assets that are given to secure a loan are null and void. By default, the borrower and the lender must be in agreement for the borrower to be allowed to transfer such assets to the lender as payment-in-kind of the outstanding debt.

Also, upon judicial and (in certain cases) extrajudicial enforcement of security, the lender is allowed to become the definitive owner of the asset given as security (in Portuguese, *adjudicação*).

7.1 Mortgage

A mortgage is the appropriate type of security for real estate properties and their accessories, railways, natural resources, ships, and airplanes. Mortgages can only be created through a public deed (in Portuguese, *escritura pública*) drafted by a notary public (in Portuguese, *Tabelião de Notas*), except in certain cases where the law expressly authorizes a lien to be created within a mortgage bond certificate (in Portuguese, *hipoteca cedular*). According to the Brazilian Civil Code, the maximum term for a mortgage is 30 years, which can be renewed through a new public deed.

Whenever a real property (the most common asset subject to mortgages) is mortgaged, both legal title to and possession of the property remain with the mortgagor (borrower). If the mortgaged property suffers deterioration or depreciation, and the borrower does not offer additional collateral, the loan is accelerated. If the borrower makes proper repayment upon maturity of the loan, then the loan is terminated, and the mortgage, which is accessory to the loan, is also considered automatically terminated. A release document is signed and registered at the appropriate Real Estate Registry Office for effectiveness before third parties.

In a bankruptcy scenario (similar to U.S. Chapter 7), a loan secured by a mortgage is only subordinated to labor credits (up to a limit of 150 times the minimum monthly wage per employee - currently BRL 181,800.00 - one hundred and eighty-one thousand and eight hundred Brazilian *reais* – or about USD 35,882.00 – thirty-five thousand and eight hundred eighty-two U.S. Dollars). That does not mean, however, that the lender is entitled to the full amount of the mortgaged property. The property is sold to benefit the bankrupt estate, and the lender is granted priority (with other creditors secured by mortgages and pledges) in sharing the proceeds thereof, as well as the proceeds from the sale of the bankrupt estate's other assets.

7.2 Pledge

A pledge is a form of security granted on movable assets. Stocks, personal movable assets, receivables, and bank accounts can all be subject to a pledge.

Traditional subsets of pledges, as set out by law, include rural pledges (in Portuguese, *penhor rural*, where pledged assets are agricultural machinery and equipment, crops, inventories or animals), industrial and mercantile pledges (in Portuguese, *penhor industrial e mercantil*, for industrial machinery, materials, instruments, raw materials and manufactured products), pledged rights and credit instruments (in Portuguese, *penhor de direitos e títulos de crédito*, for receivables, rents, credits or credit instruments) and pledged vehicles (in Portuguese, *penhor de veículos*).

Whenever a pledge is created, the title to the pledged asset remains with the pledgor (borrower), but possession may or may not be temporarily transferred over to the lender's domain. If the pledged asset is sold, deteriorated, or modified, the loan accelerates. If the borrower makes proper repayment upon maturity of the loan, then the loan is terminated, and the pledge, which is accessory to the loan, is also considered automatically terminated. A release document is then signed and registered at the appropriate Registry of Deeds and Documents, Real Estate Registry Office, or traffic/transport/licensing department(s), as the case may be, for effectiveness with third parties.

For bankruptcy purposes, a pledge has the same classification of a mortgage. In a bankruptcy (similar to U.S. Chapter 7 - Liquidation) scenario, a loan secured by a pledge over the borrower’s assets is only subordinated to labor credits (up to a limit of 150 times the monthly minimum wage per employee - currently BRL 181,800.00 - one hundred and eighty-one thousand and eight hundred Brazilian *reais* – or about USD 35,882.00 – thirty-five thousand and eight hundred eighty-two U.S. Dollars). That does not mean, however, that the lender is entitled to the full amount of the pledged assets. These are sold to benefit the bankrupt estate, and the lender is granted priority (with other creditors secured by mortgages and pledges) in sharing the proceeds thereof, as well as the proceeds from the sale of the bankrupt estate’s other assets.

7.3 Fiduciary Lien

Fiduciary types of liens – generally also applicable to stocks, real estate properties, personal assets, receivables, and bank accounts – grant fiduciary ownership of an asset or right to a lender. Either a pledge or a fiduciary lien can be created on stocks, personal assets, receivables, and bank accounts. Mortgages or fiduciary liens are alternatives for real properties.

If payment is properly made by a borrower upon maturity of the loan, the title automatically reverts to the original owner (borrower).

When a fiduciary lien is created, possession of the asset is split into direct possession, held by the borrower, and indirect possession, held by the lender.

Under Brazilian law, the following types of fiduciary liens are possible:

(i) fiduciary transfer of non-fungible movable assets;
(ii) fiduciary transfer of fungible assets – to Brazilian financial institutions only;
(iii) fiduciary transfer of bank accounts;
(iv) fiduciary transfer of real properties; and
(v) fiduciary assignment of receivables.

In general terms, the advantage of fiduciary forms of security, compared to pledges and mortgages, is that the lender typically benefits from improved protection in the event that a borrower files for bankruptcy (similar to U.S. Chapter 7 - Liquidation). A lender can take possession of an asset *de pleno jure*, while the borrower's other creditors must abide by the terms and additional conditions of a bankruptcy proceeding. Consequently, given that ownership must be transferred to the lender, in theory, the asset is not considered part of the bankrupt estate for the purposes of apportioning among creditors in a bankruptcy proceeding.

In addition, in the event of court-supervised reorganization — in Portuguese, *recuperação judicial* — (similar to U.S. Chapter 11), a lender secured by a fiduciary lien is not subject to the reorganization plan.

A lender secured by a mortgage or by a pledge is subject to the reorganization plan approved by the creditors but cannot be forced to release or to sell the mortgaged or pledged property.

8 Digital Assets

Brazil also established a regulatory framework for virtual assets, provided for by Law No. 14,478, of December 21, 2022 ("Cryptocurrency Regulatory Framework"), which:

(i) provides for guidelines to be followed regarding the provision of virtual asset services and the regulation of virtual assets service providers;
(ii) provides for the crime of fraud involving the use of virtual assets, securities or financial assets, and the penalties to be applied due to such illicit act;

(iii) equates virtual service providers to financial institutions for the purposes of Law No. 7,492, of June 16, 1986, which provides a definition on crimes against the National Financial System; and

(iv) amends Law No. 9,613, of March 03, 1998, which provides for the crime of money laundering, to include virtual asset service providers in the list of its provisions. The Law is set to enter into force 180 days after its official publication (on December 22, 2022).

Virtual asset providers (such as exchange companies, custodians, among others) can only operate in Brazil upon prior authorization from Federal Government agency or entity. What is more, the agency responsible for such regulation will establish conditions and deadlines – which must not be less than six months – for active virtual asset service providers to adjust to the Cryptocurrency Regulatory Framework.

The Cryptocurrency Regulatory Framework defines a virtual asset as "*a digital representation of value that can be traded or transferred electronically and used to make payments or for investment purposes*". Such definition does not include:

(i) domestic currency and foreign currency;

(ii) digital currency, pursuant to Law No. 12,865, of October 09, 2013;

(iii) instruments that grant their holder access to specific products or services or to benefits resulting from these products or services, such as loyalty program points and rewards; and

(iv) representations of assets whose issuance, bookkeeping, trading, or settlement is provided for by law or regulation, such as securities and financial assets.

In addition, the Executive Branch will determine which agency or entity of the Federal Government will be in charge of regulating the activities of virtual asset providers in Brazil.

Among other aspects, Law No. 14,478 also includes a new criminal type in the Brazilian Criminal Code (Decree-Law No. 2,848, of December 07, 1940), subject to penalty of imprisonment from four to eight years and fine: fraud with the use of virtual assets, securities, or financial assets. Such crime applies to those who, under the terms of article 171-A: "*Organize, manage, offer or distribute portfolios or intermediate operations involving virtual assets, securities or any financial assets in order to obtain unlawful advantages, to the detriment of others, inducing or keeping someone in error, through artifice, ruse or any other fraudulent means*."

Complementing the crypto asset legal framework, on June 14, 2023, the Federal Government enacted Decree No. 11,563 ("Decree 11,563"), which regulates Law No. 14,478, of December 21, 2022, ("Law No. 14,478").

Decree 11,563 improves the Brazilian legal framework on crypto assets by appointing the Central Bank of Brazil ("BCB") as the federal administration agency in charge of regulating and supervising the virtual asset market.

This decree provided BCB with the autonomy to regulate the provision of virtual asset services, in addition to authorizing and supervising the activities of virtual asset services providers ("VASPs"). The BCB will be the regulatory authority in charge of granting authorizations and supervising the provision of such services.

According to the decree, the BCB's competence does not extend to criminal matters, regarding the application of sanctions related to Law No. 9,613, which provides for crimes of money laundering, that will remain within the criminal jurisdiction.

What is more, Decree 11,563 excluded from the competence of the BCB the virtual assets representing securities, which remain under the competence of the Securities and Exchange Commission (“CVM”), established in Law No. 6,385, which provides for the securities market.

The expectation is that in the next phase of the regulatory process the BCB will start publishing the regulations that apply to VASPs and virtual asset service rendering activities.

BUSINESS OPERATION TAXES

Taxation in Brazil is a vast and complex field, comprising numerous federal, state, and municipal taxes. The main taxes are:

(i) **FEDERAL TAXES:** Corporate Income Tax ("IRPJ"), Import Duties, Export Tax, Tax on Manufactured Products (*"Imposto sobre Produtos Industrializados"* – "IPI"), Tax on Financial Transactions (*"Imposto sobre Operações Financeiras"* – "IOF"), Social Contribution on Net Profits (*"Contribuição Social sobre o Lucro Líquido"* – "CSLL"), Contribution to the Social Integration Plan ("*Contribuição ao Programa de Integração Social"* – "PIS"), Contribution for the Financing of Social Security ("*Contribuição para Financiamento da Seguridade Social"* – "COFINS"), and Contribution for Intervention in the Economic Domain (*"Contribuição de Intervenção no Domínio Econômico"* – "CIDE");

(ii) **STATE TAXES:** Sales Tax on the Circulation of Goods and Services (*"Imposto sobre a Circulação de Mercadorias e Serviços"* – "ICMS"), Motor Vehicle Tax ("*Imposto sobre a Propriedade de Veículos Automotores"* – "IPVA"); and Tax on Donation and Inheritances ("*Imposto sobre Heranças e Doações*" – "ITCMD"); and

(iii) **MUNICIPAL TAXES:** Service Tax ("Imposto sobre Serviços" – "ISS"), Real Estate Transfer Tax ("Imposto sobre Transmissão Inter Vivos" – "ITBI") and Property Tax ("Imposto sobre a Propriedade Territorial Urbana" – "IPTU").

It is important to highlight that at the end of 2023, Brazil approved the Brazilian Tax Reform on consumption when the final wording of Constitutional Amendment No. 132/2023 ("EC 132/2023") was enacted. We will comment on the consumption tax reform on a specific topic[8].

1 Federal Taxes

1.1 Corporate Income Tax ("*Imposto sobre a Renda da Pessoa Jurídica*" - "IRPJ")

The taxable profit is levied at the basic rate of 15% plus an additional rate of 10% on taxable profit that exceeds BRL 20,000.00 per month.

Basically, there are two methods of calculating the taxable profit:

[8] An income tax reform is also under discussion, proposing amendments to individual and corporate income taxation. The most important amendments proposed are (i) 15% or 20% income tax on dividends exclusive at source; (ii) reduction in the corporate income tax rate (from 25% to 18%); and (iii) new limits of tax-deduction of interest on net equity (INE) under the actual profit regime. Thus, we cannot rule out that a near-future change in the Brazilian tax system by means of an income tax reform may change the general information presented.

(i) Real-profit basis (a method for calculating taxable profit based on the accounting result with some adjustments established by tax law, including transfer pricing and thin capitalization adjustments); and

(ii) Presumed-profit basis (a method for calculating taxable profits based on a percentage of gross revenue).

Companies with total annual gross revenue in excess of BRL 78 million and others required by law must calculate real profits based on quarterly or annual balance sheets. They are not allowed to calculate this tax based on presumed profits.

There is a third method, the Arbitrated profit basis, which can be applied by the tax authorities, at their discretion, in certain limited circumstances. Therefore, the taxpayer does not select this method by choice. For example, when proper records of revenues and costs/expenses are not maintained, the Arbitrated method is applied.

If taxation is based on a quarterly balance sheet, payment of taxes will be definitive, and all rules for calculating annual profits will apply to such quarterly profit (rates, additions, provisions, offsetting losses, etc.).

If the company opts for payment based on yearly profits (the most common and generally adopted system), these profits will be calculated from the profit-and-loss statement prepared in December, covering earnings for the entire calendar year, but the tax must be pre-paid monthly. Monthly prepayment may be lowered or suspended if the taxpayer has accounting evidence that the pre-paid value until that month exceeds the tax value calculated based on real profits.

1.2 Social Contribution on Net Profits ("*Contribuição Social sobre o Lucro Líquido*" - "CSLL")

This tax is owed at a general rate of 9% on adjusted net income calculated quarterly or annually (depending on the taxpayer's income tax option) and is not deductible from corporate income tax. While the basis of this tax is similar to that of corporate income tax, adjustments to calculate the taxable basis of the CSLL are sometimes different. Some activities (such as financial institutions, insurance companies, among others) may be subject to higher rates (i.e., 20% or 15%, depending on the case).

1.3 Contribution to Social Integration Plan ("*Contribuição para o Programa de Integração Social*" - "PIS") and Contribution to Finance Social Security ("*Contribuição para Financiamento da Seguridade Social*" - "COFINS")

Social Integration Program Contribution (PIS) and Social Security Financing Contribution (COFINS) are contributions levied on legal entities' overall revenues (currently, export revenues and capital gain obtained from the sale of permanent assets are not subject to PIS and COFINS). There are basically two systems for the calculation of PIS and COFINS, namely: (i) cumulative system and (ii) non-cumulative system.

Under the cumulative system, PIS and COFINS are generally levied at the rates of 0.65% and 3% respectively, and the taxpayer is not allowed to offset any tax credits.

Under the non-cumulative system, PIS and COFINS are generally levied at the rates of 1.65% and 7.6%, respectively, but the taxpayer is allowed to discount credits related to part of its costs and expenses, provided that certain conditions are met (PIS and COFINS levied at the rates of 0.65% and 4% for financial revenues earned by companies subject to the non-cumulative system, with some exceptions).

Constitutional Amendment No. 132/2023 provides for the "replacement" of PIS and COFINS by the CBS and establishes a transition regime in which PIS, COFINS, and CBS will coexist until 2027, when PIS and COFINS will cease to exist and be replaced definitively by the CBS. We will comment on the tax reform and the transition regime on specific topics.

1.4 Tax on Financial Transactions ("*Imposto sobre Operações Financeiras*" - "IOF")

The IOF is levied on general financial transactions (i.e. those involving exchange, securities, credit, gold and/or insurance). IOF tax rates vary according to the nature of the taxable transaction.

1.5 Contributions for Intervention in the Economic Domain ("Contribuições de Intervenção no Domínio Econômico" – "CIDE")

In accordance with the Brazilian Constitution, the government has created several contributions for intervention in the economic domain (CIDEs):

(i) CIDE for the Universal Telecommunications Service Fund (FUST);

(ii) CIDE on remittances abroad of royalties and payment of services;

(iii) CIDE levied on the importation and marketing of petrol, oil products, natural gas and its by-products, ethylic alcohol and ethylic alcohol fuel;

(iv) CIDE for the Development of the Cinematographic Industry; and

(v) CIDE for the Telecommunications Technological Development Fund – FUNTTEL.

These CIDEs are levied on specific transactions and sectors of the economy and their rates and calculation basis vary depending on each case.

1.6 Import Duty

This is levied on the customs value of imported goods at different rates according to the goods tariff code in the Mercosur Tariff Schedule (TEC), which is based on the Harmonized System of the World Customs Organization (WCO). The customs value of imported goods is determined in accordance with the Customs Valuation Agreement of the World Trade Organization (WTO). As a rule, the customs value corresponds to the invoiced value of imported goods, plus the cost of international freight and insurance. Brazil has entered into preferential trade agreements with almost all Latin American countries and, as such, imports from those countries may benefit from reduction or exemption of the import duty. Imports from other member countries of the Southern Common Market are duty free, as long as the imported item has a certificate of origin from one of those countries.

Exceptionally, the import duty can be reduced on the importation of capital goods (BK), IT and telecommunications goods (BIT), if such goods are not produced in Brazil, by means of a formal request to the federal tax authorities.

1.7 Export Tax

A small number of products are subject to the export tax, such as:

(i) raw hides and the skins classified as bovine (including buffalos), equine, sheep, or lamb;

(ii) cigarettes containing tobacco (when exported to the Caribbean, Central and South America);

(iii) weapons and ammunition (when exported to South America, except Argentina, Chile, Ecuador, and Central America, including the Caribbean Islands).

The tax is calculated on the export price of the goods.

1.8 Social Contributions on Import - PIS – Import and COFINS – Import

PIS-Import and COFINS-Import are levied on the import of goods and services. PIS-Import and COFINS-Import are applicable regardless of the nature of the service purpose of the import (i.e., technical, or non-technical). Services performed in the country or performed abroad whose results are verified in Brazil are subject to these contributions.

PIS-Import and COFINS-Import are respectively levied at 1.65% and 7.6% on the amounts paid, credited, delivered, utilized, or remitted abroad for the importation of services (calculation basis includes ISS, PIS-Import and COFINS-Import). PIS-Import and COFINS-Import are respectively levied at 2.1% and 9.65% on the customs value for the importation of goods (depending on the NCM of the products to be imported, an additional 1% COFINS-Import rate may be applicable).

Please note that PIS-Import and COFINS-Import bear a close relationship with the PIS and COFINS already commented on above, but they are different contributions. PIS-Import and COFINS-Import are levied on the importation of services and goods, and the taxpayer is the importer domiciled in Brazil, whereas PIS and COFINS are contributions levied on revenues of Brazilian legal entities (which are the taxpayers of the contributions). Nonetheless, these contributions bear a relationship in regard to the calculation system and rates, and especially because within certain situations the credits of PIS-Import and COFINS-Import may be offset against the "local" PIS and COFINS contributions (under the non-cumulative system, if applicable).

1.9 IPI

This tax is similar to an excise tax. It is levied on most manufactured products, whether made in Brazil or imported. Although the IPI is ultimately passed on to the final consumer, it is charged on each production step or phase of independent manufacturers. As it encompasses imported goods, the IPI is charged both on customs clearance and resale, if applicable.

The IPI is usually levied *ad valorem*. The rates are based on the type of product. The IPI is a value-added tax. A tax credit is allowed for the tax that has been paid in the purchase or importation of the raw material and components that are used in the manufacturing process of the product to be taxed or on the resale of the imported product. In the case of imported products, the IPI is calculated on the customs value, plus the import duty.

Taxpayers with an IPI credit balance accumulated for three months (regarding inputs) can ask the Brazil Federal Revenue Department for reimbursement in cash of the accumulated amount, or its use to offset other federal taxes.

2 State Taxes

2.1 ICMS

The ICMS is a value-added tax. It is levied on imported and domestic products at the time the goods leave the business premises. The ICMS due on each transaction is based on the price of products sold, and a tax credit is granted for ICMS paid on the purchase or importation of the products, as it is for the IPI.

Currently, ordinary rates in the state of São Paulo are 12% on transportation services and 18% on products imported, sold, or transferred within the state. Other rates may also apply depending on the specific product, service, or state where the transaction occurs. Rates may also vary for interstate transactions: imported products or products with an imported content greater than 40% are subject to a tax rate of 4% (this rule is not applicable to products without similar in Brazil or if the product were manufactured in Brazil under a basic productive process - PPB).

In other cases, rates are usually 12% but can be 7% depending on the state of destination; the rationale is the following: the more developed the state, the higher the rate. Interstate transactions involving products for non-taxpayers (individuals or entities not involved in merchandise commerce) trigger the payment of an amount of ICMS resulted from the difference of the interstate rate and internal rate of the state to which the product is being shipped. The ICMS is also imposed on interstate and inter-municipal transportation services and communications services.

For certain products, the ICMS is due according to the tax substitution system *("Substituição Tributária do ICMS - ICMS/ST")*, in which case the tax due on the entire commercial chain of the product must be collected at once, at the beginning (as a rule, by the manufacturer or the importer), based on estimated values determined by the government, to be applicable to future taxable events.

As a rule, this system is implemented through a state agreement *("Convênio ICMS")* signed by all Brazilian states and the Federal District and is valid throughout the Brazilian territory (except if one or more states decide not to implement the rule within its territory) or throughout specific protocols *("Protocolo ICMS")* signed by two or more states. In the latter case, the system will only be valid for taxpayers located in the territory of each signatory state. However, there are cases in which one state, through a state law, can implement the ICMS/ST system for transactions within their territory, or for shipping products to taxpayers located in their territory.

Finally, it is important to mention that one of the biggest issues regarding ICMS is tax incentives to attract companies and develop the local economy. This situation is commonly referred as "tax war". To solve this, the Brazilian Congress issued Complementary Law No. 160/17 establishing requirements and procedures for validating the tax incentives granted without CONFAZ approval.

2.2 ITCMD

The Tax on Donations and Inheritances is levied on the transfer of personal assets or rights resulting from legal or testamentary inheritance and/or donations. Rates vary from 1% to 8% - depending on the state - of the fair market value of the transferred asset or right.

3 Municipal Taxes

3.1 ISS

The ISS is a municipal tax levied on all services listed in Supplementary Law 116/2003 *("Lei Complementar - LC 116/2003")*, which are not subject to state taxation through the ICMS.

The calculation basis is the service price, and the rates are fixed by the city where the renderer establishment is located. According to the legislation, such rate cannot be less than 2% or, as a rule, more than 5%.

The responsibility for collecting and remitting ISS lies with the service provider, typically the construction company or contractor.

3.2 Real Estate Transfer Tax (assessed on transfers for value)

This tax is assessed on property transfers at a progressive rate that varies depending on the property value on all transfers for value of any nature, except in cases of contribution to capital stock (requirements to be fulfilled for the exception).

3.3 Property Tax

The property tax (IPTU) is a municipal tax levied annually, normally, at a 1% rate on the appraised value of the real estate; rates vary by municipality.

4 Consumption Tax Reform

4.1 Overview

Despite the above tax system overview, it is important to point out that Brazilian had approved the Consumption Tax Reform when the final wording of Constitutional Amendment no. 132/2023 (EC 132/2023) was approved.

The tax reform introduces a dual Value-Added Tax (dual-VAT), composed of a federal contribution on goods and services (CBS) and a sub-national goods and services tax (IBS), creates a new excise tax (*imposto seletivo* – "IS") and a new state tax levied on primary and semi-finished products.

The CBS will "replace" the current federal social contributions (PIS/COFINS), whereas the IBS substitutes both the state tax on goods (ICMS) and the municipal tax on services (ISS). In short, the dual-VAT will have a broad-based and full non-cumulative tax on goods and services, be charged at the destination, and have a few tax rates and exceptions.

Both CBS and IBS will be subject to the same taxable events (domestic transactions and imports with tangible or intangible goods, including rights or with services), tax calculation bases, non-incidence events, and taxable persons; specific, exceptional, or favored taxation regimes; and non-cumulative and crediting rules.

EC 132/2023 also simplified the calculation of the dual VAT, providing that the tax will be levied on the gross value of the goods and services (calculation without a gross-up expressly forced by the law), with the non-inclusion of the IBS and CBS in their tax basis calculation. Also, EC 132/2023 implemented a complete non-cumulative system, expanding the circumstances in which the tax can be credited.

The Federal Senate will set each entity's IBS and CBS reference rates, which must be enough to keep the current overall tax burden. Each federal entity (the Federal Government, states, and municipalities) will set a single rate applicable to all goods and services. The tax reform also establishes the reduced rates applicable to specific transactions (goods and services), which may vary from 100% to 30%.

Note that the enactment of EC 132/2023 is the first step regarding the implementation of the new consumption tax system. However, many subjects in the constitutional amendment need to be regulated, most through different supplementary laws that the Brazilian Congress will have to issue for the beginning of the new tax regime (further detailed below).

4.2 Transition regime

Constitutional Amendment no. 132/2023 establishes that the transition period for implementing the new tax system will last seven years. Starting in 2026, both IBS and CBS will enter a "testing period". During this time, IBS will be imposed at a rate of 0.1%, while CBS will have a test rate of 0.9%.

Until 2027, all previous and new taxes will be imposed concurrently. This means that ICMS, ISS, IPI, PIS/COFINS, IBS, and CBS will coexist. However, in 2027, PIS/COFINS will cease to exist and be replaced definitively by CBS, which will have its standard rate. IPI will be zeroed out except for the products that are also industrialized in the Manaus Free Trade Zone on May 31, 2023, while the IS will also come into effect.

Between 2029 and 2032, the IBS rates will gradually increase yearly, while the ICMS and ISS rates will be steadily reduced, along with the tax benefits granted. Finally, in 2033, the IBS will be fully implemented, while the ICMS and ISS will be abolished.

CAPITAL MARKETS

1 Listed Companies

1.1 General Overview

Listed companies are subject to stricter rules on managerial structure, as the creation and maintenance of a board of directors (which is not generally required for closely held corporations) and the appointment of an Investor Relations Officer, are mandatory. In addition to the Brazilian Corporations Law (Brazilian Law No. 6,404/1976, as amended), listed companies are also regulated by the Brazilian Securities and Exchange Commission (in Portuguese, *Comissão de Valores Mobiliários*, or the "CVM").

1.1.1 Board of directors

The board of directors is responsible for defining general business policies and overall guidelines, including long-term strategies, and for controlling and monitoring the company's performance. The duties of the board of directors include, among others, electing or removing executive officers and supervising the management team.

In accordance with the Brazilian Corporations Law, non-controlling shareholders of a listed company, whose equity interest represents a minimum of (i) 15% of the total voting shares, for voting shareholders, or (ii) 10% of the capital stock, for non-voting shareholders, have the right to appoint and remove one director and the respective alternate by a separate vote at a general meeting, provided that the foregoing minimum thresholds have been observed continuously for at least the three months preceding such general meeting. Should such minimum thresholds not be met, voting and non-voting shareholders (not including the controlling shareholder, which does not participate in the separate vote process) may combine their equity interests to jointly appoint a director and its alternate if their combined equity interest surpasses 10% of the company's capital stock.

Since the amendment to the Brazilian Corporations Law implemented by Law No. 12,431/2011, non-shareholder individuals can be appointed as directors. In addition, the chair of the board and the chief executive officer (CEO) of the listed company cannot be the same person.

1.1.2 Board of executive officers

Executive officers are responsible for day-to-day management as appointed by the board of directors and can be resident or domiciled outside of Brazil, provided that they grant a power of attorney to a representative residing in Brazil, lasting for a period of at least three years after the end of their term of office, with powers to receive notices/summons from courts or the CVM on their behalf. They have individual responsibilities established by the company's bylaws and the board of directors. One of the officers of a listed company is appointed as the Investor Relations Officer and is responsible for providing information to the company's shareholders, the CVM, and the organized securities market where the securities issued by the company are traded.

1.1.3 Audit Committee

Under the Brazilian Corporations Law, the audit committee (in Portuguese, *Conselho Fiscal*) must be an independent corporate body. The primary responsibilities of an audit committee include monitoring management activities, reviewing the company's financial statements, and reporting its findings to the company's shareholders. The audit committee can be permanent or *ad hoc*, in which case it will be established at the request of shareholders whose interests represent at least 10% of the voting shares or 5% of the non-voting shares. Additionally, in a listed company, these percentages may vary according to the company's capital stock, as per applicable CVM regulation.

1.1.4 Plural Voting

Plural voting is allowed for common shares of a listed company, provided that the voting power does not exceed 10 votes per common share and the amendment to the bylaws is approved by all holders of the affected shares.

Additional rules apply to plural voting, including the following:

1. The CVM regulates the plural voting mechanism, including the matters whose quorum will not be affected by plural voting for listed companies. In particular, the creation of plural voting shares must be carried out prior to the trading of the company's shares on organized securities markets.

2. For the approval of matters whose quorums are expressly provided for in the applicable legislation, based on the percentage of shares or share capital and with no mention of number of votes cast by share, the calculation must disregard the plurality of votes.

3. The following reorganizations are not allowed: (i) incorporation and/or merger of listed companies on an organized market that do not adopt plural voting by a company that adopts plural voting; and (ii) spin-off of a listed company on an organized market that does not adopt plural voting for the incorporation of the spun-off portion into a company that adopts it or for the incorporation of a new company with plural voting.

4. Plural voting may not be exercised at resolutions regarding compensation of managerial bodies or related-party transactions.

1.2 Disclosure of material information

1.2.1 Periodic and occasional disclosure of information

Listed companies are subject to the reporting rules established by the Brazilian Securities Law (Brazilian Law No. 6,385/1976, as amended), which requires the company to provide periodic information to the CVM and the organized securities market on the securities issued by such company are traded, including, but not limited to, the Reference Form (as defined below) and other registration forms, financial documents (such as standardized financial statements, the annual and quarterly information, quarterly management reports, independent audit reports) as well as the report on the *Brazilian Code of Best Corporate Governance Practices*, among other documents. In addition, the company is required to file with the CVM all shareholders' agreements, documents relating to general meetings of shareholders (such as call notices, management proposals related to the agenda, a summary of the resolutions taken and minutes of the annual general meeting and copies of minutes from general meetings, as well as the ballot papers for remote voting and the voting maps), among other documents.

Since 2010, as a replacement for the previous IAN form (similar to the US 20-F-based Form), the CVM introduced the Reference Form (in Portuguese, *Formulário de Referência*), which must be annually presented in an updated form in its entirety. CVM Resolution 80 establishes the rules and structure for the Reference Form, as well as the deadline for its annual presentation and other deadlines for interim updates that must be carried out in the form in case specific events take place (i.e., as a result of certain public offerings of securities). Inspired by the "shelf registration system" model developed by the International Organization of Securities Commissions ("IOSCO"), the Reference Form is equivalent to IOSCO's "shelf document" and is intended to provide information to investors periodically and at certain material events conducted by the company.

1.2.2 Disclosure of trading of shares by the company, controlling shareholders, directors, officers, and oversight council members

Pursuant to CVM's rules, directors and officers, members of the audit committee, if established, as well as members of any other technical or advisory committee, are required to disclose, to the company, the CVM, and the organized securities market where securities are traded, within the timeframe and with the specific information required by the proper regulation, the number and type of securities issued by the company or subsidiaries held by them or by persons related to them, as well as any change to their respective interests.

1.2.3 Disclosure of material trading

According to CVM Resolution 44, as amended, any material negotiation conducted by controlling shareholders, directors and officers, shareholders entitled to appoint directors and members of the audit committee, as well as investors of a listed company, resulting in increases or decreases of interest of multiples of 5%, triggers the obligation to disclosure of such persons, who must report to the company, among other information, the ownership percentage held (including other securities entitling rights to shares, *i.e.* the Brazilian Depositary Receipts (defined below) and intended to be held in the company, as well as the purpose associated with such ownership percentage. Interests (or rights) held by investors, related parties, and any other person acting together or representing the same interest – namely, entities under common control and funds managed by the same entity or related party – are calculated into such thresholds.

1.2.4 Disclosure of material information by the company

Pursuant to the CVM and the Brazilian Securities Law, a listed company is required to inform the CVM and the organized securities market where the securities are traded of any material developments relating to the company or its business. A material development consists of an event with the potential to affect the price of securities, the decision of investors to buy, sell, or hold such securities, or their decision to exercise any of the rights inherent to such securities.

1.3 Public offering for acquisition of shares

1.3.1 Mandatory offerings

According to CVM Resolution 85, public offerings for the acquisition of shares (in Portuguese, *Oferta Pública de Aquisição de Ações*, "OPA") are generally required:

(i) for delisting a listed company from the organized securities market;

(ii) as a result of disposal of the controlling interest of a listed company or resulting from bylaws-related provisions; or

(iii) in other situations, as described in item 1.3.2 below.

1.3.2 General rules

Mandatory OPAs are generally:

(i) subject to registration with the CVM;

(ii) intermediated by a financial institution;

(iii) based on an appraisal report of the target company prepared by a specialized company, if launched by the company itself, its controlling shareholder, administrator, or their related parties, or required by the applicable regulation; and

(iv) pursued through an auction in the organized securities market on which the securities are traded.

Delisting procedure

The procedure for delisting a listed company:

(i) must be launched by the controlling shareholder or by the company itself, in which case reserves will be required;

(ii) must be followed when seeking the acquisition of all shares issued by the company; and

(iii) requires:

a. a fair price determined by an appraisal report, and

b. the agreement of two-thirds of the free float, as defined by the CVM, for the company to be delisted. After the offering, if the free float drops to 5% of all shares issued by the company, a general meeting may authorize the redemption of such free float shares for the price of the offering.

Disposal of controlling interest

(i) Other disclosure and public-offering-related obligations may apply if a significant percentage acquired by an investor, under the Brazilian Corporations Law, results in the disposal of the company's controlling interest. More specifically, the investor acquiring the company's control (directly or indirectly) must launch a public offering, to be approved by CVM, to acquire all voting shares issued by the company, at a price of at least 80% of the price paid for each controlling voting share plus accrued interest (legal tag-along right).

(ii) This price is applicable to any listed company in Brazil, except for corporations listed in special listing segments Level 2 (in Portuguese, *Nível 2*) and the New Market (in Portuguese, *Novo Mercado*) of the São Paulo Stock Exchange (in Portuguese, *B3 S.A. – Brasil, Bolsa, Balcão,* "*B3*"), for which additional tag-along rights rules apply, as described in item 1.5 below.

Other offerings

An OPA is also mandatory should the controlling shareholder of a listed company, or a related party, reduce liquidity of a class of shares acquiring:

(i) more than one-third of the free float shares of any given class (common or preferred) and subclass; or

(ii) for certain companies listed in securities regulation, 10% of the free float shares of any given class, if the controlling shareholder already holds more than 50% of such class of shares and CVM understands that, within the following six months, acquisition reduces liquidity of the shares.

1.3.3 Tender offers – bylaws

Certain bylaws of listed companies may require a public offering for acquisition of shares (tender offer) to be launched if an investor reaches a certain threshold of equity interest in the company, according to the provisions of the bylaws, which include the pricing mechanism and other rules applicable, including waivers under which the offer is not required. Since this tender offer is not provided for in Brazilian laws and regulations, a case-by-case analysis of each set of bylaws must be made to ascertain the applicable rules.

1.3.4 Other rules

For the purposes of the execution of any sort of public offering for the acquisition of shares, the offeror must hold confidential any information regarding the offering until it is duly released to the market, as well as ensure that its directors, employees, advisers and other related third parties comply with the same duty.

When hired to intermediate the OPA, the securities broker-dealers, the securities distribution agents or the financial institution with investment portfolio must not negotiate shares issued by the target company, nor conduct research and create public reports about the target company and the transaction.

The restrictions above do not apply in the following cases:

(i) trading on behalf of third parties;

(ii) transactions clearly intended to monitor stock indexes, certificates or receipts of securities;

(iii) transactions for hedge purposes regarding total return swaps contracted with third parties;

(iv) transactions as market maker in accordance with CVM rules; or

(v) discretionary management of third parties' portfolio.

During the OPA period, the offeror and its related parties are prohibited from:

(i) selling, directly or indirectly, shares of the same class and subclass of those subject to the OPA (this prohibition, however, does not prevent the offeror from selling its own shares to third parties in auction);

(ii) acquiring shares of the same class and subclass of those subject to the OPA, in the case of a partial OPA; and, finally

(iii) carrying out operations with derivatives based on shares of the same class and subclass of those subject to the OPA.

1.3.5 Voluntary offerings

According to CVM Resolution 85, an investor can acquire controlling interest in a company through a public offering for acquisition of shares, whether hostile or not. Such an offering is generally not subject to registration with the CVM, unless the offering involves an exchange of securities.

1.4 Special listing segments on the B3

1.4.1 Level 1, Level 2, and the New Market

The *B3* has three special listing segments, known as Level 1 (in Portuguese, *Nível 1*), Level 2 (*Nível 2*), and the New Market (*Novo Mercado*). Such classification was originally created to foster a secondary market for securities issued by Brazilian corporations with securities listed on the *B3*, encouraging such corporations to follow good corporate governance practices. The listing segments were designed to trade shares issued by corporations that voluntarily agree to abide by additional corporate governance practices and disclosure requirements along with those already imposed by the applicable Brazilian laws. These rules generally increase shareholders' rights and enhance the quality of information provided to shareholders.

To become a Level 1 company, in addition to the obligations imposed by the applicable laws to be a listed company, the issuer must agree to:

(i) ensure that shares of the issuer representing at least (i) 20% of its total capital are effectively available for trading (free float) or; (ii) 15% of its total capital are effectively available for trading (free float), (i) in case of ADTV (average daily trading volume) remains equal to or greater than BRL 20 million, considering the trading carried out in the previous 12 months; or (ii) in the hypothesis of entering into Level 2, concurrently with a public offering, when the offer (a) exceeds BRL 2 billion; or (b) is between BRL 1 billion and BRL 2 billion, provided that the conditions established by the regulation arerespected. Also, according to item 'ii', the company will be able to keep the free float at 15% of its capital stock for 18 months, provided that, by the end of that time period, the ADTV reaches the BRL 20 million threshold, which must be consistent for six consecutive months;

(ii) adopt offering procedures that favor widespread ownership of shares whenever carrying out a public offering;

(iii) comply with minimum quarterly disclosure standards;

(iv) follow strict disclosure policies with respect to transactions by its controlling shareholders, members of its board of directors, and its executive officers involving securities that it has issued;

(v) maintain and publish a schedule of corporate events available to shareholders; and

(vi) submit to B3 a Code of Conduct, establishing values and principles that guide the company and must be preserved in its relationship with managers, employees, service providers and other people and entities with which the company is related.

To become a Level 2 company, in addition to the obligations imposed by applicable law to be a listed company, an issuer must agree to:

(i) comply with all of the listing requirements for Level 1 corporations;

(ii) grant tag-along rights for all shareholders in connection with a transfer of control of the company, offering the same price paid per share of the controlling block for all non-controlling shareholders, regardless of the type of share;

(iii) grant voting rights to holders of preferred shares in connection with certain corporate restructurings and related-party transactions, such as:

- any transformation of the company into another corporate form;
- any merger, consolidation or spin-off of the company;
- approval of any transaction between the company and its controlling shareholder or parties related to the controlling shareholder;
- approval of any valuation of assets to be delivered to the company in payment for shares issued in a capital increase;
- appointment of an expert to ascertain the fair value of the company in connection with any loss of registration and delisting tender offer from Level 2; and
- any changes to these voting rights, which will prevail as long as the adhesion contract to the Level 2 regulation with the *B3* is in effect;

(iv) have a board of directors consisting of at least five members, out of which a minimum of 20% of the directors must be independent, and limit the term of all members to two years, reelection permitted, or three years without the possibility of reelection, under exceptional cases in which the company does not have a controlling shareholder holding more than 50% of the company's capital stock;

(v) prepare annual financial statements in English, including cash flow statements, in accordance with international accounting standards;

(vi) if there is an election to delist the company from the Level 2 segment, conduct a tender offer by the company's controlling shareholder (the minimum price of shares to be offered to all shareholders will be the economic value determined by an independent firm with requisite experience); and

(vii) adhere exclusively to the Market Arbitration Chamber of the B3 (in Portuguese, Câmara de Arbitragem do Mercado) for resolution of disputes between the company and its investors or arising from the Level 2 regulation.

Among the recent amendments to the Level 2 regulation, certain prohibitions were included to impose:

(i) qualified quorum rules or limitation of voting rights for shareholders representing less than 5% of the company's capital stock (exception made for denationalized companies with preferred shares), and

(ii) liabilities to shareholders voting in favor of any changes in the company's bylaws.

Finally, among other specific changes, the execution of any tender offer of the company's shares will require a prior written opinion by the board of directors, which will not bind the final decision, to be defined at a shareholders' meeting.

To be listed in the New Market, an issuer must generally meet all of the requirements for Level 1 and Level 2 corporations, and, in addition, the issuer must issue only common shares, except in cases of denationalization of the company, which might admit preferred shares to grant specific political rights to the denationalized entity. Additionally, New Market listed corporations must have an audit committee acting as an advisory body linked to the board of directors and comply with the particularities established in the regulation.

1.4.2 Bovespa Mais and Bovespa Mais Nível 2

Bovespa Mais and *Bovespa Mais Nível 2* are segments of the organized over-the-counter market created to increase the opportunities for new, smaller, and medium-sized listed companies to trade their shares on the *B3*, as these segments also adhere to advanced standards of corporate governance practices.

2 Insider Trading

2.1 Introduction

Insider trading rules in Brazil are very similar to those applicable in the United States, and apply either to the source of information (i.e. *tippers*, such as the managerial bodies of the company) or to individuals to whom the information is presented, who misappropriate such information and trade based on it (i.e. *tippers*, such as lawyers and financial advisers). The Brazilian legislation prohibits the trading of securities based on privileged information[9] and imposes administrative, civil, and criminal penalties, depending on the degree of the infraction and position of individuals involved. These three penalties may be imposed either individually or collectively.

Administrative penalties may be imposed by the CVM and include, as provided for in Article 11 of the Brazilian Securities Law:

(i) warnings;

(ii) fines, which vary according to the relevant transaction;

(iii) temporary disqualification up to 20 years to exercise the position of director or audit committee member of a listed company or any other entity registered with the CVM;

(iv) suspension of authorization or registration to operate in capital markets;

(v) temporary disqualification, up to 20 years, to operate in capital markets;

(vi) temporary prohibition, up to 20 years, to perform certain activities or transactions, for members of the distribution system or other entities registered with the CVM; and

(vii) temporary prohibition, up to 10 years, to operate directly or indirectly in one or more types of transaction in the securities market.

[9] Privileged information: any non-disclosed information that may affect the regular course of business.

Depending on the public interest, this Law authorizes the CVM to reach settlements with the infringing party that would suspend or prevent the commencement of administrative proceedings arising from violation of securities laws and regulations in general and, in the latter case, once the relevant party complies, will result in the proceeding being shelved by the CVM. Note that the effects of settlements with the CVM are limited to administrative penalties, and do not prevent the enforcement of civil and criminal penalties.

Since the amendment of the Brazilian Securities Law in 2017, implemented by Law No. 13,506/2017, administrative fine amounts have been heavily increased and can now range up to a maximum of the following values:

(i) BRL 50,000,000.00; or

(ii) double the amount of the issuance, offering or irregular operation; or

(iii) three times the amount of the economic advantage obtained, or loss avoided, as a result of insider trading; or

(iv) double the amount of the loss suffered by investors due to insider trading.

Civil penalties are usually imposed by way of recovery actions brought by individuals or by the state prosecutor to recover damages or losses suffered due to insider trading.

Criminal penalties range from one to five years in prison, and fines that can reach up to three times the illegal gain resulting from insider trading.

Although the CVM regulation provides for a broad definition for insider trading restrictions, certain relative assumptions in the regulation of specific actions are deemed as illegal, except if otherwise proven, especially for certain trading conducted by members of managerial bodies during certain periods.

3 Securities Transactions in Brazil

The National Monetary Council (in Portuguese, *Conselho Monetário Nacional,* "CMN") supervises both the financial market — which is regulated by the Central Bank of Brazil — and the securities market, including derivatives contracts, also regulated by the CVM. Accordingly, securities transactions are subject to CVM regulation. The main activities related to securities transactions are described below.

3.1 Public Offerings

3.1.1 Public offering

Any public offering of securities in Brazil, by an offshore or onshore entity, generally requires:

(i) prior registration of the offering with the CVM (Articles 19 and 21 of the Brazilian Securities Law) and, if applicable, the issuer,

(ii) intermediation by an institution which is part of the Brazilian SDS (defined below) (Articles 15 and 16 of the Brazilian Securities Law), and

(iii) listing the offered securities on a Brazilian organized securities market.

3.1.2 Definition of public offering

CVM Resolution 160 defines public offering for distribution of securities as "*the act of communication from the offeror, the issuer, when it is not the offeror, or any other individuals or entities, integrating or not the securities distribution system, acting on behalf of the issuer, the offeror, or the intermediary entities, disseminated by any means or form that allows the reach to several recipients, and which content and context represent attempt to raise the interest or prospect investors for investment in certain securities*".

The regulation indicates certain actions that qualify an offering as public, such as the following:

(i) seeking undetermined investors, through any persons, for certain securities;

(ii) using any advertising material aimed at the general public (meaning, any individuals or entities, funds and vehicles of collective investment or universality of rights or any other entity recipient of the public offering, including people represented by a class, category, or group);

(iii) conducting research regarding the offering viability (*pilot fishing/testing the waters*) or collection of investment intentions, except in the regulated form;

(iv) trading in a store, office, open branch, website, social media or app, destined to undetermined investors;

(v) certain offering acts to determined investors by means of massive and standardized communication;

(vi) among other acts that may qualify an offering as public.

3.1.3 "Quiet period" and lock-up period

Any disclosure regarding the public offering must be carried out in accordance with the regulation. CVM Resolution 160 qualifies as offering publicity any act for promotion, by any means or form, of communication aiming to raise the interest in the subscription or acquisition of certain securities being offered or to be offered. Therefore, there is a "Quiet Period" (in Portuguese, *Período de Silêncio*), during which the offeror, the entities participating in the distribution and other persons working with or advising in the offering in any form must refrain from publicizing the offering, including through statements regarding the issuer. The Quiet Period begins in the moment when: (i) the offering is approved by a corporate act, or if such act does not apply, once the leading placement agent is hired or otherwise engaged, or (ii) on the 30th day prior to the filing for registration of the offering before the CVM (or regulatory agency that must review the request), whichever takes place first. The Quiet Period ends when the notice of the offering closing is disclosed. CVM provided for very specific exceptions that allow "testing the waters", "pilot fishing" and book building processes, as described in the regulation.

In addition, the offeror, the entities participating in the distribution and other persons working with or advising in the offering in any form are subject to a "Lock-up Period", until the notice of the offering closing is disclosed, during which they cannot trade or carry out any transaction with securities of the relevant issuer, or securities referenced therein, except in cases expressly provided for in the appropriate regulation.

3.1.4 Exemption of registration (automatic or upon request)

Any public offering of securities targeting investors resident, domiciled, or incorporated in Brazil is subject to registration with the CVM, except if the regulation provides for exemptions or a specific waiver is granted.

CVM Resolution 160 provides for two registration proceedings, described below, and introduces a list of certain offerings of securities not subject to such regulation (*safe harbor*), which includes the following:

(i) initial or subsequent (follow-on) offerings of quotas of exclusive investment funds incorporated as closely held entities, as per specific investment funds rules;
(ii) offerings of a single indivisible lot of securities aimed to a sole investor;
(iii) offerings resulting from management compensation plans;
(iv) initial or subsequent (follow-on) offerings of securities issued and traded abroad, settled in foreign currency and offshore markets, when acquired by professional investors residing in Brazil with their offshore accounts, with prohibited trading of such securities in Brazilian markets after their acquisition;
(v) other specific situations listed in article 8 of CVM Resolution 160.

What is more, CVM Regulation 160 allows the CVM to waive registration of the issuer and/or the securities offering, or some of its requirements (such as a prospectus, certain disclosures, etc.). In granting such a waiver, the CVM will consider, among other aspects:

(i) the securities' par value or total amount of the offering;
(ii) the plan for distribution of securities;

(iii) the distribution of securities in more than one market, in order to make the different processes involved compatible, provided that at least equal conditions are ensured for the local investors;

(iv) characteristics of the exchange offer;

(v) the target investors for the offering, including for their geographic location or quantity;

(vi) the target public of the offer comprises only qualified investors; or

(vii) restrictions foreseen to the negotiation of the securities acquired in the offer.

The regulation does not specify the details for each of these situations, and analysis must be carried out by the CVM on a case-by-case basis.

3.1.5 Definition of professional investors

The category of "Professional Investors" includes:

(i) financial institutions and other institutions authorized to operate by the Central Bank of Brazil;

(ii) insurance and capitalization companies;

(iii) open and closed pension funds;

(iv) individual or legal entities that hold financial investments in an amount exceeding BRL 10,000,000.00 and that additionally attest in writing their professional investor condition;

(v) investment funds;

(vi) investment clubs, provided that their investment portfolio is managed by a securities portfolio manager authorized by CVM;

(vii) independent investment agents, investment portfolio managers, analysts and securities consultants authorized by CVM, regarding their own investments;

(viii) non-resident investors; and

(ix) endowment funds.

Moreover, it is important to note that special social security regimes established by the Federal Government, the States, the Federal District or Municipalities can also be deemed professional or qualified investors, provided they are recognized as such as per the specific regulation issued by the Ministry of Social Security.

3.1.6 Definition of qualified investors

The definition of "Qualified Investors" includes:

(i) any "Professional Investor", as defined in item 3.1.5 above;

(ii) legal entities and individuals owning financial investments in an amount greater than BRL 1,000,000.00, which additionally attest in writing their qualified investor condition;

(iii) as for their own investments, individuals approved in technical qualification examinations or that hold certifications approved by the CVM, as a requirement to be independent investment agents, portfolio administrators, securities analysts, and consultants; and

(iv) investment clubs, provided that their portfolio is managed by one or more investors deemed to be Qualified Investors.

3.1.7 Automatic registration

CVM Resolution 160 provides that certain public offerings of securities are subject to an automatic registration system, particularly if targeted to professional investors or, subject to additional requirements (including the need of a prospectus), qualified investors. The obligation for the issuer to update its Reference Form only for purposes of a public offering is also waived for offerings targeting only professional investors. There are certain offerings targeted to the general public that may also be conducted through an automatic registration system; however, there are further requirements to be met for such purpose (i.e., OPAs or follow-on of equity instruments subject to prior analysis by a self-regulatory entity authorized by CVM, debentures issued by frequent issuers of fixed income securities (as defined in the regulation), OPAs or follow-on of quotas issued by certain closed-end investment funds, certain securitization securities, shares in excess of private placements, etc.).

3.1.8 Oversight Fees

Any public offering of securities requires the payment to the CVM of a current flat fee of 0.03% over the total amount of the public offering.

3.1.9 EGEM

"Issuers with Major Market Exposure" (in Portuguese, *Emissores com Grande Exposição ao Mercado*, "EGEM"), inspired by the American version "Well-Known Seasoned Issuers" (WKSI), are able to automatically register their public offerings with the CVM, assuming that certain requirements provided in CVM Resolution 160 are met. A corporation will be qualified as an EGEM provided that it meets the following requirements:

(i) stocks publicly traded in the stock exchange for at least three years;

(ii) timely compliance with CVM requirements for the last twelve months; and

(iii) a free float equal to or greater than five billion *reais*.

To benefit from the EGEM's automatic registration, the issuer and leading distribution underwriter must submit a request to the CVM, upon submission of a specific application containing the qualification as an EGEM and the calculation demonstrating that the issuer qualifies as EGEM, a standard prospectus and further offering documents, as well as the payment of the supervision fee, as applicable to the respective target of the public offering. Upon submission of all documents required by regulation, the registration will be granted automatically. If these requirements are not strictly met, the EGEM must follow the ordinary procedures for registration of the public offering before the CVM.

A similar concept applies to the "Frequent Issuer of Fixed Income Securities" (in Portuguese, *Emissor Frequente de Renda Fixa,* "EFRF") for issuers that are qualified as EGEM or comply with the following requirements, for purposes of conducting a public offering of fixed income securities to the general public through an automatic registration system: (i) registration as a listed company with the CVM for more than 24 months and currently operational, (ii) compliance with its periodic obligations within the latest 12 months, and (iii) in the latest four fiscal years: (a) has carried out public offerings subject to the ordinary registration system amounting to at least BRL 500 million of the respective fixed income security to be offered; or (b) has carried out at least two public offerings subject to the ordinary registration procedure of the respective fixed income security to be offered, or a securitization instrument thereof.

3.1.10 Equity crowdfunding

In 2017, CVM Regulation 588 (replaced in 2022 by CVM Resolution 88) instituted the possibility of public offerings of securities for small-sized companies, aptly named *"Equity Crowdfunding"*. These offerings are automatically exempt from CVM registration, which are carried out through virtual platforms for participatory investment, that must be based in Brazil and registered with the CVM.

In order for a company to be considered a small-sized company eligible for an equity crowdfunding, it must have had a gross revenue of, at most, BRL 40 million in the fiscal year prior to that of the offering, and cannot be a listed company, according to CVM Resolution 88. These offerings must have a target resource value of up to BRL 15 million and a maximum offering period of, at most, 180 days. Since 2022, payment of oversight fees over such public offerings must also be applied, according to Law No. 14,317/2022.

3.1.11 Primary and secondary public offerings

Public offerings can be pursued in the primary or secondary markets or both.

3.1.12 Additional lots

CVM Resolution 160 provides for the possibility of additional lots to the initial amount of the public offering of securities. With no requirement of a new registration filing or change to the original terms of the offering, the amount of the offering may be increased:

(i) By the decision of the offeror, up to an amount that does not exceed 25% of the securities initially offered, excluded the potential additional amount issued under item (ii) below; and

(ii) By the decision of the underwriter, if such option is granted to the underwriter by the issuer or the offeror, up to an amount that does not exceed 15% of the securities initially offered, only for purposes of price stabilization.

In public offerings targeting exclusively professional investors, the additional lot described in item (i) above may surpass the limit of 25%, provided that the maximum amount of such additional lot and the use of proceeds are indicated in the offering documents.

The total amount of the public offering comprises the initial offered amount added by the additional lots described above.

3.1.13 Brazilian depositary receipts

Issuance, public offering, and trading of Brazilian Depositary Receipts ("BDRs") are all subject to CVM supervision. Similar to the general rule described above, an offering of BDRs may also require the issuer and offering to be registered with the CVM. Obtaining a registration by a foreign issuer with the CVM depends on the simultaneous existence of a BDR program and registration of the issuer with the CVM.

CVM Resolution 183 establishes three options of foreign issuer registration, to be selected by the issuer: (i) when the main trading market of the issuer is an offshore recognized market, as defined by regulation; (ii) compliance by the issuer with certain requirements, such as (a) to be a foreign issuer for more than 18 months, and (b) during the preceding 18-month period, maintain uninterruptedly at least 10% of its shares as free float and a minimum sum of foreign trading of shares or certificates of shares in a daily average amount of at least BRL 10 million; or (iii) when the headquarters located in a jurisdiction where the corresponding authority holds an agreement with the CVM for cooperation and sharing of information.

Validation of compliance with such requirements must take place upon: (i) registration of the issuer, (ii) any public offering of BDR, (iii) registration of a BDR issuance program, and (iv) conversion of any BDR level.

BDRs can only be backed by shares, certificates of deposit shares or securities representing debt listed or admitted to trading on markets securities organizations headquartered abroad. Only foreign issuers can have shares or share deposit certificates backing the corresponding BDRs and only Brazilian issuers can issue BDRs backed by securities representing debt issued abroad that are not admitted to trading on an organized market.

There are two categories of BDRs:

(i) sponsored, which are offered by a depositary entity hired and/or authorized by the issuing company (classified in Levels I, II or III) and

(ii) non-sponsored, under which issuer is not related and/or authorized by the issuing company (Level I only).

3.1.14 Other depositary receipts

Brazilian listed companies are also authorized to publicly offer depositary receipts ("DRs") (*e.g., ADRs* and *GDRs*) abroad, provided a DR facility is approved by the CVM, custodian and depositary institutions are hired, and other procedures established by the applicable governing law, regulations, and self-regulations are followed.

3.2 Intermediation

3.2.1 Securities intermediation

Intermediation of securities transactions in Brazil, or the carrying out of intermediation activities in Brazil, including over the Internet, requires the intermediaries to be part of the Brazilian Securities Distribution System ("Brazilian SDS"), and to be registered with the CVM. The Brazilian SDS consists of institutions responsible for, or engaged with, the following activities with respect to securities:

(i) distribution;
(ii) purchase and resale for their own account;
(iii) mediation (trading by an intermediary);
(iv) stock exchanges;
(v) organized over-the-counter markets;
(vi) commodities brokers, special operators and the commodities and futures exchanges; and
(vii) clearing and settlement.

The intermediation of securities offerings in Brazil is usually carried out by securities broker-dealers (in Portuguese, *Corretoras de Valores Mobiliários*), securities distribution agents (in Portuguese, *Sociedades Distribuidoras de Valores Mobiliários*), and other financial institutions, such as multiple, commercial, and investment banks, duly authorized by the Central Bank.

CVM Resolution 161 establishes the registration rules for placement agents of public offerings of securities. As per such rules, a placement agent must be a financial institution or any other entity that act in the distribution of securities as an agent of the issuer, provided that it obtains the applicable registration with the CVM. For purposes of obtaining such registration, the placement agent must comply with several requirements under the regulation, such as: (i) to be incorporated as legal entity in Brazil and regularly registered with the Brazilian Federal Revenue Office, thus obtaining a National Taxpayer's Number ("CNPJ"); (ii) to constitute and maintain human and technological resources that are appropriate to their size and area of operation; and (iii) to assign responsibility for the intermediation of public offerings for distribution of securities to a statutory officer. Placement agents that are non-financial institutions are subject to the inspection of a self-regulatory agency with a cooperation agreement with the CVM to act in public offerings of securities subject to automatic registration.

3.2.2 Authorized activities without registration

Intermediation of securities transactions offered exclusively outside Brazil, aiming at Brazilian investors, is not a violation of Brazilian laws and does not require the authorizations referred to above, provided that:

(i) client prospective activities are carried out exclusively outside Brazil, and

(ii) the intermediated transaction (*e.g.,* underwriting, placement, or purchase/sale of securities) does not constitute a public offering of securities in Brazil.

As previously mentioned, CVM Resolution 160 presents a list of certain offerings of securities not subject to such regulation (*safe harbor*), which includes initial or subsequent (follow-on) offerings of securities issued and traded abroad, with settlement in foreign currency and offshore markets, when acquired by professional investors residing in Brazil with offshore accounts. The trading of securities in Brazilian markets after their acquisition is prohibited.

3.3 Securities Analysis

3.3.1 Analysis activities

According to CVM Resolution 20, the analysis of securities disclosed to the general public in Brazil is subject to CVM supervision. Accordingly, an individual intending to professionally carry out this activity in Brazil must be certified by a self-regulated entity registered with the CVM, which will also be able to monitor these activities and assess penalties in the event of violation of provisions in the regulation or in the code of conduct previously approved by the CVM. Also, an individual or legal entity intending to professionally carry out this activity in Brazil must be previously authorized by the CVM, pursuant to certain requirements under the applicable regulation.

Individual

Individuals seeking certification to act as an analyst must meet the following requirements, among others:

(i) a university degree;

(ii) passing technical exams previously defined and approved by the CVM; and

(iii) unconditional adhesion to the code of conduct.

Entity

Securities analysis by legal entities requires, mainly:

(i) the entity to be headquartered in Brazil and have in its bylaws or articles of association a provision authorizing this activity;

(ii) the designation of at least one individual registered with the CVM as a securities analyst to be an officer in charge of such activity;

(iii) the constitution and maintenance of human and technological resources appropriate to the company; and

(iv) specific requirements applicable to its controlling entities as provided for under CVM rules.

3.3.2 Reports

Below are some requirements for the mandatory disclosure for analysis reports:

(i) they must be written in clear, objective language, differentiating interpretations from facts;

(ii) they must name a primary accredited analyst to prepare the report;

(iii) a disclaimer to alert that the analysis contains personal opinions and that they were independently developed must be added; and

(iv) any potential conflict of interests by any member of the analysis team must be disclosed.

Securities analysts are required to send the report to the self-regulated entity within three days of distribution, and to keep a copy for at least five years.

3.4 Asset Management

3.4.1 Introduction

Asset management of third-party assets in Brazil is subject to CVM supervision, under the terms of CVM Resolution 21. Accordingly, an individual or legal entity intending to professionally carry out this activity in Brazil must be previously authorized by the CVM, according to certain experience-related requirements. Asset management activities generally include advice to third parties on which securities to invest in and the investment decision itself (purchase and sale of securities).

3.4.2 Individuals

Authorization to manage assets in Brazil requires the individual to, among others:

(i) be a resident in the country;

(ii) hold a recognized bachelor's degree in Brazil or abroad; and

(iii) be approved in a certification exam whose methodology and content has been previously approved by the CVM.

Under certain circumstances, the CVM may exempt the individual from:

(i) the bachelor's degree-related requirement, in which case the experience referred to above would have to be for a longer period, or

(ii) the certification exam requirement, provided the individual can prove:

a. at least, seven years of proven professional experience directly related to securities and investment funds asset management activities; and

b. considerable knowledge of asset management.

3.4.3 Legal entity

Asset management by legal entities requires, mainly:

(i) the entity to be headquartered in Brazil and have in its bylaws or articles of association a provision authorizing this activity;

(ii) designation of at least one individual registered with the CVM as an asset manager to be an officer in charge of such activity; and

(iii) the constitution and maintenance of human and technological resources appropriate to the firm.

In addition, asset management services must be carried out independently from other departments of the legal entity, if any, to prevent conflicts of interest.

3.4.4 Ongoing obligations

Asset managers are subject to certain ongoing obligations such as:

(i) general reporting obligations;

(ii) obligations specifically provided for in the particular regulation or bylaws of the portfolio under management, which vary according to the markets targeted by the manager; and

(iii) payment of supervision fees, among others.

Asset managers are also required to:

(i) keep documentation for at least five years related to activities - or an additional period if an agreement, or an administrative proceeding, requires otherwise; and

(ii) keep confidential all activities performed with third-party funds.

4 Investment Funds

4.1 Funds in General

4.1.1 Introduction

Investment funds in Brazil are classified as a special category of a non-corporate pool of assets formed to trade certain types of investments and handled by an asset manager, subject to regulation and supervision by the CVM. The incorporation of a fund takes place upon the registration of its corporate documents with the CVM.

CVM Resolution 175 was published as the new regulatory framework for investment funds and became effective in October 2023. This New Fund Regulations consolidates the previous regulations on investment funds.

The structure of this regulation consists in a general set of rules applicable to any fund, followed by annexes containing rules for each type of fund. Annexes I and II refer to Financial Investment Funds ("FIFs") and to Receivables Investment Funds ("FIDCs"), respectively, which were subject to CVM Regulation 555 and CVM Regulation 356, respectively.

4.1.2 Limitation of responsibility, segregation of assets, classes of quotas

CVM Resolution 175 also innovates by admitting that the fund's bylaws provide that the quotaholder's liability is limited to the amount subscribed.

In the absence of a provision in this regard, liability prevails beyond the subscribed amount – or, in the wording of the rule, for negative equity –, noting that administrators and managers, d the process of adapting existing fund regulations, may include in such regulations limited liability, without the need for approval by shareholders at a general meeting.

Additionally, the new framework authorizes investment funds to establish classes and subclasses of quotas, providing for different investment strategies, rights, and obligations. A special feature whenever classes are adopted is the creation of a segregated equity for each class, thus avoiding a commingling risk for different strategies under a single umbrella. Until a tax regulation is enacted, each class of quotas and the fund itself should be subject to a single tax regime.

Finally, the regulation broadens the authorization for the bylaws to grant especial economic and political rights to certain classes of quotas, thus providing flexibility to investors and asset managers when structuring funds going forward.

4.1.3 Administration and Management Services

Administration services of an investment fund include activities relating directly or indirectly to the fund's maintenance, back-office and/or portfolio management, which are provided by an asset manager and/or a third party duly authorized to do so. The asset manager, as administrator and/or manager, is the primary party responsible for the fund's transactions and portfolio and is also required to provide quotaholders of the fund with material information affecting the fund's investments.

CVM Resolution 175 assigned to the administrator and the manager of the fund the qualification of essential services providers. As a rule, both essential services providers will be required for the incorporation of the fund. In addition to that, the hiring of other service providers required by the fund is also allocated between the administrator (i.e., treasury, controllership, bookkeeping, among others) and the manager (i.e., distribution of quotas, investment advice, co-management, market maker, among others).

Generally, an investment fund requires the following services providers, which may or may not be provided by the administrator or manager of the fund, subject to the applicable rules and special authorizations required for such services:

(i) administration of the fund;
(ii) management of the fund's portfolio and assets;
(iii) investment advice;
(iv) securities treasury, control, and processing activities;
(v) distribution of shares;
(vi) book-entry share activities;
(vii) custody; and
(viii) rating activities.

4.1.4 Bylaws and Incorporation of the Fund

The main corporate document of a fund is its bylaws, initially established by its administrator/manager, which are approved and can be amended by holders of the fund's quotas at any time. The Bylaws contain information related to the fund's governance, services providers, investment policy, risks, term, description of the issued quotas, among others. The investment fund is represented by its administrator and/or manager, depending on the respective allocation of liabilities, within the limitations and considering the attributions established by the fund's bylaws and applicable regulation.

According to its bylaws, the fund may be incorporated as: (i) an open-ended condominium, under which the voluntary transfer of quotas is not allowed, but redemption or amortization of quotas is permitted, or (ii) a close-ended condominium, under which the redemption or amortization is carried out upon the expiry of the fund or the class of quotas, or by a decision of investors, but the voluntary transfer of quotas is generally allowed. Once CVM Resolution 175 became effective, the qualification as "open" or "closed" was attributed to the classes of quotas of the Fund.

4.1.5 Distribution of Quotas

As a general rule, distribution of quotas issued by funds requires intermediation by institutions in the Brazilian SDS, and delivery to investors of a copy of the Fund's bylaws, if applicable, and prospectus describing the offering. Please refer to our chapter on Public Offerings of Securities for further information on the rules on public offerings. Public offerings of quotas issued by investment funds may or may not be subject to prior registration with the CVM, depending on certain aspects relating to the structure of the fund and target investors of the offering.

4.1.6 Professional and qualified investors

Funds targeting Qualified Investors or Professional Investors (defined above in sections 3.1.6 and 3.1.5) are generally authorized to implement flexible structures, including higher concentration limits, payment and redemption of shares with financial assets and exemption of prospectus.

4.1.7 Disclosure of material information

All material information relating to the fund's investment policy and the risks involved must be included in the prospectus, the fund's bylaws and during the fund's activities, in a specific disclosure report, depending on the category of the investment fund.

4.2 Categories of Investment Funds

4.2.1 Investment Funds or Financial Investment Funds (FIFs)

Investment funds previously regulated by CVM Regulation 555 are now generally referred to in CVM Resolution 175 by Financial Investment Funds (in Portuguese, *Fundos de Investimento Financeiros*, or "FIF"). Classification of such investment funds is based on the assets within their portfolios, as follows:

(i) fixed income funds;

(ii) stock funds;

(iii) multi-market funds; and

(iv) currency exchange funds.

Investment in foreign securities by Brazilian funds is permitted with specific restrictions, depending on the targeted investors, the level of asset concentration and the type of investment fund.

FIFs that were in operation on the date that CVM Resolution 175 was published must fully adapt to the provisions of CVM Resolution 175 by June 30, 2025. Until this date, FIFs remain regulated by CVM Regulation 555.

4.2.2 Private Equity Investment Fund

CVM Regulation 578 used to regulate private equity investment funds in Brazil (in Portuguese, *Fundos de Investimento em Participações,* "FIP"). Once CVM Resolution 175 became effective, the terms under CVM Regulation 578 were incorporated into Annex IV to such regulation, and the FIPs became one of the categories of investment funds regulated by CVM Resolution 175.

FIPs are created as closed-end condominiums and designed for investing a minimum amount of 90% of its net equity in shares, quotas of limited-liability companies (*sociedade limitada*), debentures, warrants, and other titles and securities that are convertible or tradable in shares of closely- and listed companies, in which the FIP effectively participates in the decision-making process (including quotas issued by other FIPs).

Among other aspects regarding such funds, some highlights of the current FIP regulation are the following: (i) a FIP can invest in debentures non-convertible into shares, limited to 33% of its subscribed capital; (ii) a FIP can invest in quotas of limited-liability companies (*sociedade limitada*), provided that certain requirements are met; (iii) FIPs can create different classes of quotas with different economic rights; (iv) FIP quotaholders must be qualified investors; and (v) FIP' can grant personal guaranties upon prior approval by their quotaholders in a general meeting.

FIPs that were in operation on the date that CVM Resolution 175 was published must fully adapt to the provisions of CVM Resolution 175 by June 30, 2025. Until this date, FIPs remain regulated by CVM Regulation 578.

4.2.3 Real Estate Investment Funds

Brazilian Real Estate Investment Funds (in Portuguese, *Fundos de Investimento Imobiliário*, "FII") are closed-end condominiums that invest most of their equity in real estate assets or related rights. Brazilian Law No. 8,668/1993 and CVM Resolution 175 are the main rules currently applicable to the incorporation and operation of FIIs. Once CVM Resolution 175 became effective, the terms under CVM Regulation 472 were incorporated into Annex III, and the FIIs became one of the categories of investment funds regulated by CVM Resolution 175 and its annexes.

Since the FII has no corporate veil (considering its form as a condominium), its administrator is the fiduciary owner of fund's real estate assets and related rights, which are segregated from the administrator's own assets. Additionally, FII quotaholders do not have any "*in rem*" right to real estate assets and related rights invested by the FII. Therefore, FII quotaholders are not personally liable for any legal or contractual obligation concerning the FII's portfolio or its management, except for the obligation to pay in all subscribed shares. Depending on the terms of the FII's bylaws, its quotaholders may be called to make capital contributions to cover the impacts of the negative net equity of the FII relating to funds expenses.

Administration of the FII can be attributed exclusively to commercial banks, multiple banks with investment or real estate credit portfolios, investment banks, brokerage or securities distribution companies, real estate credit companies, savings banks, and mortgage companies. If the FII invests more than 5% of its portfolio in securities, the administrator must be authorized by CVM to provide portfolio/asset management services.

As per Brazilian Law No. 8,668/1993, FIIs must distribute at least 95% of profits to their shareholders based on balance sheets dated June 30 and December 31 of each year.

FIIs that were in operation on the date that CVM Resolution 175 was published must fully adapt to the provisions of CVM Resolution 175 by June 30, 2025. Until this date, FIIs remain regulated by CVM Regulation 472.

4.2.4 Receivables Investment Funds

FIDCs Funds are required to invest the majority of their net worth in credit rights, according to percentages and timeframes provided for in the regulation and can be organized under an open or close-ended system.

Before CVM Resolution 175 became effective, only Qualified Investors were authorized to subscribe or acquire shares issued by FIDCs, but this rule changed with CVM Resolution 175, which allowed the general public to invest in certain FIDCs.

There must be specific investment rules applicable to the classes of quotas of the general FIDC allowing or not investment in such types of credits, and therefore limiting the target investors that may participate in such FIDCs.

FIDCs that were in operation on the date that CVM Resolution 175 was published must fully adapt to the provisions of CVM Resolution 175 by November 29, 2024. Until this date, FIDCs remain regulated by CVM Regulation 356.

4.2.5 Agribusiness Investment Funds

A new category of investment fund aiming to boost investments in the agribusiness sector was created, through the so-classed Investment Fund in Agro-Industrial Chains or the Agribusiness Investment Fund (in Portuguese, *Fundo de Investimento nas Cadeias Produtivas Agroindustriais*, "FIAGRO"). The taxation applicable to FIAGRO is similar to the existing regime for FIIs, which provide for a tax exemption for income paid by certain funds to individuals and is expected to enhance fundraising in the agribusiness. The legislation also innovated by broadening the types of assets that may comprise its portfolio, all relating to the agribusiness sectors, and allowing FIAGROs to be incorporated either as closed- or open-end funds, which will foster complex investment structures.

The New Fund Regulations entered into force on October 02, 2023, however, each regulatory annex, regulating a type of fund, will have different dates for entry into force. On October 31, 2023, the specific rules that will comprise the FIAGRO regulatory annex were placed for public consultation, that ended on January 31, 2024. The initial draft of the public consultation brings important changes to the regulatory scope of FIAGRO, especially with regard to the administration and management of these funds, and now the market is looking forward to CVM's next steps in such matter, expected to occur in 2024 and/or 2025.

Below are the main assets in which a FIAGRO can invest:

(i) rural properties;

(ii) equity in companies that pursue activities in the agro-industrial sector;

(iii) financial assets, bonds, or securities issued by an individual or a company that integrate the agribusiness productive chain;

(iv) agribusiness receivables and securities backed by agribusiness credit rights, including agribusiness receivables certificates (CRA) and quotas of receivables investment funds (FIDC or FIDC-NP) that invest more than 50% of its net worth in such agribusiness receivables;

(v) real estate receivables relating to rural properties and securities backed by such rural estate receivables, including agribusiness receivables certificates (CRA) and quotas of receivables investment funds (FIDC or FIDC-NP) that invest more than 50% of its net worth in such real estate receivables; and

(vi) quotas of investment funds that invest more than 50% of their net worth in the assets mentioned above.

Until a specific Annex of CVM Resolution 175 regarding the FIAGRO is issued, the CVM allowed the registration of a FIAGRO either as a FIP, as a FIDC or as a FII, considering the types of assets that would typically comprise the portfolios of such funds within the list of assets described above. Therefore, in practice, even though the FIAGRO was created within the FII law, it can be structured alternatively in the form of a FIDC or a FIP.

4.3 Financial Bills

The financial bill (*letra financeira*) is an instrument of credit issued by banks (multiple, commercial, or savings), mortgage and real estate credit companies, as well as credit, finance, and investment companies for fundraising purposes and traded in the Brazilian capital markets.

Issuance and negotiation of financial bills are subject to registration before a securities depositary and settlement-related system authorized by the Central Bank of Brazil. CVM Resolution 8 regulates the public offering of financial bills and provides for situations in which the rules under CVM Resolution 160 apply to public offerings of such securities.

Each financial bill must have a minimum face value of BRL 50,000.00, which must be increased to BRL 300,000.00 in case such financial bill qualifies as a subordinated debt, and the issuance must last for at least 24 months. Any advanced redemption by the issuer within such minimum issuance term is prohibited. Such minimum issuance term does not interfere with the buyback permission granted by CMN Resolution 5,007, which allows the issuing financial institution to buy back financial bills issued for a term longer than 36 months, in stock exchange or organized over-the-counter markets, to be held in its treasury for future sale. Such repurchase is limited to 5% of the book value of the financial bills, and such limit is reduced to 3% in case the financial bills have a subordination clause.

4.4 Securities for Long-Term Financing

In order to enhance fund raising mechanisms for long-term financing, special securities providing beneficial tax regimes were created as a result of Law No. 12,431/2011, as amended.

The Law introduces specific securities as alternative instruments for the financing of long-term projects, and grants beneficial tax treatment for individuals, foreign investors, companies, and investment funds complying with the requirements provided for in this law. Such securities may be summarized as follows:

III. investment project securities, including typical securities from securitization transactions:
   a. certificates of real estate receivables; and
   b. shares issued by FIDCs incorporated as closed-end condominiums, which acquire receivables from non-financial institutions;

IV. securities to finance investment projects qualified as priorities by the Federal Government (priority project securities, jointly referred to as "PPS"), issued until December 31, 2030. A prior specific authorization for issuance of PPS is deemed necessary, according to the regulations enacted by the respective supervising authority. Such securities include:
   a. priority projects bonds (including infrastructure bonds);
   b. shares issued by FIDCs incorporated as closed-end condominiums; and
   c. certificates of real estate receivables; and
   d. investment funds authorized to invest in securities to finance investment projects qualified as priorities by the Federal Government.

4.5 Certificates of Receivables

Certificates of receivables are being largely implemented to fund specific industries, primarily real estate and agribusiness-related companies.

Real estate-backed securities, known as "real estate receivables certificates" (in Portuguese, *Certificados de Recebíveis Imobiliários*, "CRI") were created by Law No. 9,514/1997 and represent an enforceable promise to pay, in cash, for credits relating to real estate activities. The most common assets linked to the issuance of CRIs are credits arising from contracts of purchase and sale with chattel mortgage from the Brazilian Real Estate Financing System ("SFI"), credits from lease contracts (built-to-suit), or credits originated by the deeds of real surface rights.

Agribusiness-backed securities, known as "agribusiness receivables certificates" (in Portuguese, *Certificados de Recebíveis do Agronegócio*, "CRA") were created by Law No. 11,076/2004 and represent an enforceable promise to pay, in cash, for credits relating to agribusiness activities. It is worth noting that Law No. 9,514/1997 also applies to CRA for specific matters. The most common assets linked to the issuance of CRAs are agribusiness credit bills, mainly rural product certificates of financial settlement (in Portuguese, *Cédula de Produto Rural de Liquidação Financeira*, "CPR-F"), certificates of agribusiness credit rights (in Portuguese, *Certificados de Direitos Creditórios do Agronegócio*, "CDCA"), or credit rights arising from agreements with rural producers. For further information about CRA, please refer to section XXVII.2.1.5 below.

Recent regulations published by the CMN introduce new rules governing the issuance of CRA and CRI. CMN Resolution 5,118 of February 01, 2024 ("CMN Resolution 5,118"), established the restrictions for the backing of CRA and CRI, prohibiting the inclusion of **(i)** debt securities of (a) a listed company or parties related to it, unless the main sector of activity of the listed company is real estate, in the case of CRI, or agribusiness, in the case of CRA; or (b) a financial institution or entity authorized to operate by the BCB, or a party related to it, and **(ii)** credit rights arising from (a) transactions between related parties; or (b) financial transactions, which the proceeds are used to reimburse expenses. There is also an impediment to transactions in which institutions and companies retain risks and benefits.

However, CMN Resolution 5,118 exempts CRA and CRI from complying with this rule, provided that **(i)** it was distributed before CMN Resolution 5,118 came into force; or **(ii)** it has already applied for registration with the CVM. It is worth noting that if there are any extensions of the deadline for CRA and CRI that have already been distributed, they will need to comply with CMN Resolution 5,118.

Resolution No. 5,121, of March 01, 2024, amended CMN Resolution 5,118 to clarify that companies typical of agribusiness or the real estate sector, which do not have a direct link with financial system institutions, are able to carry out securitization transactions through the issuance of CRI and CRA, with the aim of promoting public policies in the real estate and agribusiness sectors through debt transactions compatible with their purpose.

Law No. 14,430/2022 was issued as a new regulatory landmark for securitization transactions in Brazil, regulating securitization companies and also creating securitization instruments not necessarily associated with a specific sector or industry (in Portuguese, *Certificados de Recebiveis,* "CR"). Although not subject to the same tax incentives as the CRI and CRA described above, the CRs were created to support the funding of other industries through securitization, broadening the product to other sectors in addition to agribusiness and the real estate. Even before the CRs, other segments already had access to the securitization market through the securitization of financial receivables (regulated by the Brazilian Central Bank and mostly implemented upon the issuance of debentures) and receivables investment funds ("FIDCs").

4.5.1 Securitization company

Among the special purpose vehicles used for securitization, the securitization company plays a prominent role, along with the FIDCs. A securitization company is a non-financial corporation, organized as a company, and registered with the CVM (and, for this reason, it is classified as a listed company) for the specific purpose of acquiring receivables and issuing asset-backed securities.

A single securitization company can accomplish (and indeed usually does) more than one securitization transaction, each backed by different groups of receivables. The securitization company may segregate each set of receivables linked to different issuances into separate equities to be managed under a fiduciary regime to avowing risk sharing among independent transactions.

In accordance with CVM Resolution 60, the registration of securitization companies before CVM must be one of the following categories: (i) S1, which allows the public issuance of securities exclusively with the institution of a fiduciary regime; or (ii) S2, which allows the public issuance of securities with or without the institution of a fiduciary regime.

In addition to the provisions under Law No. 9,514/1997 and Law No. 11,076/2004, as applicable, as well as the Brazilian Corporations Law, securitization companies are also subject to the terms of CVM Resolution 60, concerning securitization companies and their transactions.

COMPETITION LAW

1 Introduction

The defense of competition in Brazil is structured by Law No. 12,529/2011 ("Brazilian Competition Law"), which is grounded on article 170, item IV of the Brazilian Federal Constitution, establishing "free competition" as one of the guiding principles of Brazilian economic law.

Brazilian Competition Law is enforced by the Brazilian Competition Defense System ("SBDC"), which is divided into the Administrative Council for Economic Defense ("CADE"), and the Secretariat for Economic Monitoring ("SEAE") of the Ministry of Finance.

This division encompasses the preventive, repressive and advocacy functions of the SBDC. In particular, CADE embodies the preventive and repressive roles by means of merger control and anticompetitive conduct prosecution, whereas SEAE concentrates on the expansion of the competition advocacy culture in Brazil.

2 Merger Control

CADE is an independent administrative agency in charge of merger control analysis in Brazil. CADE's internal structure comprises a tribunal composed of seven commissioners, which includes a president and a General Superintendence (the "GS"), composed of multiple units led by a chief superintendent[10].

Mergers that are subject to mandatory filing before CADE are initially reviewed by the GS, which may submit a final clearance decision, provided that a transaction does not result in competition-related concerns. If the GS concludes that a given transaction should be either blocked or have its approval conditioned to the enforcement of remedies, it will draft an opinion with the applicable recommendation to CADE's Tribunal, which, in turn, will issue a final decision on the matter.

Brazilian Competition Law has adopted a suspensory merger review regime under which the parties to a transaction must comply with a standstill obligation, prohibiting closing before a final clearance decision is issued by the GS and confirmed, when applicable, by CADE's Tribunal[11].

[10] CADE's structure also comprises the Attorneys--General Office and the Department of Economic Studies, entities in charge of issuing non-binding opinions in connection with merger cases whenever requested by the GS or members of CADE's Tribunal.

[11] It is worth emphasizing that Brazilian Competition Law provides for the possibility of a reporting commissioner who may authorize the preliminary implementation of a merger, whenever certain complex conditions are present – an event that has occurred only in two occasions in CADE's history.

It is prohibited, for instance, to interfere with one another's strategic commercial matters and/or to exchange commercially sensitive information, unless strictly necessary for the proper execution of the transaction, and provided that certain safeguards are put in place.

Parties that fail to comply with the standstill obligation may be subject to an investigation for gun-jumping, for which fines range from BRL 60,000.00 to BRL 60 million, in addition to the possible annulment of the acts performed by the parties before obtaining CADE's approval, as well as the opening of an investigation into potential anticompetitive conduct[12]. To date, the highest gun-jumping fine ever applied by CADE amounted to BRL 60 million[13], in May 2022.

The burden to file a transaction before CADE falls upon all the parties involved, and the buyer usually leads the filing process with the cooperation of the seller.

Provided that it is carried out prior to closing, there is no deadline for a merger filing. CADE's recent practice indicates that it is preferable that the parties file the transaction following the execution of a binding agreement, but the agency has already accepted filings based on more preliminary documents[14]. In any case, the payment of a filing fee in the amount of BRL 85,000.00 is mandatory.

2.1 Criteria for mandatory submission

The Brazilian Competition Law sets out that merger filings are mandatory if all elements of a three-prong test are present, defined as follows:

(i) Effects: The transaction or agreement is either wholly or partially performed or produces effects (actual or potential) in Brazil.

(ii) Revenues: At least one of the groups involved in the transaction or agreement must have had gross revenue in Brazil (including export sales) exceeding BRL 750 million in the year prior to the transaction, in parallel with at least another group that has registered gross revenues (including export sales) in Brazil exceeding BRL 75 million in the year prior to the transaction[15].

(iii) Concentration: the transaction or agreement constitutes a Concentration Act under the definition of the Brazilian Competition Law (mergers, acquisitions, joint ventures and certain types of collaborative or cooperation agreements).

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[12] As provided for in article 88, paragraph 3 of Law No. 12,529/2011, and article 152 of CADE's bylaws.

[13] APAC no. 08700.005713/2020-36, related to the acquisition of control of Suez by Veolia.

[14] However, the clearance decision based on preliminary, non-binding documents will be valid to the extent that the parties undertake the transaction within the terms and conditions set out in such documents.

[15] According to CADE Resolution No. 33/2022, a "group of companies" is deemed: i) a set of companies subject to a common control, internally or externally; and ii) companies in which the companies mentioned on item (i) above hold, directly or indirectly, at least 20% of the capital stock or voting capital. For investment funds, Resolution No.33 sets forth that "members of the same economic group" are cumulatively: i) the economic group of each investor holding, directly or indirectly, 50% or more of the fund directly involved in the transaction, either individually or by means of an agreement with other investors; and ii) the portfolio companies that are controlled by the fund directly involved in the transaction, as well as the portfolio companies in which such fund holds, directly or indirectly, an interest of 20% or more.

In addition, as set forth by CADE's Resolution No. 17/2016, associative/collaborative agreements are subject to mandatory submission in Brazil whenever, collectively: (i) their duration is equal to or longer than two years[16]; (ii) there is a common undertaking for the exploitation of a business activity[17]; (iii) the companies involved share risks and results from the business activity referred therein; and (iv) the parties are competitors in the respective market affected by the agreement.

2.2 CADE's merger review process and timing

There are two types of merger review procedures under the Brazilian Competition Law: (a) the fast-track procedure and (b) the ordinary/regular proceeding, which are defined in more detail below.

(a) Merger review is concluded in up to 30 (thirty) days under the fast-track procedure, which is available to non-complex mergers only, such as: (i) mergers with post-transaction market shares below 20% in horizontal overlaps and/or below 30% regarding potential vertical links; (ii) collaborative agreements or JVs in markets where the parties are not horizontally or vertically related; (iii) mergers resulting in the simple substitution of an economic agent or entry via an acquisition; (iv) horizontal overlaps above 20% whenever the HHI variation is below 200 points, provided that the transaction does not lead to a combined market share of above 50%; or in (v) other cases that are not included in any of the situations above and that do not result in competition concerns, to be determined at CADE's discretion.

(b) Mergers that entail major concentrations or that raise competition concerns are reviewed by CADE within a maximum of three hundred and thirty (330) days via the regular procedure. In such cases, the agency carries out a thorough analysis of the joint market share arising from the transaction, mainly from a rivalry and barriers-to-entry perspective. Compared to the fast-track procedure, the regular proceeding tends to be more time-consuming, given that economic studies, recurrent interactions with CADE's personnel and possibly a remedy negotiation may be required for the approval of the transaction.

[16] If the associative/collaborative agreements are valid for less than two years or for an indefinite term, CADE must be notified before their renewal, and the continued effectiveness of the agreement for two or more years will depend on CADE's prior approval.

[17] Resolution No. 17/2016 defines business activity as the acquisition or offer of goods or services in the market, even if with no profit purposes, provided that, in this situation, such activity may, at least theoretically, be exploited by for-profit corporations in the private sector.

For transactions that entail competition-related concerns[18], Brazilian Competition Law provides for the possibility of negotiating remedies. They can be structural or behavioral, but preferably the latter. Remedy negotiations may be carried out with the GS or with the case's reporting commissioner at the Tribunal level (when applicable) but, in any event, a successful merger remedy negotiation will result in the undertaking of a Merger Control Agreement ("ACC") between the parties to a transaction and CADE.

Finally, parties are only allowed to close the transaction once a fifteen (15) day waiting period following the publication of the clearance decision elapses. Within this period, third parties admitted in the merger review, regulatory agencies or members of CADE's Tribunal are allowed to challenge the GS' clearance recommendation, which inevitably delays the issuing of a final decision.

3 Anticompetitive conduct

As CADE is the main enforcer of the Brazilian Competition Law, it also holds powers for the imposition of penalties on legal entities and individuals who engage in anticompetitive conduct, such as cartel formation and abuse of a dominant position.

The Brazilian Competition Law did not specify which deeds constitute anticompetitive conduct, taking a general approach in article 36 by setting forth that any act, intended or otherwise able to produce the following effects, even if they are not achieved in Brazil[19], shall constitute anticompetitive conduct:

(i) to limit, restrain, or in any way hinder free competition or free enterprise;
(ii) to dominate a major market of a certain product or service[20];
(iii) to increase profits on a discretionary basis; or
(iv) to abuse a dominant position[21].

As such, several conducts are qualifiable as anticompetitive. Paragraph 3 of Article 36 laid out a few examples of actual practices that may constitute a violation of the economic order to the extent that they may produce any of the effects mentioned in article 36, such as:

(i) price fixing;
(ii) territorial and client-base restrictions;
(iii) exclusivity agreements;

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[18] Merger reviews of this complexity would also comprise an analysis of the efficiencies (if any) arising from the transaction, in spite of the negative effects to competition. Increases in (i) productivity/competitiveness; (ii) product/service quality; as well as (iii) efficiency and technological/economic development, a major part of which to be shared with consumers are the types of efficiencies considered in CADE's merger review. We highlight that a transaction has never been approved solely on the basis of efficiency, but its existence aids the process of obtaining approval for the merger.

[19] Pursuant to article 2 of the Brazilian Competition Law, any type of conduct deemed anticompetitive, and whose effects are enforceable in Brazil, will trigger CADE's prosecution (i.e., international cartels).

[20] However, the first paragraph of article 36 specifically excludes the achievement of market control by means of competitive efficiency from a potential violation to item II.

[21] The Brazilian Competition Law defines that any market player holding at least 20% of a major market holds a dominant position, as a rule of thumb.

(iv) refusal to deal;

(v) tie-in arrangements;

(vi) price discrimination;

(vii) resale price-maintenance, among others.

The Brazilian Competition Law is enforced by means of an administrative proceeding, which usually originates in the GS, with the General Superintendent holding the necessary powers for the opening of both investigative and accusatory proceedings, in addition to carrying out the fact-finding phase via the request of information from public and private sector entities, dawn raids[22], among others.

The standard of proof required for a conviction will vary according to the conduct under investigation. CADE has consistently reviewed explicitly collusive and naked restraint conduct (*e.g.,* cartels, RPM, etc.) as *per se* illicit, that is, the mere confirmation of authorship and materiality is a sufficient means to support a conviction decision, regardless of whether the conduct produced any effects.

Whereas for abuses of a dominant position (*e.g.,* exclusivity arrangements, ancillary restraints, fidelity discount policies etc.), the Brazilian antitrust authority has reviewed cases under the rule of reason, which will consider the net positive (or negative) effects to competition of a given conduct for a conviction/shelving decision.

In an accusatory proceeding, after the defendants have presented their defenses, the GS will issue its opinion for their conviction or shelving of the proceeding, the former necessarily being reviewed by the Tribunal, whereas the latter will become final after a 15-day waiting period has elapsed[23].

The decision issued by the Tribunal is final and cannot be challenged by a higher administrative court or authority, and it may only be annulled or modified if challenged before the Brazilian Judicial Branch.

As such, the Brazilian Competition Law sets forth that the fines imposed on the convicted legal entities will range from 0.1% to 20% of their revenues in the year prior to the opening of the administrative proceeding, within the business activity segment of the conduct. Whereas the related individuals' fine will range from 1% to 20% of the fine imposed on its related legal entity.

Alternatively, in the case of associations, unions or when the legal entity's turnover data is not available, imposed fines will range from fifty thousand *reais* (BRL 50,000.00) to two billion *reais* (BRL 2,000,000,000.00).

In addition to the above pecuniary fines, the following penalties may also apply:

(i) at the violator's expense, half-page publication of the summary of the decision in a court-appointed newspaper for two consecutive days, from one to three consecutive weeks;

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[22] Provided that a judicial warrant is granted.

[23] As in merger control cases, the commissioners of the Tribunal may perform a recall of the shelving decision for further review within the fifteen (15) day waiting period.

(ii) ineligibility for official financing or bidding processes involving purchases, sales, works, services or utility concessions with federal, state, municipal and the Federal District authorities and related entities, for a period equal to or exceeding five years;

(iii) recommendation of compulsory licensing of patents held by the violator; and

(iv) the company's spin-off, transfer of corporate control, sale of assets, partial discontinuance of activities, among others.

4 Criminal Implications

In parallel to administrative investigations, Law 8,137/1990 states that crimes against the economic order occur due to an abuse of economic power through the domination of the market or elimination of competition, even if partially, by means of agreements or alliances among competitors (i.e., collusive conduct), with the purposes of:

(i) artificially fixing prices or outputs;

(ii) regionally controlling the market by company or group of companies; and

(iii) obtaining control of the distribution or supply network, to the detriment of competition.

The penalties under Law 8,137/1990 range from two to five years of imprisonment, in addition to the imposition of a pecuniary fine.

5 Leniency Program

The Brazilian Leniency Program, in force since 2000, comprises a set of initiatives that seek to (a) detect, investigate and punish anticompetitive conduct; (b) inform and provide constant guidance to individuals and legal entities regarding the rights and warranties provided for in articles 86 and 87 of the Brazilian Competition Law; and (c) stimulate, guide and aid the signatories to the leniency agreement in the provision of supporting evidence to a future proceeding, in exchange for full or partial administrative and criminal immunity.

The requirements for granting full immunity under the Brazilian Competition Law are similar to those of North American legislation. The main conditions for full immunity are:

(i) applicants must be the first to inform of the violation;

(ii) applicants must cease their involvement in the infraction completely, as of the date of the proposal;

(iii) insufficient evidence to file charges against the applicants at the time of the proposal;

(iv) applicants must admit to involvement in the violation and provide full/permanent cooperation with the investigation; and

(v) applicants must cooperate with the investigation for the identification of all other co-participants, as well as collect information and documents to prove the violation beyond a reasonable doubt.

If all the above requirements are met, the signatories to the leniency agreement will be granted administrative and criminal immunity, but not civil (against damage claims). If requirements are partially met, partial immunity may be granted (with a fine amount discount varying from one to two-thirds of the original penalty).

The process for leniency negotiations encompasses three phases: (i) marker request; (ii) presenting of information that confirms the existence of the reported conduct; and (iii) formalization and signing of the leniency agreement.

The proposal, negotiations, applicants' identities, and documents part of the leniency agreement are confidential until a final decision is rendered by CADE's Tribunal[24], except if the signatories to the agreement waive their right to secrecy.

Leniency negotiations can be forfeited at any moment by both parties to the negotiation without representing a confession to the reported conduct, provided that it occurs before the signing of an agreement. In such event, all information and documents obtained by the GS in the context of the negotiations must not be used by CADE for any purposes whatsoever. Notwithstanding, the GS may open a proceeding to investigate facts related to the reported conduct of the forfeited leniency investigations, but only if based on non-related information and evidence.

After the original negotiations' forfeiture, the GS will contact the next marker holder in line (if any) for the commencement of new negotiations. No aspect of the leniency negotiation process is open to the public, unless there is a specific legal/judicial command or a request by the negotiating parties, provided that the GS confirms that the publicization of the leniency agreement will not impair its investigation.

In addition, it is possible to negotiate a leniency agreement in the course of an ongoing investigation related to another infraction unknown to the antitrust authority (Leniency Plus), obtaining a fine amount reduction for the ongoing investigation in return. Likewise, the party negotiating a Leniency Plus agreement may combine it with a settlement agreement for the ongoing investigation, obtaining an even more substantial fine amount discount.

[24] However, CADE's Resolution No. 21/2018 regulated access to leniency documents for the purpose of private damage claims after a final ruling decision has been rendered.

6 Settlement Agreement

Article 85 of the Brazilian Competition Law sets out that CADE may, on its own discretion, and considering the public interest, undertake a settlement agreement with a defendant to an ongoing proceeding, in order to have the settling party cease its participation in the investigated conduct (*Termo de Compromisso de Cessação*, "TCC").

Therefore, the TCC is an agreement that may be negotiated with CADE in order to advance the termination of the administrative proceeding. Any defendant interested in entering into a TCC may submit a marker request to CADE, which will be either negotiated with the GS or with the case's reporting commissioner, depending on the phase of the proceeding at the time of the request.

If a proposal is made while the case is still under review by the General Superintendence, the negotiation deadline will be established at the discretion of the authority. Contrastingly, if a proposal is made after the case has already been brought to the Tribunal for a final decision, the negotiation period will be limited to a maximum of 60 days.

The negotiation process may be confidential, at CADE's discretion. However, the TCC itself, once approved, will be made publicly available on CADE's website. Confidential information will be redacted.

The settlement agreement must:

(i) specify the respondent's obligations to cease the conduct under investigation or its harmful effects, as well as other obligations deemed applicable;

(ii) set a daily fine for full or partial contempt of the obligations undertaken; and

(iii) set the pecuniary contribution amount, when applicable.

Although CADE does not restrict the number of TCCs to be executed with interested parties, its bylaws predetermine the maximum applicable discount to the hypothetical fines that the parties would be subject to. Such discounts will consider the moment upon which the marker was requested and the degree of cooperation of the settling party.

As regards the method applied by CADE for calculating the pecuniary contribution, CADE's directives set forth the following discount standards: (i) the first defendant to come forward and execute a TCC may benefit from a reduction of 30% to 50% of the expected fine in the event of a conviction; (ii) for the second defendant, the reduction is of 25% to 40% of the expected fine; (iii) from the third defendant onward, the reduction is up to 25% of the expected fine (this is the applicable discount considering the stage of the Administrative Proceeding); and (iv) for the agreements executed after the case is presented to the Tribunal, the maximum reduction will be of 15% of the expected fine.

Whenever the administrative proceeding concerns an investigation of agreements, combination, manipulation, or adjustment between competitors (i.e., explicit collusion), the payment of a pecuniary contribution and the admission of guilt are mandatory. CADE may also request the party to cooperate extensively with the investigation.

Finally, it is important to keep in mind that undertaking a settlement agreement with CADE does not grant criminal, civil nor administrative immunity.

7 CADE and the Judicial Branch

The Judicial Branch will act when called upon by the administrative authority, in cases where CADE seeks the enforcement of its decisions, or by those harmed by an anticompetitive conduct in damage claims brought against the violators. It can also act when called upon by parties that disagree with the decision rendered in the administrative sphere, seeking its annulment.

7.1 Private damage claims within civil courts

Those affected by anticompetitive conduct may seek injunctive relief and compensation for damages under article 47 of the Brazilian Competition Law. Since CADE does not protect individual interests, this article seeks to provide for the private interests involved, in which case the text should be understood as any individual or legal entity who has suffered damage resulting from the anticompetitive conduct, directly or indirectly.

Thus, the legitimacy to propose damage claims is present on those affected, in the case of individual interests, or through the intermediation of representatives of society's interests on collective cases, such as the Public Prosecutor's Office.

The adverse impact of the overcharge that defines damages on these types of cases can be used as a procedural argument by both parties involved in the lawsuit (pass-on effect). The pass-on argument can be used by indirect purchasers when claiming damages as a consequence of anticompetitive conduct, or by the defendants, when claiming that the effect reduced the actual harm suffered.

In Brazil, damage claims are not as common as in other legal systems, such as in the United States or Europe, but the tide is slowly turning.

With the aim of improving the damage claims situation in Brazil, the Legislative Branch enacted Law No. 14,470/2022, which amends the Brazilian Competition Law with the purpose of settling controversial procedural matters concerning damage claims due to anticompetitive practices, while providing tools to facilitate the filing of this type of claim.

The new Law bolsters the "private enforcement" of competition law in Brazil, providing incentives that encourage potential claimants to seek compensation for damages resulting from antitrust violations, such as cartels. Private enforcement is regarded as an initiative complementary to CADE's public enforcement.

Law 14,740/2022 establishes that those harmed by antitrust violations provided for in article 36, paragraph 3, items I and II of the Brazilian Competition Law (which includes practices of collusion, such as cartels) will be entitled to claim for double damages.

The new Law also establishes that double damages will not apply to leniency applicants and to defendants that decide to settle with CADE, meaning that, in these cases, the parties will only be liable for the compensation of the actual damages. Similarly, the new Law determines that the parties that enter into such kinds of agreements with the antitrust authority will not be held jointly and severally liable for damage caused by other companies involved in the same practice.

In addition, the new Law provides that the limitation period will not be triggered while an investigation is under CADE's analysis. It further establishes a limitation period of five (5) years, which is prompted by the unequivocal acknowledgment of the damage, by the aggrieved party, which will be considered as the date of publication of CADE's decision in the administrative proceeding related to such claim.

7.2 Judicial Review of CADE's Decisions

Because of CADE's position as an administrative authority, the decisions rendered in the administrative sphere will always be subject to the analysis of the Judicial Branch, due to the constitutional principle of the non-void function of judicial control, as provided for in article 5, item XXXV, which states that: "*the law shall not exclude any injury or threat to a right from the appreciation of the Judicial Branch*".

7.3 Civil Courts and Arbitration

Due to the number of cases involving antitrust matters being submitted for consideration, the Judicial Branch has sought ways to improve the upholding of justice in this type of lawsuit. In this context, Resolution No. 445/2017 of the Federal Court Council, provided for the creation of federal courts specialized in competition law and international trade matters, with concurrent competence for the trial of these types of claims.

Also, in the Brazilian legal system, disputes between private parties involving competition matters may be resolved through arbitration, since damage claims involve rights that can be settled. However, considering that the Competition Law regulations are in force, arbitrators must apply them systematically, analyzing all of the provisions involved, and therefore adopting the necessary measures to ensure that whatever decision is restricted to the available rights of the parties involved in the proceeding.

8 Ministry of Finance's Secretariat for Economic Monitoring ("SEAE")

Among the duties of this secretariat, SEAE is in charge of the development of competition advocacy in Brazil (or competition promotion), which focuses on incorporating competition concerns into public policies and regulation, as well as assessing legislative proposals before Congress.

Although SEAE does not act as a deliberative body and its assessments are opinion-based, its influence often brings about normative or regulatory changes that are in favor of a more competitive and efficient environment.

In its Intensive Regulatory and Competition Evaluation Front ("FIARC"), SEAE seeks to improve the regulatory framework in Brazil, issuing opinions on anticompetitive regulations, upon the request of individuals and private or public legal entities.

COMPLIANCE

1 Compliance in the Spotlight

In order to correspond to requirements set forth by the international treaties against corruption, Brazil enacted Law No. 12,846/2013 (commonly named the "Brazilian Clean Company Act" or "BCCA") on August 01, 2013. Such law provides for the civil and administrative liability of legal entities due to harmful acts against the Government, practiced in their interest or for their benefit. In addition, Federal Decree No. 11,129/2022, enacted on July 11, 2022, regulates the Brazilian Clean Company Act and establishes the guidelines for evaluating an Integrity Program, under Brazilian authorities.

In this new legal landscape, it is essential that both national and foreign companies review their operational and administrative routines in view of the new rules, adopt and enhance their Codes of Ethics and Conduct, and implement practices in line with the legal standards for relationship with the Government through Compliance Policies.

The main legislation directly addressing corporate risk and compliance management in Brazil are:

- Law No. 12,846/2013 - Brazilian Clean Company Act
- Federal Decree No. 11,129/2022 – Regulation of Brazilian Clean Company Act
- Law Decree No. 2.848/1940 - Criminal Code
- Law Decree No 3,689/1941 – Criminal Procedure Code
- Law No. 12.850/2013 – Criminal Organizations
- Law No. 12,529/2011 – Competition Law
- Law No. 9,613/1998 – Anti-Money Laundering Law
- Law No. 8,666/1993 – Public Bidding Law
- Law No. 14,133/2021 – New Public Bidding Law
- Law No. 8,429/1992 – Administrative Misconduct Law
- Law No. 13,869/2019 – Abuse of Authority Law
- Law No. 7,492/1986 – White Collar Law
- Law no. 13,964/2019 – Anticrime Law
- Law No. 13,608/2018 – Reporting Channels Law
- Law No. 7,347/1985 – Public Civil Action Law
- Law No. 13,303/2016 – State-owned Company's Law
- Law No. 14,478/2022 – Crypto-assets Law
- Normative Ordinance No. 19/2022 – Summary Judgment of Administrative Liability Proceedings (PAR) amended by Normative Ordinance No. 54/2023
- Ordinance No. 909/2015 – Evaluation of Integrity Programs
- Ordinance No. 910/2015 – Administrative Responsibility and Leniency Agreements
- Interministerial Normative Ordinance No. 36/2022 – Leniency Agreements
- Law No. 12,813/2013 – Conflict of Interest Law

- Central Bank Circular 3,978/2020 – Policy and Procedures related to AML/CFT
- Resolution CVM No. 50/2021 – Policy and Procedures related to AML/CFT
- Resolutions of the Public Ethics Committee (2000)
- Resolution No. 20 of the Federal Senate (1993)

The Brazilian Clean Company Act has become the main statute on the fight against corruption, notwithstanding its recurrent joint application with the other legislations referred above, on a case-by-case basis. It applies to any corporation, foundation, association or foreign company that has its registered office, branch or representation in Brazil and which practices wrongful acts against the government. Both foreign governments and public international organizations are encompassed by the term "government".

The Law provides for administrative and civil strict liability of legal entities, but it does not exclude the criminal and civil individual liability of its directors or officers or of any natural person who is a perpetrator, co-perpetrator or participant of the harmful act. Directors and officers shall only be held accountable in connection with a harmful act to the extent of their culpability under the Brazilian Criminal Code, New Public Bidding Law and others.

Parent companies, subsidiaries, affiliates, or co-members of a consortium, within the scope of the contract, may be deemed joint and severally liable for the corrupt practices established in the law, with such liability being limited to the payment of penalty fines and full compensation of the damages caused. In the event of a merger or amalgamation, the responsibility of the successor is restricted to payment of a fine to the extent of the assets transferred.

2 Illegal Practices

Under the Brazilian Clean Company Act, the following acts are prohibited from: (i) offering, promising or granting any undue advantage to a national or foreign public official; (ii) provenly financing, paying, sponsoring or, through any other means, subsidizing such illegal acts; (iii) provenly using an individual or legal entity to conceal or disguise the real interests or the identity of the beneficiaries of the acts committed; and (iv) hindering the government's investigations or inspection activities, or interfering in their operations.

Within the context of public bids, such Law also prohibits:

- frustrating or defrauding the competitiveness of a public procurement procedure by means of an arrangement, agreement or any other method;
- preventing, disturbing or defrauding the performance of any act in a public procurement procedure;
- removing or attempting to remove a bidder in public procurement procedure, by means of fraud or offering any kind of advantage;
- defrauding public procurement procedures or related contracts;
- creating a legal entity to defraud a public procurement procedure or to enter into government's contract;

- obtaining, fraudulently, an undue advantage or benefit from an amendment to or an extension of the agreement with the government, or from the notice of the public procurement procedure or the related contractual instruments; or
- rigging bids, manipulating or defrauding the economic-financial balance of a government contract.

This broad definition of wrongful acts may lead to diverse interpretations of such Law on the part of the government when initiating investigations and proceedings against corporations, thus exposing companies to greater risks. These risks will be better measured when regulations are implemented, and jurisprudence and case law evolve.

2.1 Fines and Penalties

At the administrative level, companies held liable for wrongful acts under the law shall be fined and required to publish the condemnatory decision in a widely circulated media outlet and on the company's website after undergoing an Administrative Liability Proceeding (PAR).

The amount of the fine may vary from 0.1% to 20% of the gross revenue of the last fiscal year prior to the initiation of the PAR. If it is not possible to apply such criteria, the competent authority may apply a fine that varies from BRL 6,000.00 to BRL 60 million. For purposes of evaluating the amount of the applicable fine, the competent authority will take the following into consideration: (i) seriousness of the offense; (ii) benefit earned; (iii) consummation or attempt; (iv) degree of injury; (v) negative effect caused by the unlawful act; (vi) the corporation's financial soundness; (vii) cooperation in investigations of the legal entity; (viii) existence of internal control mechanisms (effective Integrity Program); and (ix) the amount subject to public contracts in force jointly with the injured government entity.

At the judicial level, competent authorities may apply the following sanctions: (i) forfeiture of assets, rights or amounts representing advantage or profit directly or indirectly obtained from the wrongful act, subject to the right of the injured party or a good-faith third-party; (ii) partial suspension or interdiction of the activities of the company; (iii) compulsory dissolution of the company; (iv) prohibition from receiving incentives, subsidies, grants, donations or loans from public agencies and public financial institutions or from financial institutions controlled by the government for a minimum period of 1 year and a maximum period of 5 years.

Additionally, the Brazilian Criminal Code also establishes criminal liability for several crimes relating to corrupt practices, such as money laundering, fraud and corruption of public officials. The Administrative Misconduct Law, on the other hand, establishes penalties for public officials that take part in administrative misconduct, but also for private parties that participate in the activity or benefit from it. Finally, the Brazilian Clean Company Act only sanctions corrupt practices between private companies and the government and its officials, as there are no penalties for corruption acts practiced between solely private companies and individuals (private corruption) under the Brazilian legal framework.

3 Leniency Agreements

The Brazilian Clean Company Act establishes the possibility of companies entering into leniency agreements with investigative authorities. These agreements are possible if collaboration with the government results in the identification of other involved parties, and in the swift acquisition of information and documents proving the illegal act. However, since the Law establishes a "first come, first served" rule, other companies involved in the wrongdoing may not feel as encouraged to come forth and provide potentially useful information as well.

Moreover, for purposes of the Brazilian Clean Company Act, only legal entities are entitled to obtain such benefits and, regarding natural persons, Brazilian legislation provides for criminal plea bargains, which also require individuals to provide useful information in order for the plea bargain to be successful. Thus, any individual who collaborates with the authorities by presenting information and documents, under the purpose of a leniency agreement to a legal entity, will not benefit from any possible reduction of sanctions eventually applied by the authority to the legal entity. Both tools result in a decrease of the company/ individual's sanctions, if all requirements established by law are met.

The fine sanction on a company can be reduced up to 2/3 as a result of a leniency agreement. In December 2022, Interministerial Normative Ordinance No. 36 was published, which provides for the criteria observed by Brazilian authorities to reduce, by up to 2/3, the applicable fine under leniency agreements, thus limiting the authorities' discretion in defining the amount to be reduced.

4 Summary Judgment of Administrative Liability Proceedings (PAR)

Normative Ordinance No. 19, of July 2022, included the possibility of summary judgment of PARs that are pending before the Brazilian Office of the Comptroller-General (CGU). The summary judgment introduced a settlement option that is simpler and faster than a leniency agreement, and enables mitigating circumstances to be taken into consideration for companies that:

- assume strict liability for the acts under investigation;
- agree to pay compensation for any damage caused;
- return any advantages resulting from the offenses;
- agree to pay the applicable fine;
- comply with requests for information regarding the proceeding that the legal entity has access to; and
- waive the right to file a defense or lawsuit relating to the PAR.

As opposed to leniency agreements, however, entities that intend to enter into a summary judgement within a PAR do not necessarily need to provide extensive new information to the authorities concerning the wrongdoings.

In addition to a fine reduction, such legal entity can potentially be exempted from the extraordinary publication of the condemnatory decision, as well as benefit from mitigating circumstances that underpin the penalties aimed at restricting participation in public bids, if applicable.

5 Integrity Programs

Unless required in specific cases (e.g., for entering into government contracts as provided for by the New Public Bidding Law and certain entities that receive public financing) the implementation of an anticorruption Compliance Program is not mandatory under Brazilian legislation.

In this regard, each company will determine, on a case-by-case basis, the level of governance it intends to implement, following best guidelines and legal standards provided by the legislation. In this regard, it is recommended that companies implement mechanisms and internal control proceedings against irregularities on the application of its conduct and ethics statutes. Such mechanisms, referred to as an 'integrity program', must be suitable and updated according to the activities and requirements of the undertaking. The existence of a well-structured integrity program helps to diminish penalties in the event of an infraction of the compliance or anticorruption obligations set out by law up to 5% (five percent) of the fine.

As a corporate governance tool, a solid compliance program enables the establishment of a safe environment for interaction among the company, its investors and management, preserving directors and managers from potential Administrative, Civil and Criminal liabilities.

Federal Decree No. 11,129/2022 provides for the minimum requirements for an integrity program to be considered effective and, thus, enable the involved company to benefit from a reduction in fines for infringements. According to the Decree, a compliance program consists of:

> *"[the] mechanisms and internal proceedings of integrity, auditing and incentives to denounce violations in the context of a corporation, and the effective application of codes of ethics and conduct, policies and guidelines with the objective to I - prevent, detect and remediate violations, fraud, irregularities and illicit acts committed against the government, either national or international; and II - foster and maintain a culture of integrity in the organizational environment."*

Minimum requirements for the program to be considered a mitigating factor include:

- Engagement of senior management of the company and allocation of appropriate resources for the integrity program;
- Implementation of a code of ethics, code of conduct and compliance policies applicable to all employees and management;
- Extension of the program to third parties such as suppliers, service providers, agents and associated companies;
- Periodic training and campaigns to disseminate information on the integrity program;
- Periodic risk assessment;
- Proper accounting registries;
- Internal controls that secure trustworthy financial reports;
- Internal proceedings that prevent fraud and illicit acts within the context of public bids, public contracts and overall interaction with public officials;
- Independence means and delegation of powers to the compliance officer;
- An open communication channel for reporting of irregular activity, available to employees and third parties;

- Disciplinary actions in case of violations;
- Internal procedures to secure the immediate interruption of the detected violation, and damage remediation;
- Appropriate checking measures, based on a risk-based approach for:
- Contracting of third parties
- Hiring of politically exposed persons
- Participating in sponsorships and donations;
- Vetting measures during merger and acquisition procedures as well as corporate restructuring operations regarding past misconduct or vulnerabilities of the involved companies; and
- Continuous monitoring of the integrity program.

On a slightly different note, recently enacted Federal Law No. 14,457/22, which aims to improve labor regulations, establishes that certain entities must implement and execute internal measures such as conduct guidelines, informative campaigns, training events, reporting channels and disciplinary measures to prevent, detect and remediate sexual harassment and other forms of violence in the workplace.

6 AML/CFT Applicable to Financial and Banking Operations

Aiming to bring the Brazilian banking system closer to the current reality affected by the risks of new forms of money laundering crimes, the Central Bank of Brazil enacted — in January 2020 — Circular 3,978, providing for new AML (Anti-money laundering) / CFT (combating the financing of terrorism) rules, which came into effect on October 1, 2020. What is more, on July 27, 2021, the Central Bank of Brazil enacted Resolution No. 119, which modified certain provisions of Circular 3,978. The Brazilian Securities and Exchange Commission (CVM) also enacted its own rules regarding this matter, through Resolution CVM No. 50/2021.

As per these rules, the financial institutions and other BACEN-authorized entities are called upon to implement internal controls and procedures in accordance with the characteristics and complexity of the line of business carried out by each institution.

Although the rules set forth certain guidelines, each institution has the flexibility to establish its own set of policies and procedures in a manner more compatible to its operational activities, which shall be based on the profile of its clients and service users, as well as on the risks of such activities and other elements related to the profile of the institution's employees, partners and service renderers.

6.1 AML Policy

AML Policy must be documented and previously approved by the institution's board of directors and/or the board of officers. Furthermore, the institution's personnel must be trained to deal with the combat of money laundering and financing of terrorism.

6.2 Prudential Conglomerate

Institutions comprising prudential conglomerates are authorized to adopt one single AML/CFT set of policies, procedures and internal risk analysis, upon prior approval by the board of directors or board of officers, as applicable. Moreover, the procedures intended to monitor, select and analyze the suspicious operations, including the report of such operations to the Federal Financial Operation Board ("COAF"), may also be shared on a centralized basis by all the institutions of the same conglomerate.

COAF was transferred to the Central Bank from the Ministry of Economy, as established by Law 13,974/2020, enacted in January 2020. In 2023, COAF was repositioned within the Ministry of Finance by Provisional Measure No. 1,158/2023. However, these changes did not modify the way companies should conduct their Know Your Customer (KYC) and AML/CFT procedures.

6.3 Appointed Officer

Each institution must submit to BACEN the name and qualification of one specific officer in charge of representing the institution before BACEN in connection with all AML/CFT related matters.

6.4 Know Your Client ("KYC")

As to the KYC policies, Circular 3,978 provides for the related processes, determining that they must consider as basic elements regarding the clients and users, specific identification, qualification and associated risk level. The procedures for qualification of the clients must be carried out upon the gathering and processing of personal and financial information pertaining to each client and duly evidenced by means of proper and valid documentation compatible with the level of risk and the nature of the business with each client.

According to Resolution No. 169, the Central Bank requires the financial institution to obtain additional information about the client, such as place of residence/location of headquarters or branch.

6.5 Ultimate Beneficiary Owners

Equally relevant and mandatory upon the enactment of Circular 3,978 is the need to identify the individuals who are considered the ultimate beneficiary owners of legal entities that deal with and enter into agreements with the financial institution. The rule creates the obligation for the institutions to apply to the ultimate beneficiary owners the same procedures that are applicable to the legal entity as for the risk measurement related to the intended business.

The institutions may establish a minimum value as a reference to the equity participation to determine when someone will be considered an ultimate beneficiary owner, subject to a minimum of 25% (calculated either direct or indirectly). To that end, the institution must follow the same patterns defined by the Brazilian Internal Revenue Service to facilitate the identification of the individual subject to the ultimate beneficiary owner regulatory treatment.

6.6 Employees, Business Partners and Service Providers

Financial institutions must implement procedures to be applied to the relationship with their own personnel, and various business partners and service providers. The gathered KYC information and documents related to such relationships must be maintained by the institutions for ten years as of the date of termination of each contractual relationship.

6.7 Risk Assessment

The institution must take into account and assess the risks related to the likelihood of materialization and magnitude of financial impacts, as well as legal, reputational and socioenvironmental effects stemming from its business and operational relationships with clients, users, employees, business partners and services providers, as applicable. The current rules permit the institution to create specific sets of risk categories in order to enable the establishment of specific controls.

6.8 Suspicious Operations and Business Situations

As to suspicious operations and business situations, the procedure related to monitoring, selection and analysis of risks must be detailed and in written format in a risk manual distributed across the institution following its approval by the institution's board of directors and/or board of officers, as applicable. The monitoring and selection of suspicious situations must be fully carried out in forty-five days as of the date the facts occurred.

6.9 Reports to COAF

All suspicious cases must be reported to the COAF and the communications derived from suspicious activities must occur within 24 (twenty-four) hours from the date the suspicious activity took place. In case an institution does not report any suspicious activities to the COAF within a one year time-period, a declaration must be filed, stating that no suspicious cases to be reported occurred. This 'negative report' must be filed within ten business days as of the termination of the respective fiscal year.

6.10 Politically Exposed Person ("PEP")

The current rules broaden the already existing concept of PEP. Besides the individuals already enlisted prior to Circular Letter 3,978, city counselors, mayors and state congressmen, as well as political parties' presidents and treasurers or equivalent must also be included.

6.11 Law 9,613/1998 – Anti-money Laundering Law (AML)

According to the Anti-money Laundering law, it is a crime to conceal the nature, origin, location, disposition, movement or ownership of assets, rights or amounts resulted, directly or indirectly, from a criminal offense. Offenders are subject to a penalty ranging from three to ten years, as well as a fine.

Nowadays, any crime can be deemed a predicate offense to the practice of money laundering.

The Law also provides for a list of business activities whose management is subject to specific obligations in terms of AML, including:

(i) raising, intermediating and investing financial resources from third parties in national or foreign currency;
(ii) purchasing and selling foreign currency or gold as a financial asset or exchange instrument;
(iii) holding in custody, issuing, distributing, liquidating, negotiating, intermediating or managing bonds or securities.

Such obligations involve identifying clients and keeping records (of such clients and certain transactions), informing COAF of any suspect transactions, as well as responding to any of COAF's requests, among others.

In November 2023, the Brazilian Federal Supreme Court established a precedent that intelligence reports from the Financial Activities Control Council (COAF) can be shared either spontaneously or upon request by criminal prosecution agencies for criminal purposes. This can be done without the need for a judicial authorization. This decision, referenced as Constitutional Claim ("RCL") 61,944, enables financial oversight and law enforcement to collaborate more efficiently in regard to the investigation and prosecution of financial crimes. The decision underscores the court's recognition of the importance of intelligence in combating illegal financial activities.

Finally, only individuals may be held criminally liable for the practice of or participation in the crime of money laundering, whereas legal entities are subject to administrative proceedings for failing to comply with AML obligations.

CONTRACT LAW

1 INTRODUCTION

The Brazilian Civil Code, in force since January 11, 2003, provides for the general principles of Contract Law and regulations regarding most legal agreements, such as distribution, agency, lease, free lease; where the remaining contractual types are either governed by specific instruments (such as, among others, the sales agency agreement) or have no legal system, in which case the agreement must comply with the general assumptions and requirements set out by the Brazilian Civil Code.

Therefore, it is necessary to determine whether a given agreement falls within one of the regulated frameworks (either the Civil Code or a specific instrument) before its execution in order to ascertain if it meets the formal and substantial requirements established by the Brazilian legislation.

The following are the requirements for a contract to be enforceable in Brazil: qualified party, lawful scope, and proper or not-legally-forbidden form. However, certain agreements may require further essential elements, according to their nature. As an example, the price is an essential element in a purchase and sale agreement.

As a general principle, the parties (Brazilian or foreign citizens) are free to enter into agreements with each other and to set mutual obligations at will (principle of free will). Based on the expression of will, silence will be considered as consent whenever there is an implied authorization. In this case, an express declaration of will is not necessary. As long as an obligation is not unlawful, in conflict with the law, immoral, or impossible to be enforced, it is considered valid. Moreover, there must be some balance between the mutual obligations set in a contract, that is, a contract cannot set evidently disproportional encumbrances on one party, while granting extreme advantages to the other.

Under the Brazilian legal system, the principles of contractual effectiveness, good faith, and the social role of contracts are used for the purposes of interpreting agreements, subject to some limitations. The contractual conditions must neither diverge from nor infringe on statutory rules, which in most cases prevail over the mutual agreement between the parties.

2 GOVERNING LAW AND LANGUAGE

According to the Introductory Law to the Rules of Brazilian Law, the law applicable to international agreements is the law of the location where the obligations are established, which is the domicile or principal place of business of the proposing party. Hence, in principle, in Brazil, the parties are not allowed to choose the governing law of a contract, based on which the contract will be analyzed and interpreted.

If one of the parties is foreign, foreign law may apply to the contract through the mechanisms of private international law, although Brazilian legal culture is still averse to doing so. In short, if an action is filed and the court considers itself legitimate to rule on the dispute, then Brazilian law is very likely to be applied.

Finally, it is important to point out that under Article 224 of the Brazilian Civil Code, documents drafted in any foreign language must be translated into Portuguese in order to have legal effect in Brazil, except in cases where arbitration was chosen to solve any dispute arising from the contract. When a party submits any document to court, whether as evidence or to support the lawsuit, Article 192 and its Sole Paragraph of the new Brazilian Civil Procedure Code establish that its sworn translation must be attached to the case records.

3 PARTY'S LIABILITY

As a rule, provisions or clauses that limit the liability to indemnify to a certain amount are valid provided that, when applied, they do not characterize a *de facto* exclusion of the liability or are greatly reduced in relation to the damage caused. However, provisions on liability limitations that completely exclude the liability of one of the parties due to a certain type of damage are not usually accepted inBrazilian courts.

It should be also noted that consumer relationships are regulated by the Brazilian Consumer Code, which, in Article 51, item I, states that contractual clauses concerning the sale or supply of goods and services must be deemed void and unenforceable if they prevent, exempt, or reduce the seller's or suppliers' liability for defects of any kind in goods/services or imply a renouncement or a waiver (by the consumer) of significant rights. Such clause also states that "in consumer relations between supplier and corporate-entity consumers, the amount of indemnity may be limited in justifiable situations".

4 BRAZILIAN GENERAL DATA PROTECTION LAW- LGPD

It is essential that agreements comply with the provisions of the Brazilian General Data Protection Law ("LGPD"), a regulation that governs any type of personal data processing operation carried out in Brazil, from the collection and processing to the transfer of personal data of individuals, regardless of the country in which the legal entity that will send or receive the data is located, pursuant to Article 3 of the LGPD. The Law provides that the data controller and operator will be severally liable in the event of non-compliance with data protection provisions established in Article 42 of the LGPD. Thus, it is important that the parties take notice of how the data are being treated.

5 ELECTRONIC SIGNATURE

Agreements signed electronically by two witnesses also hold executory force under Brazilian legislation. However, there are certain points to be observed regarding the appropriate means of signature. The safest form of acceptance of an electronic agreement as an extrajudicial executory instrument is a digital signature certified by the ICP-BRASIL, under the terms of Article 10, first and second Paragraphs of Provisional Measure No. 2200-2/2001, in force in Brazil. In addition, Law No. 14,620/23 added paragraph 4 to Article 784 of the Brazilian Civil Procedure Code, which allowed any type of electronic signature provided by Brazilian law, exempting the signature of witnesses when the electronic signatures integrity is checked by a signature provider.

6 TERMINATION

It is extremely important that contractual relationships be carefully analyzed before the termination of an agreement, especially in unilateral terminations. If the contractual relationship implies economic dependence, characterized by the decisive power of one party over the other – allowing them to maintain the agreement and remain in the market –, it may result in contractual imbalance. In these situations, the unilateral termination by the party with greater economic power may lead to indemnity payments.

The same occurs when one of the parties raises a legitimate expectation that the commercial relationship will remain in force for a considerable amount of time, and result in theoretical profit and investments. Nonetheless, if instead, the other party terminates the agreement unilaterally, it may result in an indemnity right against the terminating party, under the terms of Article 473 of the Brazilian Civil Code.

CORPORATE CRIMINAL LAW

1 General Overview of Criminal Liability

In Brazil, as a rule, criminal liability is enforced on individuals and depends on the existence of a causal link (*nexus*) between the conduct (action or omission) and its result. In other words, there must be a clear chain of causation in order to establish criminal liability.

As a result, only the individual who is directly involved in the unlawful act can be held liable for the crime. The participation in criminal conduct will also be punished to the extent of the culpability of each individual, which must be determined on a case-by-case basis.

The legal nature of criminal liability has been historically subjective. In other words, it depends on the proof of intent or fault. However, the concept of intent (willful misconduct – when the agent is aware of and seeks to achieve the outcome that was reached) has increasingly expanded. As a result, the so-called "knowing intent" has been frequently applied to the detriment of the original concept. "Knowing intent" means that one assumes the risk of producing the criminal result, and it can still occur in situations of omission, that is, when one fails to adopt the necessary measures in order to avoid a criminal result.

Fault, on the other hand, is established if the agent causes the result due to recklessness, negligence, or lack of skills. A crime will only be punished by fault when the criminal legislation expressly provides for this possibility. Otherwise, only willful misconduct is of interest.

Within the corporate structure, criminal liability encompasses, for example, directors, managers, officers and legal representatives, all of whom can be held liable for any criminal act, even if such act has been committed on behalf of a legal entity, and if, due to omission, these individuals have failed to implement measures aimed at preventing a criminal outcome. Caselaw has demonstrated that the position (such as director, manager, etc.) held by an individual is directly linked to their criminal liability, given the responsibilities they assumed within the company's bylaws/corporate governance.

It is also important to clarify that criminal liability relates to the individuals who were in charge at the time of the facts. On the other hand, because they are legal entities, companies can only be held criminally liable in cases of environmental crimes, as provided for in the Brazilian Federal Constitution, Art. 225.

2 Tax-Related Crimes and Consequential Criminal Liability

Tax evasion is defined as undue suppression or reduction of taxes, as well as any accessory charges through any of the following conduct:

(i) omitting information or providing false statements to treasury authorities;

(ii) defrauding tax investigators by providing imprecise elements, or omitting transactions of any kind in a document or ledger required by tax law; and

(iii) falsifying or altering any document related to a taxable transaction.

This offense is punishable by imprisonment from two to five years, plus a fine to be defined by the court.

Submitting a false declaration or omitting a declaration of earnings, assets or facts, or carrying out fraud to **exempt oneself** from paying taxes, partially or fully, as well as failing to withhold taxes or social contributions owed within the legal deadline, are also punishable from six months to two years of imprisonment.

It is worth noting that the Federal Supreme Court ("STF") has established that, where tax crimes that require a result in order to be considered consummated (material crimes) are concerned, a criminal investigation or proceeding is only possible as of the conclusion of the administrative proceeding that precedes criminal charges. Therefore, one can only be held criminally liable for such a crime after conclusion of the due administrative proceedings.

In accordance with the provisions set forth under Article 9, Paragraph 2, of Law 10,684/2003, payment at any time of taxes owed extinguishes punishment for the crimes set forth under Law 8,137/1990.

Paying installments of the debt resulting from tax evasion/omission, however, does not extinguish punishment. It merely suspends it until payment has been made in full, at which time punishment will be lifted.

Where a company is concerned, its managers, at the time of the offense, are to be held criminally liable for tax evasion and crimes against the economic order, as provided for in Law 8,137/1990, if they omit or provide false information to tax authorities with the purpose of suppressing or reducing taxes owed, or if they provide incorrect or untrue data or neglect operations of any kind in a document or book required under tax laws.

It is important to highlight that during investigations involving tax crimes, police authorities can request the lifting of the seal of financial data/information of individuals, which depends on the judge's decision, during any sort of police/administrative inquiry or judicial proceeding. Even though the Brazilian Constitution does not provide specifically for a right to financial confidentiality, this right can be inferred from a general provision concerning the right to privacy and intimacy, as provided for in Article 5, Item X, of the Federal Constitution.

In the current Brazilian landscape, it appears in many cases that authorities attribute to taxpayers the commission of tax crimes in everyday situations involving mere noncompliance with the tax legislation, in which there is no fraud, intent or any element that justifies criminalization.

In a decision of December 18, 2019, most of the justices of the STF decided to consider a crime punishable by imprisonment from six months to two years, plus a fine, due to the failure to pay a tax called ICMS, even if declared by the taxpayer. ICMS is a state tax imposed on operations involving the circulation of goods and on the provision of interstate, intercity and communication services.

According to recent judgments (which are not definitive because interested parties can file an appeal), the nonpayment of the tax will be subject to criminalization provided that there is repeat offense or if the taxpayer intentionally decides not to pay the amount owed to the state.

It is also important to mention that the authorities are communicating with each other in order to share data and information, especially the Brazilian Federal Revenue Office, the Central Bank of Brazil ("BC"), the Brazilian Securities and Exchange Commission ("CVM"), and the Council for the Control of Financial Activities ("COAF"), which has increased the chances of a criminal tax matter becoming a daily issue for Brazilian companies.

A new law in Brazil, Law No. 14,689/23, has reinstated a special tie-breaking vote in favor of the government in tax disputes. This Law also introduces new changes to the way that tax appeals are decided on. There is a rule (Decree No. 7,574/2011) establishing that if tax auditors find something wrong (evidence of tax crime), they have to report it to the public authorities, which could lead to criminal investigations. But now, if a tax case is decided in favor of the government because of this tie-breaking vote, any criminal investigation involving that case will be initiated. Therefore, if the tax court uses this tie-breaking vote and the government wins, the taxpayer will only have to give consideration to paying the overdue taxes without fear of criminal investigation or prosecution.

3 Labor-Related Crimes and Consequential Liability

The Brazilian legislation sets forth extensive protection for workers, both through common legislation and the Constitution. Compliance with labor laws demands great attention in order to avoid claims in labor or criminal spheres.

Labor relations in Brazil are regulated by the Consolidated Labor Laws ("CLT") (Chapter VII.1 above), which establish a complete system to protect workers, their rights and guarantees.

Where crimes against labor organization in Brazil are concerned, the Brazilian Criminal Code deems a crime to be, as provided for in Article 203, the frustration, through fraud or violation, of a labor right assured by existing labor laws, punishable with imprisonment from one to three years.

Within the context of subjective liability, the manager responsible for failure to comply with these labor laws can be held criminally liable for the offense resulting from non-compliance.

Although not mentioned in the chapter of the Brazilian Criminal Code addressing crimes against labor organization, a few other offenses relating to labor matters are also worth mentioning.

The crime of diminishing an employee to a condition analogous to slavery by submitting them to forced labor, to exhausting working hours, to demeaning labor conditions, or restricting their freedom in any way through debt contracted with the employer, as provided for in Article 149 of the Brazilian Criminal Code, is punishable by imprisonment of two to eight years, plus a fine to be defined by the court.

Exposing an employee's life or health to direct and imminent danger is also considered a crime, as provided for in Article 132 of the Brazilian Criminal Code, punishable by imprisonment of three months to one year, if a greater injury does not accrue from such endangerment. The applicable penalty is increased from one-sixth to one-third if the exposure to such danger is due to the transportation of people, in violation of rules set forth by law, with the purpose of rendering services at any establishment.

Concerning occupational accidents, the individual that gave cause to such accident can be held liable for bodily injury or even involuntary manslaughter.

Regarding bodily injury, which is an offense provided for in Article 129 of the Brazilian Criminal Code, the applicable penalty is imprisonment from three months to one year for unintentional injuries.

In the event of involuntary manslaughter, the applicable penalty is imprisonment from one to three years, which can be extended by a third if:

(i) the crime occurs due to failure to comply with professional technical regulations;

(ii) the agent fails to provide immediate aid to the victim or does not seek to mitigate the consequences of their act; or

(iii) flees to avoid being caught in the act.

4 Bankruptcy Law Violations and Consequent Criminal Liability

Law 11,101/2005 (Bankruptcy Law), which regulates bankruptcy as well as judicial and extrajudicial restructuring in Brazil, provides for crimes regarding these matters in Articles 168 to 178, for which the applicable penalties range from imprisonment, from two to six years, to detention, from one to two years, plus a fine to be defined by the court.

Article 179 specifically states that the company's directors, managers, officers, councilors and even its trustee will be held liable for criminal offenses, in a situation equivalent to debtors or bankrupt agents.

Under Article 180, the court order granting judicial or extrajudicial restructuring is a condition precedent to criminal liability where the aforementioned crimes are concerned.

5 Crimes Against the Environment and Consequential Criminal Liability

As mentioned previously, criminal liability in Brazil is, as a rule, individual and personal. The Federal Constitution, however, provides for exceptions to this rule, allowing for corporate criminal liability.

Corporate criminal liability for crimes against the environment is fully regulated by Act 9,605/98 ("Environmental Crimes Act"). According to section 3 of the Environmental Crimes Act, companies can be held criminally liable if the environmental crime is committed (i) through a decision by its legal or contractual representative or collegiate board and (ii) in the interest or benefit of the entity. In addition, corporate liability does not exclude the criminal liability of individuals, perpetrators, co- perpetrators, or participants in the crime.

Act 9,605/1998, the Federal Law addressing crimes against the environment, provides for offenses committed against the fauna and flora, urban order, and historical sites, as well as the environment as a whole. Under this law, the emission of gas, liquid, or solid waste in violation of legal standards is punishable with severe penalties, such as imprisonment for up to five years, plus a fine to be defined by the court, if the local ecosystem or human health is compromised by such pollution.

Moreover, Decree No. 6,514/2008 provides for administrative infractions against the environment and sets forth the administrative proceeding for investigations of such infractions as well as applicable penalties.

Lack of proper licensing is also considered a serious offense, which can result in the suspension of the company's activities when operating without required environmental licenses, as well as imprisonment of the responsible individuals. The environmental agencies issuing these licenses can also be held criminally liable if the licenses are issued to companies that do not comply with environmental laws.

Criminal liability in environmental matters is imputed in accordance with the agent's degree of guilt and is ascribed not only to the agents directly involved in the environmental damage but also to any party aware of the criminal conduct and negligent in preventing such offense from being committed, despite being able to do so. The Brazilian Superior Court of Justice ("STJ") previously held the position that corporate criminal liability would only be admitted in cases in which there was simultaneous responsibility of at least one individual.

In August 2013, however, the 1st Panel of the Brazilian Supreme Court of Justice ("STF") changed this opinion to allow for corporate criminal liability regardless of individual criminal liability. The Supreme Court justices determined that the Constitution does not require criminal liability of legal entities for environmental crimes for the simultaneous prosecution of individuals theoretically responsible within the company.

Since then, both the STF and the STJ began to authorize the prosecution and conviction of companies for environmental crimes, regardless of the imputation of the same fact to a representative of the company.

Therefore, a company can be held criminally liable for a crime against the environment notwithstanding the possibility of personally penalizing the individuals involved in such offense.

In situations in which the existence of a legal entity becomes an obstacle to the recovery of damages caused to the environment, Article 4 of Act 9,605/1998 provides for piercing corporate veils. Where penalties are concerned, individuals can face deprivation of freedom (imprisonment or confinement), as well as restrictions of rights (rendering services to a community, temporary limitation of rights, partial or total interruption of activities, fine, house confinement), which can replace a penalty that deprives freedom, provided that the conditions provided for in Article 7 of Law 9,605/1998 are met.

Legal entities, in compliance with the provisions established in Article 21 of Law 9,605/1998, are subject to fines, restrictions of rights (partial or total interruption of activities, temporary interdiction of the commercial establishment/activity, ban from public-private partnerships, as well as any government subsidies or grants) and rendering services to a community.

6 Consumer Relations Crimes and Consequent Criminal Liability

Federal Law 8,078/1990 instituted the Brazilian Consumer Protection Code, which establishes the legal principles and requirements applicable to consumer relations in Brazil.

The Consumer Protection Code provides for, among other things, regulations and liabilities on products and services provided to consumers and it sets forth the rules and applicable sanctions on administrative, civil, and criminal proceedings resulting from failure to comply with consumer laws.

Articles 61 to 74 provide for consumer-related crimes, most of which involve violation of the manufacturer's or service provider's duty to inform of certain aspects of the commercialized products/services, either by omitting or providing false or incorrect information on labels, casings, packaging, or advertising, thus misleading the consumer.

The applicable penalties for such offenses vary from imprisonment from one month to two years, plus a fine to be defined by the court, to restrictions of rights alternatively or cumulatively (rendering services to a community, temporary limitation of rights, broadcasting in popular media of the terms in which the offender was found guilty, at the expense of the offender).

Article 7 of Law 8,137/1990 also addresses crimes against consumer relations, punishable by imprisonment from two to five years, or a fine.

7 Crimes Involving Economic Law and Consequent Criminal Liability

Article 4 of Law 8,137/1990 provides for the following conduct considered to be crimes against the economic order:

(i) abuse of economic power with the intent to dominate the market by eliminating competition, in part or in full; and

(ii) creation of an arrangement, convention, agreement or alliance among offering parties, with the goal of artificially setting prices or quantities sold or produced, therefore exercising regionalized control over the market.

These offenses are punishable by imprisonment of two to five years, or a fine.

Article 36 of Law 12,529/2011 also provides for administrative infractions against the economic order, establishing that the acts, under any circumstances, which have as their purpose or that can have the following effects, are considered violations to the economic order, regardless of fault:

(i) to limit, restrain or in any way hinder free competition or free initiative;

(ii) to control the relevant market of goods or services;

(iii) to arbitrarily increase profits; or

(iv) to abusively exercise a dominant position. Conduct will be analyzed on a case-by-case basis.

On the subject of crimes against the economic order, cartels require special attention. Cartels are an association of business owners who enter into an agreement concerning variables significant to market competition.

As far as penalties are concerned, under Law 12,529/2011, legal entities can incur a fine, as well as their managers, if directly or indirectly responsible for the offense. Other applicable sanctions are established in Article 37 and can be imposed cumulatively with those previously mentioned or individually.

In addition to the pecuniary fines above, and considering the severity of the violation, the following can also apply:

(i) half-page publication, at the violator's expense, of the summary of the sentence in a court-appointed newspaper for two consecutive days, for one to three consecutive weeks;

(ii) ineligibility for official financing or to participate in bidding processes involving purchases, sales, construction works, services or utility concessions with the federal, state, municipal and the Federal District authorities and related governmental entities, for a minimum period of five years;

(iii) compulsory licensing of patents held by the violator; and

(iv) division of the company, transfer of corporate control, sale of assets, partial discontinuance of activities; among others.

Law 12,529/2011 also provides for a deferral (leniency) program, established in Articles 86 and 87, according to which, where crimes against the economic order are concerned, provided for under Law 8,137/1990, the execution of a leniency agreement, in compliance with the conditions set forth by law, results in suspension of the statutes of limitation on such crimes and prevents criminal charges.

Repression of antitrust offenses takes place both in the administrative and criminal spheres.

In the administrative sphere, a violation of the economic order is characterized regardless of its agent's malicious intent, even if harmful effects are merely potential and have not yet occurred. In the criminal sphere, there must be proof of the agent’s intent (malice), as well as proof of damage caused to the economic order.

During the course of investigations involving crimes against the economic order, there can be a breach of bank confidentiality, which must be authorized by a judge during any sort of police/administrative inquiry or judicial proceeding.

8 Crimes Involving the National Financial System and Consequent Criminal Liability

Considered to be Brazil's "white-collar crime legal system", Law 7,492/1986 provides for crimes against the financial system and crimes that are damaging to the country's economic order. It seeks to protect both individual and collective interests from such crimes, a concept in which market organization, the regularity of its instruments, as well as the confidence required from them, and the security of business transactions performed are of special significance.

The white-collar crime law addresses harmful or dangerous acts that attack assets or interests affiliated with the state's financial policy, that is, funding, administration, and disbursement, as well as any other conduct violating individual interest and wealth.

Article 1 of Law 7,492/1986 defines financial institutions as legal entities governed by public or private law that have as their main or accessory activity, whether cumulative or not, the funding, intermediation, or application of third-party funds, or those institutions that deal with securities. The concept of financial institutions can also encompass those that take on or manage insurance, exchanges, consortia, capitalization, or any other type of third-party savings or fund, as well as individuals who perform any of these activities.

Crimes against the National Financial System are addressed in Articles 2 to 23 of the white-collar crime law. Applicable sanctions are imprisonment for one to twelve years, plus a fine to be defined by the court.

Given the extensive list of possible agents, in light of the broad concept of a financial institution, and owing to the fact that such characterization is essential to impute any of the crimes set forth under the white-collar crime law, each criminal charge must be carefully examined.

In accordance with subjective culpability, legal entities cannot be held liable for white-collar crimes. Therefore, in compliance with Article 25, agents deemed to be directors, managers and controllers, as well as receivers, liquidators, or trustees of the financial institution, are to be held criminally liable for the offenses set forth under Law 7,492/1986.

During the course of investigations involving white-collar crimes, a breach of bank confidentiality can be imposed, which must be authorized by a judge during any sort of police/administrative inquiry or judicial proceeding.

9 Money-Laundering Crimes and Consequent Criminal Liability

Law 9,613/1998, known as the "money-laundering law", lists transactions defined as money-laundering crimes. This law was updated in 2012 by Law 12,683/2012.

Money laundering is defined as activities or transactions seeking to provide the appearance of legitimacy to the economic product of a crime previously committed, with the intention of allowing such product to enter the formal economy, and, therefore, making it available for use by the perpetrator of the crime preceding the money-laundering activity.

The crime of money laundering is considered worldwide as a three-stage process, which includes, respectively: placement, layering and integration.

(i) **Placement**: placing the unlawful/illicit money into the legal/financial system. This is the moment in which the funds/assets are transferred from their criminal source and are "washed" by being placed into the legitimate system. Money launderers commonly use offshore accounts to this end, in an attempt to escape domestic law enforcement.

(ii) **Layering**: once the funds are placed into the financial system, criminals use evasion techniques to avoid or inhibit authorities from tracing them. The objective is to create multiple financial transactions as a means of concealing the original source and ownership of the illegal funds.

(iii) **Integration**: in the last stage, the money returns to the criminal as if it were legitimate.

It is worth mentioning that Brazilian law does not specify the predicate offenses – in other words, crimes that can be considered antecedent to money laundering –, assuming that any criminal offense could precede the offense of money laundering.

In addition to the legal assets affected by previous crimes, punishment for money laundering is intended to prevent the agent from using the spoils of the previous crime as if they were legal, which would be destructive to the economy, the financial system, taxation, and to a number of legal assets that can be included within the protection of the social order and society itself.

The Federal Money-Laundering Law also created COAF, which has the purpose of governing and applying administrative penalties, as well as examining and identifying activities suspected to be illegal, as provided for in the money-laundering law, notwithstanding the jurisdiction of other agencies or entities.

As the Brazilian State is unable to inspect all financial and commercial acts, a system of compulsory collaboration was created, whereby professionals and entities working in sectors most used by criminals to hide resources must adopt a number of measures to prevent the practice of money laundering, as well as notify public authorities whenever they become aware of suspicious transactions, such as transactions involving high amounts and fractional deposits.

In this way, banks, jewelers, insurance companies and art auctioneers, for example, have a legal obligation to collaborate with the authorities, reporting any acts of potential concealment of illicit goods and amounts to COAF.

It is worth highlighting that COAF has an administrative structure and cannot request the launch of a police investigation or measures such as the lifting of bank secrecy. However, it can inform the competent authorities about the launching of the respective proceeding.

COAF is allowed to, for example:

(i) receive and organize data, and prepare financial intelligence reports to collaborate with the authorities in the investigation of crimes.

(ii) draft rules aimed at certain sectors that are sensitive to money laundering, and that do not have their own regulatory structure, such as factoring companies, for example, on the form and method of registering customer information, and on the suspected acts of money laundering that must be reported.

(iii) launch administrative proceedings and apply sanctions on entities and persons that fail to comply with the legal rules on preventing money laundering. Banks, which are regulated by the BC, or insurance companies, which are regulated by the Superintendence of Private Insurance ("SUSEP"), must observe the rules established by the corresponding regulatory body, before which they will be processed administratively.

Regarding criminal liability, any individual legally responsible for a legal entity that hides or disguises assets, rights, or money resulting from the criminal activities precedent to money laundering can be punished with imprisonment from three to ten years, including a pecuniary fine to be defined by the court.

In accordance with subjective culpability, legal entities cannot be held liable for money-laundering crimes. The agent who committed the crime set forth by law as money laundering is criminally liable.

It is important to note that during the course of investigations involving money-laundering crimes, the lifting of confidentiality can be authorized in order to determine whether the crime was committed or not. Such breach must be authorized by a judge during any sort of police/administrative inquiry or judicial proceeding, because, even though the Brazilian Constitution does not provide specifically for a right to bank confidentiality, this right can be inferred from a general provision concerning privacy and confidentiality, as provided for in Article 5, item X, of the Constitution.

In addition, due to Federal Law 13,964/2019, investigations of money laundering can use undercover police officers, and controlled action techniques.

In this regard, police officers will be able to infiltrate a criminal organization to obtain information that can be used in investigations, and to monitor and observe the conduct of suspects, without acting immediately, taking action at the most appropriate time to obtain evidence and information.

10 Crimes Against Social Security and Consequent Criminal Liability

Regarding crimes against the social security system, two specific offenses are worth mentioning: tax evasion of social security contributions and undue appropriation of social security contributions.

Where tax evasion of social security contributions is concerned, the provisions are those set forth under Article 337-A of the Brazilian Criminal Code. Evasion of social security contributions is characterized by suppressing or reducing social security and any accessory contributions through conduct such as fully or partially omitting revenue or profits earned, payments made or credited, as well as any other social security contribution taxable event.

In terms of undue appropriation of social security contributions, Article 168-A of the Brazilian Criminal Code states that it is marked by failure to transfer contributions withheld from employees to the social security administration in compliance with the rules and deadlines set forth by law or a specific contract.

Both crimes are punishable by imprisonment of two to five years, plus a fine to be defined by the court.

In accordance with the provisions set forth under Article 9, paragraph 2, of Law 10,684/2003, payment, at any time, of any owed taxes and their accessories extinguishes punishment for evasion of social security contributions and undue appropriation of social security contributions.

Where tax evasion of social security contributions is concerned, paying installments of the debt does not extinguish punishment. It merely suspends it until payment is made in full, at which time the punishment is effectively lifted.

11 Crimes Against Intellectual Property Rights and Unfair Competition and Consequent Criminal Liability

Law 9,279/1996, informally known as the "industrial property law", governs the rights and obligations of industrial property. Protection of rights involving industrial property takes place through the concession of invention patents and utility models, as well as the concession of registry for industrial designs and trademarks, in addition to the repression of unfair competition.

The industrial property law also addresses crimes against intellectual and industrial property rights, in Articles 183 to 194.

The applicable punishment for such crimes ranges from imprisonment from three months to one year, or a fine, in the event of:

(i) unauthorized use or manufacturing of products whose application for a patent is pending;

(ii) reproduction or change of a trademark;

(iii) manufacturing products whose application for industrial design has been approved; and

imprisonment from one to three months for other cases, such as:

a. use of trademark or advertisement expression to indicate false origin of a product, or

b. use of false geographical indication.

If the violated trademark is a famous, certified, or collective mark, or if the violating party is a sales representative, an authorized individual, company, partner or employee of the industrial property owner or its licensee, the aforementioned penalties can be increased from one third to half of the originally imposed punishment.

Law 9,279/1996 also provides for crimes involving unfair competition, set forth under Article 195. Unfair competition constitutes the use of incorrect and harmful methods that seek to modify proper, healthy competitive relationships.

Unfair competition is viewed as a crime due to the use of illegitimate means or methods to modify the normal competitive relationship, resulting in undeniable harm to its victims and interfering with the development of activities involving the creation and use of intellectual work.

Unfair competition includes:

(i) unauthorized use of a third party's corporate name or confidential information;

(ii) diversion of clientele;

(iii) deliberately misleading consumers;

(iv) disclosure or employment of fraudulent means or false statements concerning a competitor with the intention of obtaining a competitive advantage; and

(v) other types of fraud.

All practices involving unfair competition share an undercurrent of the agent's specific malice. The agent acts with the intention of harming a competitor or obtaining an improper advantage, deliberately violating the law.

Crimes involving unfair competition are punishable by imprisonment from three months to one year, or a fine.

The practices set forth as unfair competition are subject to civil liability, and during the course of a civil lawsuit, the injured party can be entitled to financial compensation due to losses and damages arising from such practices.

The Brazilian Criminal Code also provides for violation of copyrights under Article 184, according to which any reproduction of copyrighted material, partial or total, without the author's specific and express authorization, and with an economic purpose, constitutes a crime punishable by imprisonment from three months to one year, plus a fine to be defined by the court, or imprisonment from two to four years, plus a fine to be defined by the court, depending on specific aspects of the offense.

12 Corruption-Related Crimes and Consequent Criminal Liability

The Brazilian Criminal Code provides for crimes committed against the government, whether by private individuals or public officials. Among such crimes are those of corruption (active and passive), set forth under Articles 333 and 317, respectively, corruption in international transactions, set forth under Article 337-B, and graft, set forth under Article 316.

Active corruption is described as offering or promising an undue advantage to a public official, to lead them to perform, omit or delay the performance of an act inherent to their position. The applicable penalty is imprisonment from two to twelve years, plus a fine to be defined by the court.

Passive corruption is characterized by soliciting or receiving for oneself or another party, directly or indirectly, even if not holding the position or prior to holding it, even if by reason of it, an undue advantage, or accepting a promise of such advantage. The applicable punishment is imprisonment from two to twelve years, plus a fine to be defined by the court.

Corruption in international business transactions is defined as promising, offering or giving, directly or indirectly, an undue advantage to a foreign public official, or a third party, to lead them to perform, omit or delay the performance of an act inherent to their position and relating to the international business transaction. Punishment for this offense is imprisonment from one to eight years, plus a fine to be defined by the court.

Graft is described as demanding for oneself or another party, directly or indirectly, even if not holding the position or prior to holding it, even if by reason of it, an undue advantage. The applicable punishment was changed by Law 13,964/2019 to imprisonment of two to twelve years, plus a fine to be defined by the court.

On the subject of corruption, it must be noted that Brazil is also a signatory to four international treaties concerning this matter, all of which have been enacted by Legislative Decrees 3,678/2000, 4,410/2002, 5,015/2004 and 5,687/2006, and intend to ensure that no public servant is corrupted in their relationship with private entities.

Decree 3,678/2000 resolves matters regarding offenses relating to the corruption of foreign public officials and the measures that must be adopted by the signatory states.

Decree 4,410/2002 aims to strengthen the mechanism needed to prevent, detect, punish, and eradicate corruption, in addition to defining, in precise terms, the acts of corruption in international transactions.

Decree 5,015/2004 has the main purpose of reiterating the criminalization of corruption, as well as establishing measures against such practices as well as the liability of the legal persons involved.

Decree 5,687/2006 defines measures that must be adopted by the laws of the signatory states regarding bribery of national and foreign public officials and of employees of public international organizations.

Moreover, Law 12,846/2013 provides for the strict liability of legal entities, in both administrative and civil spheres, for practicing acts against the Brazilian and foreign public administration.

According to the abovementioned Law, Brazilian legal entities can be held liable regardless of the corporate type adopted, like entities personified or not, constituted in fact or in law, even if temporarily. Likewise, foreign legal entities with registered office, branch or representation in Brazil could be held liable for any of the offenses provided for by law.

It is worth noting that, despite the absence of legal provision holding legal entities criminally liable, such acts implies severe administrative and civil/judicial penalties.

Within the administrative sphere, companies held liable for wrongful acts will incur a fine that can range from 0.1% to 20% of their gross revenue in the last fiscal year, prior to the initiation of the administrative proceeding. These companies will also be required to publish the conviction in a widely circulated media outlet and on the company's website.

For determining the amount of the fine, authorities will consider, on a case-by-case analysis, the:

(i) seriousness of the offense;
(ii) benefits earned;
(iii) consummation or attempt;
(iv) degree of injury;
(v) negative results of the unlawful act;
(vi) corporation's financial health;
(vii) cooperation in investigations into the legal entity;
(viii) existence of internal control mechanisms (effective integrity program); and
(ix) amount subject to the public contracts maintained with the injured government entity.

Within the judicial sphere, competent authorities can apply the following sanctions:

(i) forfeiture of assets, rights or amounts that represent advantage or profit directly or indirectly obtained from the wrongful act, subject to the right of the injured party or a third party in good faith;
(ii) partial suspension or interdiction of the company's activities;
(iii) compulsory dissolution of the company;
(iv) prohibition from receiving incentives, subsidies, grants, donations or loans from government agencies and public financial institutions, or from financial institutions controlled by the government, for a minimum period of one year and a maximum of five years.

These measures, both administrative and civil, also provide for the liability of persons responsible for the management of the corporation, i.e. managers, directors, board of directors, or anyone who has contributed to the practice of a harmful act, besides the potential criminal liability, which, in accordance with subjective culpability, can only be held criminally liable in cases of willful misconduct.

In contrast to the severe penalties mentioned above, the legal text allows for the application of a more lenient sentence for companies with effective compliance programs, as well as for the reduction of up to two-thirds of the fine for companies that cooperate with the investigations and sign a leniency agreement.

13 Violation of the Securities Law and Consequent Criminal Liability

Law 6,385/1976, which regulates the stock market and created the CVM, provides for crimes against the stock market, in compliance with Articles 27-C to 27-F.

As set forth under these provisions, market manipulation, insider trading, and illegally engaging in an occupation, activity, or function, are subject to criminal liability, notwithstanding administrative or civil punishment, if applicable.

Market manipulation is defined as performing simulated or embezzlement-related operations with the purpose of artificially changing the securities market functioning structure, in order to obtain undue advantage or profit, or to cause damage to third parties. It is an offense punishable by imprisonment from one to eight years, plus a fine of up to three times the amount of improper advantage obtained as a result of the crime.

Insider trading is characterized by using relevant confidential information that is not, and cannot, be made available to the general public, due to its potential to provide undue advantage in negotiations. This crime is punishable by imprisonment of one to five years, plus a fine of up to three times the amount of improper advantage obtained as a result of the crime.

Illegally engaging in an occupation, activity, or function involves holding any office or acting in the securities market as an institution, individual, or collective manager, independent auditor, or securities analyst, without proper authorization or registration issued by the appropriate administrative authorities, as required by law or regulation. This offense is punishable by imprisonment from six months to two years, plus a fine to be defined by the court.

Concerning criminal liability, in observance of subjective liability, only individuals can be held liable for the aforementioned offenses.

Regarding insider trading, it is worth noting that, as set forth by Law 6,385/1976, the duty of confidentiality is a condition precedent for criminal liability. Theoretically, only those legally bound can be found guilty of insider trading.

14 Criminal Organizations

The Criminal Organizations and Special Techniques of Investigation Law (Law 12,850/2013) came into force in 2013, thus establishing the crime of criminal organization – considered to be when four or more people gather in an organized way and with different roles in order to obtain any kind of advantage by practicing criminal offenses.

The major changes introduced by the new Law involve how to prove the existence of a criminal organization. The main changes are described below.

First of all, rewarded collaboration ("*colaboração premiada*") was instituted. Article 4 of Law 12,850/2013 addresses the possibility of one of the defendants having their sentence reduced by one-third to two-thirds in the event of reporting the existence of a criminal organization to the authorities. It is important to point out that such a report must achieve the purpose for which it is intended, preventing the benefit from being assigned in the event that it is not achieved.

Secondly, Article 8 of Law 12,850/2013 also provides for controlled action. According to the Law, police authorities can delay immediate arrests to a later time, which will assist agents in gathering more evidence, thus facilitating the prosecution and the punishment of a criminal offense perpetrated by a criminal organization.

Lastly, Article 3, item VII, of the Law mentioned above brings more clarity to the figure of the undercover police agent. This is a state agent who infiltrates into a criminal organization in order to gather as much evidence as possible relating to the crimes committed.

15 Larceny and other fraud

The Brazilian Criminal Code provides for crimes committed through fraudulent means.

Larceny by trick, provided for in Article 171 of the Brazilian Criminal Code, is the classic example and, in its standard format, serves as a model for other similar offenses, such as those provided for in Articles 172 to 179 of the Brazilian Criminal Code.

Larceny by trick is defined as obtaining an illicit advantage to the detriment of someone else, thus misleading or keeping this person in error, through an artifice, trickery, or any other fraudulent means.

The fundamental characteristic of this crime is the fraud used by the perpetrator to mislead or keep the victim in error, with the purpose of obtaining an illicit patrimonial advantage. Punishment for this offense is imprisonment from one to five years, plus a fine to be defined by the court.

The same penalty is applied to those who carry out the following acts: disposal of someone else's property, fraudulent sale, defraud of pledge, fraud to receive insurance or indemnity, and fraud in payments by cheque.

In 2021, a new law came into force, which added a new clause to the Brazilian Criminal Code, aimed at increasing the penalty for fraud whenever committed through electronic means: imprisonment, from four to eight years, plus a fine, if the fraud is committed through the use of information provided by the victim or by a third party misled through social networks, telephone calls, fraudulent e-mails, or by any other similar deceptive means). Depending on the severity of the outcome, this penalty can be increased by one-third to two-thirds (if the crime is committed through a server located outside of Brazil). Also, the penalty can be increased by one-third if the crime is committed to the detriment of an entity governed by public law or an institution of popular economy, social assistance, or charity.

In Brazil, many legal entities are victims of fraud, committed by employees linked to sensitive areas of the company, such as financial, accounts payable and human resources departments, for example.

In addition, banks and large business conglomerates find themselves indirectly linked to fraud carried out against their clients, requiring these people to register the facts before the police authority in order to formalize an internal investigation, or for simple control in terms of compliance.

Prior to Federal Law 13,964/19, larceny by trick was considered a public criminal lawsuit that did not require any request from the victim.

In this context, the authority would initiate a police inquiry, and, at the end of the investigation, the Public Prosecutor's Office could file a criminal complaint against the person under investigation, regardless of the victim's wishes.

Federal Law 13,964/19, however, added paragraph 5 to Article 171 of the Brazilian Criminal Code, which conditioned the criminal lawsuit on larceny by trick depending on the representation of the victim. Thus, it is not enough for the victim to report the criminal fact to the police authority, by means of a police report, for example, but rather, it is necessary to formalize to the competent authorities the desire to criminally pursue the perpetrator of that crime.

If the victim is the government, direct or indirect, or a child, an adolescent, a person with a mental or physical disability, or over 70 years of age, it will not be necessary to formalize representation with the police authority. This ensures the protection of persons considered as vulnerable. The Brazilian Criminal Code also establishes the crime of issuing a simulated duplicate, which is described as the issuance of an invoice, duplicate or bill of sale that does not correspond to the merchandise sold, in quantity or quality, or to the service provided. Punishment for this offense is imprisonment from two to four years, plus a fine to be defined by the court (in compliance with Article 172 of the Brazilian Criminal Code).

There is also the provision for the crime of abuse of disabled persons (in compliance with Article 173 of the Brazilian Criminal Code), misleading them into gambling, betting, or speculation (Article 174 of the Penal Code), and fraud in commerce, which comprises selling a false or deteriorated commodity as if in perfect order, or to deliver a commodity instead of another (Article 175 of the Penal Code).

Article 177 of the Brazilian Penal Code provides for the crime of fraud and abuse while incorporating or managing a business corporation.

This crime is described as incorporating a business corporation by providing, in prospectus or in communication to the public or the board, false statements about the incorporation of a company, or conceals facts relating to it in a fraudulent manner.

Punishment for this type of offense is imprisonment from one to four years, plus a fine (if the fact does not constitute a crime against the popular economy).

According to Article 177 of the Brazilian Criminal Code, the same penalty must be applied if the crime does not constitute a crime against the popular economy in the following situations:

> "I – to the director, manager or supervisor of a public limited company, who, in a prospectus, report, opinion, balance sheet or communication to the public or board, makes a false statement about the economic conditions of the company, or conceals fraudulently, in whole or in part, a fact involving them;
>
> II – to the director, manager or supervisor who, by any means, provides a false list of shares or other securities of the company;
>
> III – to the director or manager who borrows from the company, or uses for their own benefit or that of a third party, assets or property, without prior authorization from the general meeting;
>
> IV – to the director or manager who buys or sells, on behalf of the company, shares issued by it, except when permitted by law;
>
> V – to the director or manager who, as a guarantee of social credit, accepts the shares of the company as a pledge or guarantee;
>
> VI – to the director or manager who, in the absence of a balance sheet, in noncompliance with it, or by means of a false balance sheet, distributes fictitious profits or dividends;
>
> VII – to the director, the manager or the supervisor who, through an intermediary, or in collaboration with a shareholder, obtains approval for an account or opinion;
>
> VIII – to the liquidator, in the cases of No. I, II, III, IV, V and VII;
>
> IX – to the representative of the foreign corporation, authorized to operate in the country, that carries out the acts mentioned in No. I and II, or provides false statements to the government."

Article 178 of the Brazilian Criminal Code provides for the crime of irregular issuance of deposits or warrants. The punishment for this type of offense is imprisonment from one to four years, plus a fine.

Finally, Article 179 of the Brazilian Criminal Code provides for the crime of fraudulent execution, which is characterized by the disposal, deviation, destruction or damage of assets, or simulation of debts. The punishment for this crime is imprisonment from six months to two years, plus a fine.

16 Cryptocurrency Regulation and Consequent Criminal Liability

On December 21, 2022, the president of Brazil sanctioned Law 14,478/2022, which provides for cryptocurrency regulation in Brazil, which entered into force 180 days after its publication.

From the criminal perspective, this new Law adds a new type of larceny by trick to the Brazilian Criminal Code, which applies to any individual who organizes, manages, offers, or distributes portfolios, or intermediates transactions involving virtual assets, securities, or any financial assets, in order to obtain illicit advantages, and misleading or keeping someone in error, through artifice, ruse, or any other fraudulent means. The penalty is imprisonment of four to eight years, plus a fine.

The Law also amends the anti-money laundering law, by including crimes carried out through the use of virtual assets in the list of crimes, whose penalty can be increased by one-third to two-thirds if it constitutes a repeat offense.

17 Bullying and Cyberbullying and Consequent Criminal Liability

On January 15, 2024, Federal Law 14,811/2024 came into force, foreseeing important changes to the criminal legislative framework in Brazil, notably by including bullying and cyberbullying in the Brazilian Criminal Code (Decree 2,848/1940).

The new Law introduced Article 146-A into the Brazilian Criminal Code, defining the practice of bullying as:

> "*Systematically intimidate, individually or in groups, through physical or psychological violence, one or more people, intentionally and repetitively, without evident motivation, through acts of intimidation, humiliation or discrimination or verbal, moral, sexual actions, social, psychological, physical, material or virtual*."

The penalty is the payment of a fine, if the conduct does not constitute a more serious crime.

Significantly, the new Law also typifies the virtual version of bullying, known as cyberbullying, when the conduct is promoted in the digital environment. In this case, the penalty is two to four years of imprisonment and a fine, if the conduct does not constitute a more serious crime.

Addressing bullying from a criminal law perspective, in other words, as crimes *per se*, demonstrates a clear concern on the part of the Brazilian authorities in combating such practice. By recognizing the importance of fighting bullying, the authorities are aiming to interrupt a toxic cycle that inhibits social development, which is present in schools, online environments, and other communities.

It is especially relevant to highlight the legislator's concern in criminally punishing cyberbullying, given its increased prevalence in recent years – especially after the Covid-19 pandemic – and which, so far, was not criminalized, which brought a feeling of impunity across society.

The Law additionally included several conducts in the list of heinous crimes, which bear more rigid consequences for convicted individuals, such as to begin to serve their sentence necessarily in prison, with no possibility of posting bail or applying to other legal benefits, such as amnesty or pardon:

(i) instigation or assistance to suicide or self-mutilation, carried out through a computer network, social network or transmitted in real time – Art. 122, main section and § 4 of the Brazilian Criminal Code;

(ii) kidnapping committed against a minor under 18 years of age – Art. 148, § 1, IV of the Brazilian Criminal Code;

(iii) human trafficking committed against children or adolescents – Art. 149-A, main section, I to V, and § 1, II of the Brazilian Criminal Code;

(iv) to arrange, facilitate, recruit, coerce or mediate the participation of children or adolescents in pornographic records or recordings and display, transmit, assist or facilitate the display or transmission, by any means or digital environment, of an explicit or pornographic sex scene with participation of children or adolescents – Art. 240, § 1, of the Child and Adolescent Statute;

(v) to acquire, possess or store, by any means, photographs, videos or other forms of recordings that contain explicit or pornographic sex scenes involving children or adolescents – Art. 241-B of the Child and Adolescent Statute.

Another relevant change concerns the inclusion in the Child and Adolescent Statute of Article 244-C, which criminalizes conduct by a father, mother or legal guardian who intentionally does not report to public authorities the disappearance of a child or adolescent. The penalty is imprisonment from two to four years, plus a fine.

Finally, Law 14,811/2024 also increases the penalties for the crime of homicide against children under 14 years of age (Art. 121 of the Brazilian Criminal Code), which can be increased by two-thirds if it was committed in school, as well as the possibility of increasing the penalty for the crime of inducing or instigating suicide (Art. 122 of the Brazilian Criminal Code), which can be doubled if the perpetrator is the leader, coordinator, administrator or person responsible for a virtual network group/community.

It is also worth noting that the new Law establishes the National Policy for Preventing and Combating Abuse and Sexual Exploitation of Children and Adolescents, which has yet to be developed.

18 Sports Betting regulation

The new Sports Betting Law, Federal Law 14,790/2023, was enacted in Brazil in December 2023, introducing a number of obligations and responsibilities for companies exploiting sports betting and on-line casino games or gambling.

In order to operate in Brazil, a company must obtain authorization from the Treasury Department and comply with several requirements, including the obligation to adopt internal policies in terms of corporate compliance.

Specifically, companies must provide evidence of the adoption and implementation of policies, procedures, and internal controls of:

(i) attendance to bettors and ombudsman;

(ii) prevention of money-laundering crimes, terrorist financing and proliferation of weapons of mass destruction;

(iii) responsible gambling and prevention of pathological gambling disorders;

(iv) betting integrity and prevention of manipulation and other frauds;
(v) protection of personal data as provided for in the General Data Protection Law (LGPD); and
(vi) cybersecurity and technical measurement requirements, certified domestically or internationally.

It is important to mention that a further regulation is expected from the Treasury Department, precisely to establish the requirements and guidelines to be observed in the development and evaluation of the effectiveness of the respective policies.

As was expected, the legislator included specific requirements relating to the prevention of money laundering. It is, in fact, widely accepted that games involving money transactions impose serious risks in terms of money-laundering crimes, as, due to their characteristics, these transactions appear to be an easy way to 'clean' illicit money.

In other words, if a betting company does not effectively implement preventive money-laundering measures, the individuals who are responsible, such as CEOs, managers, etc., can be subject to criminal investigation and, perhaps, even prosecution for failing to adopt the necessary actions.

If the individuals or legal entity violates any of the provision provided for under the Law, the following administrative penalties can be imposed:

I. warning;
II. in the case of a legal entity: fine in the amount of 0.1% to 20% on the proceeds of the collection after deducting the amounts referred to in items III, IV and V of the main section of Art. 30 of Law 13,756, of December 12, 2018, relating to the last fiscal year prior to the initiation of the administrative sanctioning process, observing that the fine will never be lower than the benefit obtained, when it is possible to estimate it, nor higher than BRL 2,000. 000,000.00 per infraction;
III. in the case of other individual or legal entities governed by public or private law and any associations of entities or persons incorporated in fact or in law, even if temporarily, with or without legal personality, that do not carry out business activity, when the use of the collection product criterion is not possible: fine of BRL 50,000.00 to BRL 2,000,000,000.00 per infraction;
IV. partial or total suspension of the exercise of activities, for a period of up to 180 days;
V. revocation of authorization, termination of permission or concession, cancellation of registration, disqualification or similar act of release;
VI. prohibition from obtaining ownership of a new authorization, grant, permission, accreditation, registration or similar act of release, for a maximum period of 10 years;
VII. prohibition from carrying out certain activities or transactions, for a maximum period of 10 years;
VIII. prohibition from participating in bidding processes aimed at granting or permitting public services, in the federal public administration, directly or indirectly, for a period of no less than 5 years;
IX. disqualification from acting as a director or administrator and from holding a position in a body provided for in the statute or social contract of a legal entity in any lottery category, for a maximum period of 20 years.

19 *Habeas Corpus*

Habeas Corpus is a legal remedy provided by the Brazilian Federal Constitution, which can be used before or after the arrest of an individual. The goal is to protect the right to freedom of a person who is experiencing a threat or violation.

To use *Habeas Corpus*, it is necessary that the person suffering the threat or violation of their freedom or locomotion is illegally detained or threatened by a Brazilian authority.

On April 08, 2024, Federal Law 14,836/2024 came into force, providing for important changes to the *Habeas Corpus* procedure in Brazil, notably by including, in the Brazilian Criminal Code (Decree 2,848/1940) that, in the event of a tie, the decision most favorable to the defendant will prevail in all trials of criminal or criminal procedural matters in collegiate bodies.

20 Final Remarks

It is important to mention that Brazilian Criminal Law sets forth some legal benefits, which can be applicable to the abovementioned crimes, depending on their penalties. The most common ones are: criminal settlement; conditioned suspension of proceedings; and non-prosecution agreement.

20.1 Criminal Settlement

Crimes in which the maximum penalty does not exceed two years are considered a misdemeanor provided for in Article 61 of Federal Law 9,099/95 and entitles the offender to the benefit of entering into a "criminal settlement" with the Public Prosecutor's Office.

The proposal of a criminal settlement is marked by the immediate application of a penalty of restriction of right (*e.g.,* pecuniary payment, temporary suspension of rights or rendering of community service) to the offender.

The criminal settlement does not require the offender to plead guilty to a crime and, for this reason, the acceptance of a criminal settlement does not imply an assumption of guilt and does not lead to criminal records. If accepted and accomplished, the criminal settlement prevents the launching of a criminal lawsuit.

20.2 Conditioned suspension of the lawsuit

Crimes in which the minimum penalty is equal to or does not exceed one year entitle the offender to the benefit of entering into a deferred prosecution agreement (suspension of the criminal lawsuit) with the Public Prosecutor's Office.

The events that authorize the suspension of the lawsuit are provided for in Article 89 of Law 9,099/95.

The proposal of suspension of the lawsuit is defined as a probation period of two to four years, of which the defendant may have to observe the following conditions:

- compensation for damages – unless it is not possible to do so;
- ban on visiting certain places (such as night clubs);
- ban on traveling away from the city of domicile without a court order authorizing the trip; and
- monthly visits to the criminal court to inform and justify their activities.

When the probation period comes to an end without any violation of the established conditions, the judge closes the case.

20.3 Non-prosecution agreement

The recent edition of Federal Law 13,964/2019 introduced Article 28-A to the Brazilian Criminal Code, which allows for the execution of a non-prosecution agreement.

According to the new Article, the Prosecution can choose not to file a criminal complaint against the person investigated in certain crimes committed without violence, and with a minimum penalty of less than four years, upon express agreement to comply with certain measures.

The agreement to be signed by the Public Prosecutor, the investigated person and their lawyer must be ratified by the judge. The Law establishes that, separately or cumulatively, the following conditions are necessary to settle the non-prosecution agreement, such as: confession to the crime; compensation for the damages – unless it is impossible; waiver of certain assets involving the offense; provision of services to the community; and payment of a fine.

The judge can return the case to the Public Prosecutor's Office if they consider the conditions proposed to the investigated to be inadequate, insufficient, or abusive, and can also refuse to ratify the agreement, thus returning the case to the Public Prosecutor's Office to complete the investigations, or to offer to file a complaint.

The non-prosecution agreement is applicable for most of the crimes provided for in the Brazilian legal system, including those committed against the government, whether by private individuals or public officials.

In addition, the non-prosecution agreement can be considered as evidence for the purposes of applying the Anti-Corruption Law, for example, resulting in impacts to the company linked to the investigated party who has confessed to committing the crime.

ENVIRONMENTAL LAW

1. Overview of Environmental Law

Historically, environmental regulations were created and have been updated to address different impacts arising from economic activities in the country, such as:

- National Policy Law for the Environment (Federal Law No. 6,938/81)
- Mineral resources (Mining Code – Federal Decree-Law No. 227/1967);
- Fishing (Federal Decree-Law No. 221/1967);
- Activities involving wild fauna in general (Hunting Code – Federal Law No. 5,197/1967);
- Water use (Water Code – Federal Decree No. 24,643/1934, and the National Policy for the Use of Water Resources - Law 9,433/1997);
- Water quality, wastewater and stormwater standards (CONAMA Resolutions No. 357/2005 and 430/2011, Brazilian National Waters Agency (ANA) Resolution No. 188/2024);
- Dam safety (Law No. 12,334/2010 – updated by Federal Law No. 14,066/2020 and Federal Decree No. 11,310/2022, among other regulations)
- Use and protection of Atlantic (tropical) Forest Biome (Federal Law No. 11,428/2006);
- Administrative and criminal infractions (Federal Law No. 9,605/1998 and Federal Decree No. 6,514/2008, updated by Federal Decree No. 11,373/2023);
- Public Civil Actions (Federal Law No. 7,347/1985);
- Air emissions and (Federal Law No. 14,850/2024; CONAMA Resolution No. 382/2006 and No. 436/2011, CONAMA Resolution No. 15/1995 and 491/2018 and several others);
- Management of soil and contaminated areas (CONAMA Resolution No. 420/2009).
- Waste management (National Policy on Solid Waste Management – Federal Law No. 12,305/2010; Federal Decree No. 10,936/2022 and Federal Decree No. 11.413/2023);
- Environmental licensing for potentially pollutant activities (Supplementary Law No. 140/2011 and Federal Decree No. 8,437/2015);
- Forests and use of native vegetation (Brazilian Forestry Code – Federal Law No. 12,651/2012; Federal Decree No. 7,830/2012; Ministry of Environment Normative Instruction No. 02/2014; IBAMA's Normative Instructions No. 21/2014, 17/2021, 8/2022 and 16/2022; Law No. 9,985/2000);
- Access to biodiversity (Federal Law No. 13,123/2015, and Federal Decree No. 8,772/2016);
- Use of polychlorinated biphenyls and asbestos (Federal Laws No. 14,250/2021 and No. 9,055/1995, among others);
- Climate change (National Climate Change Policy – Federal Law No. 12,187/2009 -; Federal Law No. 12,114/2009; Decree 9,578/2018;); and
- Payment for environmental services (Federal Law No. 14,119/2021 and 14,590/2023).

The increase of environmental concerns worldwide and the enactment of numerous international agreements resulted in a growing consciousness in Brazil, leading to the adoption of a National Policy Law for the Environment in 1981 (Federal Law No. 6,938/81), which was crowned with the approval of the Brazilian Constitution of 1988 containing an entire chapter addressing environmental issues. One could say that environmental protection as it is reflected in the legislation countrywide was ultimately consummated with the enactment of the National Environmental Criminal and Administrative Law in 1998 (Federal Law No. 9,605/98), which was regulated by Federal Decree No. 3,179/1999, revoked in 2008 by Federal Decree No. 6,514/2008 (updated by Federal Decree No. 11,373/2023).

In 1985, another important law was enacted: Federal Law No. 7,347/1985, which created Public Civil Actions. Similarly to American class actions, Brazilian law, in general, allows the public prosecutors to file lawsuits aimed at protecting the environment, and it bestows standing to non-governmental agencies to bring suits under its terms.

At present, regulations regarding environmental protection in the country abound. They range from the creation of conservation units to the possibility of generating carbon credits as part of forest concession activities, and tax benefits relating to environmental aspects, among others.

Additionally, the states and sometimes the municipalities (when there is a local and specific interest) across the country can implement their own regulations regarding environmental protection and the use of natural resources at state and local levels.

2. Main requirements applicable to industrial activities

Regarding industrial activities, applicable regulations generally require environmental licenses and permits *prior* to the start of a company's activity.

In turn, pollution-control systems are implemented to a large extent in industrialized centers like the states of São Paulo, Rio de Janeiro, Minas Gerais, Paraná, Santa Catarina and Rio Grande do Sul, but also on smaller cities. Both the lack of environmental permits and the act of polluting, regardless of intention, can be deemed criminal acts and trigger criminal sanctions in addition to administrative penalties (warnings, fines, interdiction of the company's activities, suspension of tax benefits, among others), and civil sanctions (obligation to repair or compensate environmental damage and affected third parties).

3. Environmental liability

Environmental liability, under Brazilian law, may occur at three different independent levels:

(iv) civil;
(v) administrative, and
(vi) criminal.

It can be said that the three spheres of liability mentioned above are “different and independent” because, on one hand, a sole action by the offender, including legal entities and individuals, may generate environmental liability at the three levels: civil, administrative, and criminal, which involves the applicability of three different sanctions. On the other hand, the absence of liability in one of those spheres does not necessarily exempt the offender from liability in the others.

Environmental civil liability arises from action or omission - directly or indirectly - by the offender, that results in environmental damage of any kind. This type of liability is characterized as a modality of strict liability, regardless of fault.

Such liability results in the civil penalty of repairing or indemnifying for the damage caused to the environment and consequent damage to third parties. In the case that the legal entity cannot pay for the environmental recovery, the requirement for indemnification may extend to partners and their property, commonly referred to as piercing of the corporate veil.

In addition to the environmental damage, there is the possibility of individual and collective non-pecuniary moral damages.

Environmental civil liability applies jointly to all those who directly or indirectly contributed to the environmental damage, regardless of fault. Such type of liability is established, for example, in circumstances that involve outsourcing in the process of transportation and final disposal of waste/residues, or in the case of contaminated areas and deforested areas. In these cases, more than one agent can be held liable for the environmental damage, or agents can be held individually liable with the right to request compensation from the others. Based on this scenario, in theory, lenders and financial institutions can be exposed to civil environmental liability.

Furthermore, Brazilian higher courts have also decided that civil liability due to environmental damages in Brazil is not subject to a statute of limitations or exceptions, such as act of God, act of a stranger, etc.

Administrative liability results from an action or omission by the offender that involves violation of environmental protection regulation, regardless of actual occurrence of environmental damage.

Regarding the applicable sanctions, the competent environmental authority may apply the following penalties: warning, fines of up to BRL 50 million, embargo on work or activity and their respective areas, demolition of work, partial or total suspension of activities, and restriction of rights, such as suspension or cancelation of registration, license or authorization; loss or restriction of tax incentives and benefits; loss or suspension of participation in lines of credit from official credit institutions; and prohibition from contracting with the government).

Finally, criminal liability occurs through the action or omission of an individual or legal entity that is typified in criminal law. Among those who may be held liable for such crimes are officers, administrators, board members and technical committee members, auditors, managers, representatives, or commissioners, as well as any other person who is found to participate in or fails to prevent any acts involving the offenses referred to in the law from taking place.

Thus, the law does not set forth the need to actually carry out the act considered as criminal; participating by any means in its practice is sufficient.

Administrative and criminal environmental claims are subject to a statute of limitations, but in case of permanent or continuous infraction such statute of limitation will be calculated from the day when such infraction has ceased to occur.

4. Environmental licensing

In Brazil, most industrial activities are qualified as potentially pollutant, and therefore demand compliance with specific requirements pertaining to the environmental licensing of such activities, which also apply to activities that involve the use of natural resources.

The environmental licensing proceeding can be carried out by environmental agencies at different Brazilian federation levels (federal, state, or municipal), according to the characteristics of the proposed activity and/or its location.

The competence to define the jurisdiction to carry out environmental licensing procedures is provided for the Federal Constitution, which determines that all Brazilian entities are entitled to protect the environment. However, Supplementary Law No. 140/2011 establishes parameters regarding jurisdiction, setting the roles of each federative entity at federal, state, and municipal levels. The legislation determines, for instance, that environmental licensing shall be a unique proceeding, whose jurisdiction at the federal, state, or municipal level shall rely on certain criteria, as follows:

(i) Federal, depending on the location (i.e., involvement of two or more states) or subject matter (i.e., production of radioactive material, installation of enterprise located or developed in conservation units instituted by the Federal Government, federal highways, federal waterways, certain types of electricity generation and transmission systems, exploitation of oil, natural gas and other hydrocarbons, organized ports, except for port facilities handling cargo in volumes of less than 450,000 TEU/year or 15 million tons/year, private use terminals and port facilities handling cargo in volumes of more than 450,000 TEU/year or 15 million tons/year);

(ii) Municipal, for activities that have local impacts; and

(iii) State, in a residual manner, in connection with activities not subject to licensing by Federal or Municipal authorities.

Also, Supplementary Law No. 140/2011 sets out provisions for environmental infractions, ascribing the federal, state, or municipal responsibility for issuing infraction notices, depending on the entity responsible for its licensing or authorization procedure.

The environmental licensing procedure generally involves a three-step administrative proceeding, including the issuance of three different (although connected) licenses by the competent environmental agency:

(i) Preliminary License – approves the project location and conception, and confirms environmental feasibility, based on environmental impact studies, setting forth the required conditions to be met throughout the subsequent stages of project implementation.

(ii) Installation License – authorizes the implementation/construction of the project.

(iii) Operation License – authorizes the operation of the company´s activities.

In certain cases, environmental licenses can be issued concomitantly. In other words, more than one phase of the licensing procedure can simultaneously be included in the same environmental license. Moreover, they can involve specific situations, such as recovery of degraded areas. Simplified procedures can be established for certain activities. For example, the state of Rio de Janeiro issues the Environmental Recovery License ("LAR"), which authorizes the recovery of contaminated areas in closed, deactivated or abandoned activities or enterprises, or degraded areas.

The Brazilian Congress is currently assessing Bill No. 3,729/2004, which intends to establish a national framework for environmental licensing. The current wording of this bill establishes other types of simplified licenses and permits/authorizations for potentially polluting activities, such as the Adhesion and Compromise License ("LAC"); Unified License ("LAU"); and Corrective License ("LAC"), for simpler and less environmentally harmful projects.

In addition, in the event that the environmental impact resulting from the activity in question is deemed "significant", the issuance of the preliminary license will be subject to the submission of an Environmental Impact Study and Report (EIA/RIMA), as well compliance with additional legal requirements (such as public hearings, compensatory payment measures, among others).

Environmental agencies usually set technical or other conditions to be fulfilled for the environmental licenses to keep their effectiveness, under penalty of having the licenses barred from renewal or even canceled or suspended, among other sanctions within the scope of environmental administrative, criminal, and civil liabilities.

The licenses are valid for a specific period and their renewal must be requested, generally, 120 days before their expiration date so that they remain valid until the new license is issued.

Any modification or expansion of the licensed project must receive prior approval by the competent environmental authority.

Environmental licensing is a technical and multilateral procedure, in which the consultation of several government bodies may be necessary in addition to the authority that is directly responsible for the environmental licensing itself, such as the National Institute of Historic and Artistic Heritage ("IPHAN"), the National Institute for Colonization and Agrarian Reform ("INCRA") and National Indigenous People Foundation ("FUNAI") and Chico Mendes Biodiversity Conservation Institute ("ICMBio").

In general, the participation of other government bodies in the environmental licensing process is possible.

Developing activities without or non-compliant with environmental licensing rules can result in administrative and criminal environmental liabilities, in addition to the obligation to repair and/or indemnify for the environmental damage and/or affected third parties (environmental civil liability).

5. Use of water resources and discharge of effluents

Law No. 9,433/1997 establishes the National Water Resources Policy and provides for the main principles, instruments, and definitions regarding the use of water resources, in addition to creating the Brazilian National Water Resources Management System.

According to such Water Policy, the by-pass, extraction, release, and catchment of water resources, as well as the discharge of effluents in water bodies, require prior authorization issued by the corresponding environmental agency.

In general, obligations relating to sampling, monitoring and discharge of wastewater and stormwater, as well as disclosure of information about such activities, can originate from (i) legal requirements/provisions, such as domestic laws and regulation (*e.g.,* decree, resolution, ordinance), and international laws (e.g. acts, agreements, treaties) that have already been incorporated into the national framework; and/or (ii) administrative acts/permits, either by means of a condition established for environmental licenses, water grants and authorizations, or as a regulatory requirement.

CONAMA Resolutions No. 357/2005 and No. 430/2011 establish that the direct discharge of wastewater from any sources of pollution can only be carried out after proper treatment and must comply with legal standards, conditions, and obligations.

The use of water resources without or not in compliance with the respective authorizations can subject those involved to the three different and independent types of environmental liability.

In addition, Federal Law No. 9,433/97 provides for the possibility of financial charges for the use of water resources as a means of encouraging the rational use of this resource and obtaining financial support for the recovery of river basins. States such as São Paulo and Minas Gerais use this kind of instrument.

Within the public sanitation sector, Federal Law No. 14,026/2020 was published, amending Federal Law No. 11,445/2007, which provides for the legal framework of basic sanitation, in order to regulate deadlines for the environmentally appropriate final disposal of waste in municipalities.

6. Management of contaminated areas

In general terms, the management of contaminated areas derives from the application of the environmental liability concepts, triggering the obligation to repair any environmental damage caused by the activity.

It is important to note that the concept of environmental liability can be extended to the property owner, financing agents, as well as to the lessee, based on certain legal doctrines that have been applied by court decisions.

In addition, at the federal level, CONAMA Resolution 420/2009 sets forth the main requirements applying to the process of identification, delineation and remediation of soil and groundwater impacts. It is also important to highlight that some states have enacted specific regulations, such as Rio de Janeiro and São Paulo.

São Paulo State Law 13,577/2009 lays out procedures for identification and mapping of contaminated areas and implementation of mechanisms for remediation. This law makes it possible not only for the party at fault and/or the owner of the property to be held liable for the contamination, but also the tenant, the holder of the effective title, and the economic beneficiaries of the area. Earlier, the state program on management of contaminated areas, which is a reference in Brazil, was operating by means of administrative rules of the São Paulo State Environmental Agency ("CETESB"), but these procedures were subsumed by Law 13,577 in 2009. The proceeding, which was updated in 2017, has also been adopted in other states, due to the lack of a Federal Regulation on the subject.

CETESB has also established the necessity of an ecological risk assessment in the environmental management of contaminated areas, which aims to qualitatively and quantitatively assess the risk to which an ecological asset that must be protected may be exposed, due to potential physical, chemical or biological anthropogenic effects. In 2022, CETESB updated the technical parameters for the health risk assessment based on the United States Environmental Protection Agency's ("EPA") methodology.

Furthermore, in case of change of use of the property (e.g. change of industrial use of the property to commercial or residential ones) or reuse of the area under a clean-up process, a statement from CETESB is required.

Moreover, in general terms, the closing of activities subject to environmental licensing triggers the obligation to submit a decommission plan to the environmental authority and to verify the soil and groundwater quality, as well as to repair any environmental damage caused by the activity.

The Brazilian Congress is currently analyzing a bill (Bill of Law 2,732/2011) aimed at establishing a national framework for the management of contaminated areas.

7. Waste management and post-consumption liability

The National Policy on Solid Waste Management (Federal Law No. 12,305/2010) consolidates a set of principles, tools, goals, and actions aiming at an integrated management of solid waste. Many Brazilian states have already enacted their own solid waste policy, establishing goals and obligations at the local level which may differ from those determined by federal legislation and arrangements.

Pursuant to Brazilian legislation, producers/generators of solid waste are responsible for its management until it is adequately allocated.

According to the National Policy on Solid Waste Management, the management of industrial waste requires that the generator develop a "Solid Waste Management Plan" ("PGRS"), through which the project owner will provide the environmental agency with a comprehensive diagnosis of its operation, focusing on the generation and management of solid waste, as well as assessing the origin, volume and classification of such waste, so as to assign specific proceedings aimed at ensuring its proper storage, transportation and final disposal.

The PGRS is a mandatory document for companies that generate waste:

(i) originating from the public sanitation system, industrial processes, health services and mining activities;

(ii) classified as hazardous and non-domestic;

(iii) originating from the civil construction sector, if so, stated by the regulation established by the competent federal authority;

(iv) originating from ports, airports, customs terminals, roadways, railroads, and border control passages, as defined by the competent regulatory and environmental agencies; and

(v) originating from agricultural and silviculture activities, if required by the competent body.

The PGRS must be submitted to the competent environmental agency or to the municipality.

Parties involved in the waste management process must also comply with several technical and registering obligations to allow public authorities to verify the regularity of such process. The main source of information in this regard is the National System of Waste Management Information ("SINIR"); and one of the most important documents to be issued by the parties is the Residue Transportation Manifesto ("MTR"), in which the generator of waste must declare information relating to the quality, transportation and final disposal of the waste.

Brazilian legislation also establishes that parties that generate or handle hazardous waste must be registered with the National Registry of Operators of Hazardous Wastes and develop a hazardous waste management plan that will be analyzed and reviewed by the competent environmental authority.

In addition, such federal regulation establishes the liability of manufacturers, importers, distributors/wholesalers, retailers, among others, regarding certain products classified as generators of significant environmental impact through relevant post-consumption waste, such as tires, batteries, , electronics, lubricant oils, packaging and fluorescent lamps.

Certain states have enacted stricter regulations, which condition the implementation of reverse logistics systems to the issuance or renewal of projects' environmental licensing, and have included additional products that are subject to a reverse logistics system.

One of the major innovations of the National Policy on Solid Waste Management is the acknowledgment of shared responsibility for the product lifecycle as a basic principle of solid waste management and the obligation to implement a reverse logistics system aimed at cradle-to-grave management of the products and waste.

More recently, Federal Decree No. 11,413/2023 established three types of credits related to reverse logistics, enabling financial investments to fulfill the legal obligations related to the implementation of a reverse logistics system. Such law provides for the: (i) Reverse Logistics Recycling Credit Certificate (CCRLR) - used to prove compliance with reverse logistics goals, based on final destination certificates and electronic invoices of products or packaging returned to the manufacturer or company responsible for recycling; (ii) Certificate of Structuring and Recycling of Packaging in General (CERE) - issued to manufacturers, importers, distributors and traders who invest in structuring projects for the recovery of recyclable materials; and (iii) Future Mass Credit Certificate - intended for companies that implement structuring reverse logistics systems, with investments in initiatives that result in the effective recovery and additionality of recovered mass in the medium term.

Therefore, Federal Decree No. 11,413/2023 offers flexible alternatives for companies to fulfill their reverse logistics obligations. Instead of implementing their own collection and recycling systems, companies can choose to acquire those credits, which attest to the carrying out of recycling actions and collaboration with the reverse logistics infrastructure.

The inadequate disposing of waste or causing pollution can result in criminal and administrative sanctions, in addition to the obligation to repair or indemnify for the damage to the environment and affected third parties, even if the solid waste management, such as its transportation, treatment and final disposal were carried out by outsourced parties contracted specifically for such purposes.

8. Air emissions

Air quality standards in Brazil have been provided for through CONAMA Resolution No. 491/2018, which also establishes other obligations relating to the control and monitoring of air emissions.

This resolution was challenged by a lawsuit that is currently being assessed by the Federal Supreme Court, due to the alleged reduction of air quality standards. States and municipalities also have jurisdiction to establish additional standards and obligations relating to air emissions.

Federal Law 14,850/2024 establishes the National Policy of Air Quality management in Brazil. This law provides for the concept of air quality standards, aiming to protect the environment and public health. The policy addresses maximum emission limits, air quality standards, air quality monitoring, emission inventories, management plans and programs, atmospheric modeling, fiscal and financial incentives, and the National Air Quality Management System (MonitorAr). The environmental authorities in Brazil will be responsible for monitoring air quality and will have to develop a National Air Quality Monitoring Network.

9. Asbestos

The use of asbestos in Brazil is regulated – and restricted – by Law 9,055/1995 and by CONAMA Resolutions.

Certain states and municipalities have also enacted laws and regulations that provide for standards and limitations regarding the use of asbestos (e.g, Rio de Janeiro; Rio Grande do Sul; Pernambuco; São Paulo; Maranhão; Mato Grosso; Minas Gerais; Amazonas; Rondônia; Santa Catarina; Bahia; Goiás; Espírito Santo; Piauí and Paraíba).

The use of asbestos, including in civil construction waste, is considered harmful to the environment and to human health. As a result, CONAMA´s Resolution 307/2002 classifies construction waste containing asbestos as hazardous.

Banning the use of this mineral has long been an ongoing discussion in the Brazilian Congress. CONAMA, through Motion No. 030/2001, has recommended the progressive ban on the use of this mineral. The Brazilian Federal Supreme Court ("STF") has already ruled for prohibiting the extraction, industrialization, and use of chrysotile asbestos/asbestos in Brazil. The STF has also ruled in different lawsuits against state laws regarding asbestos, always based on the precautionary principle.

According to Brazilian legislation, the landowner and occupiers are jointly responsible for extracting or handling asbestos located on the property.

10. Forestry preservation

All activities related to the use and suppression of forest resources are subject to Law 12,651/2012 (Forestry Code), among others, establishing goals against illegal deforestation, the protection of native forests or relevant environmental areas.

This law establishes limits for intervention in public or private proprieties, taking into account the definitions for areas qualified as "permanent preservation areas" and legal reserve areas.

Permanent preservation areas are those with significant environmental characteristics, such as riparian areas, springs, hilltops, mountain slopes, and mangroves, located in rural or even urban areas. Interference in such areas is only allowed if the activity is previously authorized and qualified as public utility, social interest, or low environmental impact.

Legal reserves are portions of rural areas that must be preserved by maintaining the native vegetation or even recovering it.

The size of the areas that must be preserved in the form of a legal reserve depends on where the property is located and the vegetation (biome) in the region, varying from 80%, 35% and 20%. In addition, the Federal Government can, in specific cases, reduce the mandatory legal reserve areas. For example, such reduction is possible in the event that property is located in areas of the Amazon rainforest within municipalities that maintain more than 50% of its area as indigenous territories and public domain conservation units. In these cases, the legal reserve areas – originally 80% of the property – can be reduced to 50%.

Reduction of mandatory legal reserve areas to 50% can be also determined by states in the Amazon rainforest area whose economic and ecological zoning has been approved and that have restricted more than 65% of their territory for indigenous and public domain conservation units.

In parallel, the Federal Government can increase by 50% the area allocated for legal reserves if deemed necessary through approved economic and ecological zonings in order to achieve the Brazilian targets for biodiversity protection or reduction of greenhouse gases.

The Forestry Code also created a nationwide electronic system encompassing the environmental information on rural proprieties - the Rural Environmental Registry (CAR), as a condition for the obtaining of loans or rural credit.

The Forestry Code allows for the compensation of legal reserve areas and creates a legal reserve quota that can be used to attest compliance with the Forestry Code requirements. In addition, it also defines specific rules for forest management and exploitation activities as well as forestry products supply control.

Federal Law No. 12,651/2012 determined that the federal and state authorities should implement Environmental Regularization Programs (PRA) for rural properties whose vegetation was irregularly removed before July 22, 2008. After fulfilling the obligations established in the Program, the consolidated rural areas will be considered regularized, and any fines will be converted into services for the preservation, improvement, and recovery of the quality of the environment. In this way, states are currently issuing local rules regulating their own Programs in their territory. Federal Law No. 14,595/2023 extended the deadlines initially determined in Federal Law No. 12,651/2012 for adherence to the PRA by the owners and possessors of rural properties with: (i) an area of up to four fiscal modules, by March 12, 2025; and (ii) an area of more than four fiscal modules, by December 31, 2023. So far, no new federal regulations have been enacted to extend the deadline.

Federal Law No. 14,285/2021 amended certain articles of Federal Law No. 12,651/2012 (Forestry Code), to provide for permanent preservation areas around watercourses in consolidated urban areas. The new law has established that municipalities will define, through local laws, the extension of permanent preservation areas related to marginal bands of water courses/bodies located in consolidated urban areas. According to the new law, a consolidated urban area must be included in the urban perimeter or in an urban zone by the master plan or by a specific municipal law; have a road system in place; be organized into predominantly built-up blocks and plots; and have a predominantly urban use, characterized by the existence of residential, commercial, industrial, institutional, mixed or service-oriented buildings. Furthermore, activities or enterprises to be installed in urban permanent preservation areas must also comply in cases of public utility, social interest or low environmental impact.

11. Biodiversity Law

Access to biodiversity resources in Brazil is currently regulated by Federal Law No. 13,123/2015 and Federal Decree No. 8,772/2016.

Main provisions of the 2015 Biodiversity Law are:

(i) creation of a registry (SISGen – launched in November 2017), in which activities involving access or export of genetic resources shall be previously registered by the relevant company, on a self-declaratory basis;

(ii) definition of activities that are subject to previous authorization or mere registration;

(iii) requirement of notification by the company to CGEN, previously to the economic use of the final product resulting from the access;

(iv) distinction between the concepts of remittance and sending of samples of genetic resources to foreign institutions;

(v) establishment of minimum of 1% of the annual net revenue resulting from the economic use of the final product (% can be reduced to up to 0.1%, in case a sector agreement in this sense is signed by the industry), for purposes of benefit sharing, and

(vi) special treatment for the regularization of past uses.

On March 4, 2021, Brazil ratified accession to the Nagoya Protocol, a multilateral agreement establishing rules on access to genetic resources and fair and equitable distribution of the benefits derived from their use, which was approved through Legislative Decree 136/2020.

12. International Law

Brazil is party to numerous multilateral environmental agreements, such as the Climate Change Convention, the Biodiversity Convention, the Basel Convention on the Movement of Hazardous Waste, the Montreal Protocol, the Stockholm Convention on Persistent Organic Pollutants, and UNCLOS, among many others. Rules reflecting such agreements are being enacted at the national level to comply with relevant international obligations set forth in these agreements.

13. Climate Change Law and air pollution standards

Brazil has signed all climate change international treaties, such as the United Nations Framework Convention on Climate Change ("UNFCC"), Kyoto Protocol and Paris Agreement.

Federal Law No. 12,187/2009 established the National Climate Change Policy ("PNMC") and provided for the main guidelines and public policies aimed at tackling climate change at the national level, such as sectoral plans for mitigation and adaptation, and the National Climate Change Plan.

It also created the Brazilian Market for Emission Reduction ("MBRE"), which is still pending regulation. Several states and municipalities have also issued laws regarding climate change policies.

What is more, voluntary carbon market transactions have increased in Brazil, which is considered one of the countries with the highest potential to generate carbon credits.

National financial initiatives have also been implemented for greenhouse gases offsets and nature-based solutions, such as the National Biofuels Policy ("RenovaBio"); the National Payment Policy for Environmental Services, which has set forth REDD+ programs such as the National Zero Methane Program.

As such, Brazilian Courts have already addressed cases of climate-related litigation in Brazil. Most cases are directly related to recent changes to Federal Government policies that combat the deforestation of the Amazon rainforest, as well as other financial initiatives concerning climate change.

There are also cases of class actions requesting indemnification for environmental damage based on arguments involving climate issues, such as carbon emissions due to illegal deforestation. Regarding this, the Brazilian Council of Justice ("CNJ") has recently issued Resolution No. 433/2021, which provides that, when assessing environmental damage lawsuits, judges must consider, among other parameters, the impact of such damage on global climate change.

In addition, Federal Law No. 14,590/2023 has provided that areas with granted forests can generate carbon credits. The new law allows public forest concessionaires to operationally unify forest management activities in continuous units. If they are located in the same conservation unit, this can also be done by different concessionaires, who will draw up a single Sustainable Forest Management Plan ("PMFS").

ESG AND SUSTAINABLE BUSINESS

Performing well according to Environmental, Social, and Governance criteria has increasingly become an indicator of diligent management and prosperity for any company, with the potential for long and even short-term financial returns, in addition to reputational benefits. Good practices in relation to ESG and for the construction and transparency of a more sustainable environment for businesses have become decisive factors for fostering trust from investors, consumers, and commercial partners, as well as for responding to growing demands from society on a more human approach to company's activities, including their direct and indirect impacts, and supply chains as a whole.

In addition to the reputational scope, the ESG framework has started to be reinforced through even more strict legal requirements and voluntary standards beyond those provided for in legislation. This includes a growing regulation of ESG criteria according to international guidelines and by Brazilian regulatory and banking federal agencies. Also, issues related to ESG, such as sustainability, climate change, social responsibility, and diversity, among others, are continuously under scrutiny by Brazilian courts.

At the same time, many opportunities are created for social and sustainable businesses and practices, supported by the Brazilian legislation, including wide-ranging forms of incentives for such businesses and practices (tax incentives, remuneration through the establishment of certificates and titles, among others) and the ongoing discussion on the regulation of the carbon credit market.

Given this landscape, it is fundamental to map out and avoid or mitigate risks related to ESG and take advantage of the opportunities this new investment and development environment presents, especially for sustainable, social, and environmental investments.

1 Introduction and main concepts

ESG refers to the practices and internal policies for the management of an organization/company, usually based on voluntary criteria aiming at the regulation, guidance, and oversight of the organization's actions and conduct in a manner that its internal and external relationships comply with the legislation and with additional good practices for the protection of the environment, social assistance and commitment, and corporate governance.

Themes related to each aspect of ESG include:

a. E – Environment: reduction of pollution, circular economy (waste recycling, reuse, and recovery), maintenance of water quality, management of natural resources, land use and avoidance of deforestation, reforestation projects, renewable energy, reduction of GEE emissions, climate change, green bonds and investments, and biodiversity, among others.
b. S – Social: health and safety of workers and communities, human rights, modern slavery, child traffic and labor, companies' involvement with communities, life quality, social inclusion, harassment, conflict areas, and relocation of people, among others.

c. G – Governance: anti-corruption compliance, antibribery policies, internal ESG policies, payments of executives, financial and corporate reports, transparency, salary gender equality, diversity and inclusion, data protection, cybersecurity, and clear definition of tasks and responsibilities, among others.

The knowledge of, adherence to, and monitoring of ESG criteria within companies is subject to growing demands from society, the market, investors, consumers, regulatory agencies, and international organizations. This evolution in the global market and diverse pressures also encompasses the growing understanding that social and sustainable investment goals should not only be aligned with companies' financial objectives, but also reflected and included in the companies' main values.

This, in turn, creates opportunities for the establishment of sustainable businesses, in which the business model and purpose are aimed at sustainability objectives, for the constitution of benefits to the environment and to society, bringing forth legacies for involved communities. Examples of sustainable business include creating structures to restrict the use of and maintain environmental preservation of areas, reforestation projects, carbon credit projects, projects creating and distributing clean energy, and biodiversity protection, among others.

2 Main ESG regulation in Brazil

ESG aspects are constantly being included in the context of various segments and activities of economic agents, including in global financial markets.

In the Brazilian market, since 2014, the Central Bank of Brazil ("BACEN") has devoted a great deal of attention to the work of laying the foundations necessary for financial institutions to act in such a way as to foster the development of sustainable finance.

In this regard, initially, BACEN issued CMN Resolution No. 4,327/2014, which was repealed and replaced by CMN Resolution No. 4,945/2021. This new resolution provides for the principles and guidelines for the establishment and implementation of the Social, Environmental and Climate Responsibility Policy ("PRSAC") and for the management of socio-environmental risks by financial institutions and other institutions authorized to function by BACEN, which must implement and enforce the PRSAC.

The repealed resolution (CMN Resolution No. 4,327/2014) established guidelines that were proportional to the business model of each different kind of financial institution and other controlled entities, according to the nature of the operations and the complexity of the institution's products, services, activities, and processes, and to the size and relevance of exposure to social risk, environmental risk and climate risk, in line with other resolutions issued by BACEN.

Additionally, BACEN Resolution No. 4,557/2017 provides for a risk management structure (including socio-environmental risks), a capital management structure and a disclosure policy that must be implemented by certain institutions authorized to operate by BACEN, considering the different structures defined according to the framework of the respective financial institution, or equivalent institutions.

Both resolutions mentioned previously have been updated to align the Brazilian banking practices to those that institutions at the global level have been carrying out, with a more comprehensive scope in comparison with the previous rules. CMN Resolution No. 4,327/2014 was partially applicable within a transition period and was repealed and fully replaced as of December 1, 2022, by CMN Resolution No. 4,945/2021, as stated previously.

Accordingly, financial institutions and similar institutions in Brazil must comply with the following set of regulations: (i) CMN Resolution No. 4,943/2021; (ii) CMN Resolution No. 4,944/2021; (iii) CMN Resolution No. 4,945/2021; (iv) BACEN Resolution No. 139/2021; (v) Normative Instruction No. 153/2021; (vi) BACEN Resolution No. 151/2021; (vii) BACEN Resolution No. 140/2021; (viii) BACEN Normative Instruction No 222/2021; (ix) Resolution No. 331/2023; and (x) CMN Resolution No. 5,081/23. The application of each resolution may differ for specific types of financial institutions mentioned in each regulation.

In sum, these regulations provide for obligations for different types of financial institutions, and other similar institutions, to:

a. Maintain social, environmental, and climate-related risk management structures;
b. Provide for policies compatible with the Social, Environmental, and Climate Responsibility Policy, as defined by BACEN; and
c. Promote the disclosure of information on policies, risks, and opportunities related to social, environmental, and climate matters. In addition, such normative documents determine certain criteria and impediments for granting rural credits.

These regulations established different applicable dates depending on the case. The deadlines for implementing their requirements vary according to the type of institution and obligations set out[25].

CMN Resolution No. 4,943/2021, which amends Resolution No. 4,557/2017, and CMN Resolution No. 4,944/2021 refer to risk management structures, detailing the need and form of identification, measurement, classification, evaluation, monitoring, control, and mitigation of social, environmental, and climate risks, among others. For this, CMN Resolution No. 4,943/2021 provides a more comprehensive approach, and, in its turn, CMN Resolution No. 4,944/2021 refers to a simplified risk management structure applicable in certain contexts.

[25] Most of BACEN's ESG rules mentioned in this chapter have been in force as of December 2022. However, BACEN Resolution No. 151/2021, which provides for social, environmental, and climatic risk disclosure has been implemented in separate stages since December, 2012, according to the framing of each financial institution according to BACEN. The last phase of implementation is set for June, 2024for smaller financial institutions (Segment 4, as BACEN defines) .

Within this scope, risks of a social nature are defined as: the possibility of occurrence of losses for the institution caused by events associated with the violation of fundamental rights and guarantees or acts harmful to the common interest[26]. Additionally, environmental risks are defined as: the possibility of losses to the institution caused by events associated with environmental degradation[27]. The Resolution also generally indicates that such risks include acts or activities that, despite being regular, legal, and not criminal, negatively impact the institution's reputation, as it is considered harmful to the common interest and/or as a result of environmental degradation.

Finally, climate risks are divided into two types, defined as follows:

a. Transition climate risks: the possibility of occurrence of losses for the institution caused by events associated with the transition to a low carbon economy, in which the emission of greenhouse gases is reduced or compensated, and the natural mechanisms for capturing these gases are preserved.
b. Physical climate risks: the possibility of occurrence of losses for the institution caused by events associated with frequent and severe weather or long-term environmental changes that can be related to changes in weather patterns.

In order to deal with such risks, financial institutions must establish management structures to identify and monitor risks incurred as a result of their products, services, activities, or processes. This must be performed not only regarding the risks of the institution itself, but also of its counterparties, controlled entities, relevant suppliers, and relevant outsourced service providers. It must be noted that risk management also extends to the identification of reputational risks.

Besides risk management, BACEN's set of rules also emphasizes the need for compatibility of the policies of financial institutions and other institutions authorized to operate by BACEN with the Social, Environmental and Climate Responsibility Policy ("PRSAC"). This Policy is regulated by CMN Resolution No. 4,945/2021 and deals with principles and guidelines of a social, environmental and climate nature that the institution must observe in carrying out its business, activities, and processes, as well as in its relationship with concerned parties. In fact, financial institutions must consider this Policy in evaluating their products and services, and the institution must establish the PRSAC and implement actions aimed at its effectiveness, including, among others, a periodic evaluation by the institution's internal auditors, based on clear and verifiable criteria.

The PRSAC also stipulates the obligation to appoint a director responsible for compliance with the Resolution and actions related to PRSAC, and there are also initiatives in this scope for which the board of directors is obliged to participate. Certain institutions must also constitute a social, environmental, and climate responsibility committee linked to the board of directors.

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[26] The resolutions indicate several concrete examples of this type of risk, including acts of harassment, discrimination, or prejudice based on personal attributes; practices related to work in conditions analogous to slavery; irregular, illegal or criminal exploitation of child labor; non-compliance with social security or labor legislation; irregular, illegal, or criminal acts that negatively impact traditional peoples or communities; acts that are harmful to public, historical, or cultural assets, or the urban public order; irregular, illegal or criminal processing of personal data; among other examples.

[27] This includes excessive use of natural resources, such as the occurrence of or signs of the occurrence of irregular, illegal, or criminal conduct or activity against fauna or flora; irregular, illegal, or criminal pollution of the air, water, or soil; irregular, illegal, or criminal exploitation of natural resources, including water, forests, energy, and mineral resources; environmental disasters resulting from human intervention; among other examples.

Furthermore, CMN Resolution No. 4,945/2021 also addresses existing concerns in the ESG context regarding transparency and information disclosure, making it mandatory to release the PRSAC and its actions, among other information, to the external public. If inadequacy or insufficiency is identified in the controls and procedures related to establishing the PRSAC and implementing actions aimed at its effectiveness, BACEN may determine that improvements are necessary.

In addition to the PRSAC, BACEN Resolution No. 139/2021 and BACEN Normative Instruction No. 153/2021 determine the annual disclosure of the Social, Environmental, and Climate Risks and Opportunities Report ("GRSAC Report"), which is mandatory for some institutions.

Regarding the disclosure of information related to ESG, it is also necessary to consider the determinations of BACEN Resolution No. 151/2021, which defines the obligation of some institutions to send to BACEN certain information related to the assessment of social, environmental, and climate risks in the context of their exposures in credit operations and securities, and their respective debtors.

More recently, BACEN enacted Resolution No. 331/2023, which provides for the PRSAC for prudential conglomerates classified as type 3, as well as the necessary measures to ensure its effectiveness. Resolution No. 331/2023 also defines the PRSAC as a set of principles and guidelines on social, environmental and climate matters, which must be complied with by the prudential conglomerate classified as Type 3 while running its business, activities and processes, as well as in its relationship with its stakeholders.

In addition, this resolution provides for the disclosure of information about the PRSAC on the conglomerate's institutional website, including the policy; implemented measures; economic sectors subject to restrictions relating to social, environmental, and climatic aspects; and products and services that contribute positively to these aspects, among others. Such information must be updated timely in the event of a review or of major changes made to the PRSAC.

Finally, BACEN Resolution No. 140/2021, as amended by CMN Resolution No. 5,081/23, provides for Social, Environmental, and Climatic Impediments in the Rural Credit Manual, establishing certain restrictions for granting rural credits to enterprises that: **(i)** are fully or partially inserted in a Conservation Unit; **(ii)** are located totally or partially on indigenous lands (already approved) or in areas inserted in lands occupied and titled by remainders of *quilombola* communities; **(iii)** are located in the Amazon Biome on a property embargoed by the Brazilian Institute of the Environment and Renewable Natural Resources – IBAMA; **(iv)** have a restriction in effect for illegal deforestation, according to records made available by the National Institute of Colonization and Agrarian Reform – INCRA; **(v)** are registered in the registry of employers that have kept workers under conditions analogous to slavery, due to a final administrative decision regarding the notice of violation; or **(vi)** are located in a rural property not registered or whose registration is cancelled or suspended in the Environmental Rural Registry (CAR).

In addition to BACEN, other Brazilian financial market and regulatory agencies have published regulations on ESG matters or have ongoing discussions to this respect.

As regards the scope of the National Financial System, the following rules and proposed regulations issued by the Securities and Exchange Commission ("CVM") stand out:

a. **CVM Resolution No. 14/2020:** Resolution that defines the requirement for publicly traded companies that decide to prepare and publish an Integrated Report to include in such document information related to sustainability reports, among other types of information, in order to reflect considerations on the subject of ESG, aiming to demonstrate, in an integrated manner, how the organization under analysis generates value over time. In this regard, a format for information presentation is defined, and the release of the Integrated Report, in such format, and with assurance by an independent auditor registered at the CVM, is mandatory for all publicly traded companies that choose to prepare and release it. However, the preparation itself of the Integrated Report is not mandatory.

b. **CVM Resolution No. 80/2022**: regulates the disclosure of information by issuers of securities. In 2021, among the information whose disclosure is required by publicly traded companies', CVM added information about environmental, social, and corporate governance (ESG) practices, in order to increase transparency on disclosure of them through the adoption of the "practice-or-explain" concept. Thus, the companies should report their practices on ESG matters or, in case the company do not adopt any practices on that matter, they have to explain the reasons for not doing that.

c. **CVM Resolution 175/2022**: regulates the incorporation, operation, and disclosure of information on investment funds. Such resolution includes a general section that applies to all categories of investment funds, and schedules referring to specific regulations applicable to different categories of funds.

    i. Among other provisions, CVM Resolution 175/2022 contains requirements directed to the investment funds whose name contains terms related to ESG matters, by providing that their by-laws include certain information related to the ESG practices of the fund.

d. **CVM Resolution No. 193/2023**: requires publicly-held companies to disclose financial information related to sustainability. It will be mandatory for publicly-traded companies from 2026. This document is already available, on a voluntary basis, for publicly-traded companies, investment funds and securitization companies that seek to provide the market with financial information related to sustainability. The report aims to facilitate a clear comparison among ESG-related actions adopted by each company. The document will follow two standards (IFRS S1 and S2) by the International Sustainability Standards Board (ISSB). The drafting and publication of this ESG risk report in Portuguese will be mandatory from 2026 onwards. As of 2027, however, the report will have to be published three months after the end of the financial year or at the same time as the financial statements, whichever comes first.

e. **Public hearing of Technical Pronouncement CBPS No. 1:** in May 2024, CVM submitted the draft of Technical Pronouncement CBPS n. 1 to public hearing, which is aligned with IFRS S1 - General Requirements for Disclosure of Sustainability-related Financial Information, issued by International Sustainability Standards Board (ISSB) in June 2023. The objective of the Pronouncement is to establish general requirements for disclosures of information on sustainability-related risks and opportunities that are useful for users of general-purpose financial reports in making decisions about providing resources to the entity. The respectively CVM Resolution is expected to come into effect in January 2026.

f. **Public hearing of Technical Pronouncement CBPS No. 2:** in May 2024, CVM submitted the draft of Technical Pronouncement CBPS n. 2 to public hearing, which is aligned with IFRS S2 – Climate-related Disclosures, issued by ISSB in June 2023. The Pronouncement's draft includes disclosure requirements for information on climate-related risks and

opportunities that are useful for users of general-purpose financial reports in making decisions about providing resources to the institution, encompassing aspects of physical and transition risks, and opportunities available to the institution. The document incorporates recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and includes sector-based disclosure requirements derived from the Sustainability Accounting Standards Board (SASB) Standards. The respectively CVM Resolution is expected to come into effect in January 2026.

B3 S.A. ("B3"), Brazil's official stock exchange, has been collaborating with CVM to align its operation with the market's best practices by including an ESG Annex to its Regulation for Listing of Issuers and Admission to Trading Securities.

In line with CVM practices, the "practice-or-explain model" was adopted, offering listed companies[28] the option to either disclose their ESG practices or to explain the reason for the lack of ESG measures.

In sum, four ESG measures are listed in the regulation, focusing mainly on social and governance topics:

a. The first measure provides for the election of at least one woman and one member from a minority community as full members of the executive board or the board of directors.
b. The second measure sets out that bylaws or nomination policies must establish ESG criteria for the procedure to appoint members of the executive board or the board of directors, including the minimum criteria of "complementarity of experiences" and diversity of gender, sexual orientation, color or race, age group, and inclusion of people with disabilities.
c. The third measure emphasizes the need for ESG performance indicators in compensation policies, especially in cases of variable compensation of executives.
d. The fourth measure adopted by B3 regards information transparency, ensured through the drafting and publishing of an ESG Practices Disclosure Document approved by the Board of Directors.

As a self-regulatory agency that represents the institutions of the Brazilian capital market, the Brazilian Association of Financial and Capital Market Entities ("ANBIMA") is one of the main parties responsible for the adoption of good practices by institutions that are part of the financial sector. In regard to ESG practices, ANBIMA is in charge of establishing parameters and conduct that must be followed by regulated entities, through guidelines and self-regulation codes to which entities can adhere.

Within the scope of the self-regulation, especially regarding investment funds, the following proposed regulations issued by ANBIMA stand out:

a. **ESG Guideline II (2021):** Assists a fund's management in understanding the identification rules for sustainable funds, which are part of ANBIMA's self-regulation. The main requirements are related to (1) Commitment to Sustainability; (2) Continuous Actions; and (3) Transparency.
b. **Third Party Resource Management Code**: multimarket funds, FIDCs (Credit Rights Investment Funds), FICs (quota funds that invest in the local market or abroad) and ETFs will have to[29] identify in the regulations which category of sustainable identification they fall into, as per

[28] The Annex would be applicable to all listed companies, except for smaller entities, entities registered in category B, beneficiaries of tax incentives, and issuers of Sponsored Brazilian Depositary Receipts.

[29] The implementation is phased and depends on when each investment fund was incorporated, since depending on their date of incorporation, they were given time to adapt. The adaptation period ends on June 28, 2024.

ANBIMA regulations. For an investment fund to qualify as a sustainable fund, there is a number of ANBIMA rules that must be followed, mainly to ensure transparency with the public, including the need to follow the rules and procedures for investments in sustainable assets, create an ESG methodology form and prepare an annual ESG report;

c. **Guide to ESG Bond offerings:** An advisory document aimed at instructing financial institutions regarding the adoption of best practices for the public offering of fixed income securities related to sustainable finance. Also, the guidelines aim to mitigate, even if indirectly and non-exhaustively, the risk of greenwashing, by providing international best practice references for the ESG bonds market and defining obligations related to the disclosure of information.

d. Based on the particularities of the Brazilian market and on the principles of the International Capital Market Association ("ICMA"), ANBIMA has classified fixed income bonds into two categories:

e. Use of proceeds bonds: The funds raised in these issuances are used to finance or refinance projects, assets or investments that generate social and/or environmental benefits. This means that the funds raised in the offering, or an equivalent amount, are "stamped" for a specific destination that must be related to one of the following fundraising modalities: green, social or sustainable.

f. Sustainability-linked Bonds: The funds raised in these issuances can be allocated freely. However, the issuer assumes an obligation to meet previously established ESG goals.

g. Issuers must disclose certain mandatory documents containing the information necessary for due transparency about the issuance characteristics, including:

h. Issuer framework: Document drafted by the ESG issuer containing key information about its ESG-related operations and strategies . The lack of framework requires that the information related to the ESG pillars of the bonds be disclosed in another public document, such as the offering documents;

i. Second opinion report: Description of the pillars that characterize each bond. In the case of the use of proceeds bonds, the use of a certificate to replace the second opinion report is allowed;

j. Annual report: Report regarding the issuer's progress to ESG goals, measured through key indicators, in the case of sustainability-linked bonds, or using the description of the projects that were financed with the specified resources, in the case of use of proceeds bonds; and

k. Final report: Conclusion attesting that 100% of the resources were allocated to the defined projects, applicable only to the use of proceeds bonds.

In addition, ANBIMA has established key points that must be included in the offering documents, i.e., documents drafted by the issuer or the offering placement agents to provide information regarding the issuer or the offering, such as:

I. The characteristics of the issuance, including the (i) classification of the ESG bond, specifying the type of bond, as applicable; (ii) suitability of the bond's characteristics to the Guide's information; (iii) publicity of the documents; and (iv) existence of an independent third-party examiner to prepare the second opinion report or the certificate, among others.

II. Specific clauses for compliance with sustainable obligations established by the parties, including:

(i) **"Compensation"** clause, or another clause affected by any change in the characteristics of the offering, as a result of compliance or non-compliance with ESG goals (applicable only for the sustainability-linked bonds);

(ii) **"Use of proceeds"** clause, with a detailed description of the projects or portfolio to which the offering resources or an equivalent amount will be allocated(applicable only for use of proceeds bonds);

(iii) **"Non-Automatic Early Maturity"** clause, in the case of non-compliance with ESG goals or the allocation of resources related to specific projects or assets;

(iv) **"Representations and Warranties"** clause, with a detailed description of each party's obligation, as applicable, related to the ESG characteristics of the operation;

(v) **"Risk Factors"** clause, related to breach of the established obligations; and

(vi) Other applicable information. It is recommended that the issuance document provide for conditions that discourage the issuer from making early redemptions of the sustainable bonds before the dates of verification of sustainability milestones or full allocation of the funds to the selected projects, as applicable.

Also, within the scope of regulatory norms in relation to insurance, the Superintendence of Private Insurance ("SUSEP") incorporated ESG criteria and practices into their frameworks and policies. In this sense, among the main topics under discussion are climate change and the need for a greater and better understanding of pricing climate risks to promote a more efficient allocation of capital and prevent abrupt adjustments that may result in disruption in the financial system. In this context, SUSEP published SUSEP Circular No. 666/2022, providing for sustainability risk management instruments to be complied with by insurance companies, Open Entity for Complementary Social Security (EAPCs), capitalization companies and local reinsurers, given their role in the insurance industry as both risk manager and taker, and as an investor, as well as taking into account their duty to promote sustainable economic and social development, especially when considering such entities' qualification to carry out risk assessment and pricing.

Among the Circular's provisions are:

a. Mandatory incorporation of environmental, climate, and social risks in the general structure of the Internal Controls System (SCI) and the Risk Management Structure (EGR).
b. Supervised entities must draft, publish, implement, and update a Sustainability Policy, complementary to risk management, which must establish principles and guidelines to ensure that sustainability aspects, including risks and opportunities, are considered in the carrying out of business and in regard to relationships with stakeholders.
c. Regarding supervised entities' governance, their management bodies must be readily available to coordinate and comply with the Policy requirements.

Similarly to BACEN's provisions, SUSEP's Circular establishes different timelines for deadlines and obligations that are applicable to each specific segment of the supervised entities.

In addition, within the scope of regulations that provide for regulated companies in the health sector, the Brazilian National Supplementary Health Agency ("ANS") has published Administrative Resolution No. 82/2023, which provides for its Integrated Policy of Governance and Socio-environmental Responsibility. This resolution introduces normative provisions and defines ESG factors in programs, projects, processes, activities, and tasks carried out by the ANS.

Although this resolution is exclusively connected to ANS' regulatory operation, it corroborates the ANS' increasingly evident intention to implement new regulations for its regulated companies, based on and in compliance with international ESG practices.

In fact, the ANS has already published new regulations in this regard – emphasizing governance practices. One example is the publication of Normative Resolution No. 518/2022, which provides for the adoption of minimum corporate governance practices, and the creation of regulatory incentives, such as the "New Operators Accreditation Program", which encourages the adoption of good practices for organizational management and health management.

Within the regulatory scope, the Brazilian Association of Technical Standards ("ABNT") published ABNT PR 2030ESG on December 14, 2022, seeking to standardize the metrics and guidelines for reporting ESG information. The "Recommended Practice" is the world's first national ESG standard and will be one of the baselines for creating the first global ESG standard, which is currently under development by the International Organization for Standardization ("ISO").

Finally, important specific ESG-related terms have also been addressed by Brazilian regulators in order to mitigate occurrences of greenwashing or social washing[30]. For example, the use and definition of terms such as "green", "social", "sustainable", "ESG", among others, and the parameters for such use, has been established by the National Council of Self-Regulation in Advertisement ("CONAR"), through the Brazilian Code of Self-Regulation in Advertisement; by the CVM, through CVM Resolution No. 75/2022; and by the Brazilian Association of Financial and Capital Market Entities ("ANBIMA").

[30] Greenwashing is the term used to refer to the practices of certain companies to ostensibly adopt market campaigns or issue statements about their positive environmental efforts without reflecting this in their practices and products, while social washing refers to the same activity regarding social claims.

3 Climate change

The National Policy on Climate Change (PNMC), established by Law No. 12,187/2009, is a legislative milestone that establishes Brazil's commitment to mitigating climate change and adapting to its effects. This regulation outlines principles, objectives, guidelines, and instruments related to climate action, including the reduction of greenhouse gas emissions and the increase of carbon sinks.

To achieve its objectives, the PNMC is divided into five sectoral plans, addressing areas such as reducing deforestation in the Amazon and *Cerrado* regions, energy, agriculture and livestock, and industry.

The PNMC also encourages adaptation measures to reduce the country's vulnerability to the impacts of climate change, including the development of the National Plan for Adaptation to Climate Change (NPACC), which aims to manage risks associated to extreme climate phenomena and improve the resilience of natural and human systems.

Also, regarding the development of climate change regulations, Law 14,590/23 recently came into force, amending the rules for the management of public forests by concession, to expand the possibilities for the concessionaire to exploit the area. The law allows the trading of carbon credits and the exploitation of the biodiversity of the concession area, which was previously forbidden.

4 Forestry PFI Projects

Federal Law No. 14,590/2023 enables the development of forest carbon credit projects and other environmental services in conservation units (protected areas) through Project Finance Initiative ("PFI") contracts.

The ownership of the forest remains public throughout the concession period. In turn, project developers pay the government sums that vary according to the price bid submitted during the procurement process.

Under the PFI contract, sustainable management enables the project developer to explore timber and non-timber products, as well as forestry services, such as:

X. Timber products: Timber and timber by-products (branches, roots and tree trunks).
XI. Non-timber products: non-timber plant products, including leaves, roots, bark, fruit, seeds, gums, oil, latex, and resins.
XII. Services: Tourism and sightseeing activities, environmental education, forest restoration, and carbon credits resulting from the recovery of degraded areas.

In addition, the new law establishes that the concession contract can provide for the transfer of ownership of carbon credits and environmental services from the granting authority to the project developer, thus contributing to the legal certainty of such projects.

Under the terms of the Public Forest Management Law (Law 11,284/2006), the project developer has the right to carry out sustainable forest management activities, within the managed forest, as well as forest restoration and exploitation of products and services in the management unit. The activities to be carried out by the project developer will be agreed upon in the relevant PFI contract.

5 Biodiversity

In 1992, the Convention on Biological Diversity ("CBD") established general rules on access to biodiversity and the sharing of benefits derived from this access.

Given that Brazil is one of the most biodiverse countries in the world, regulations relating to this access and/or to the shipping of Brazilian biodiversity were established in 2001 at the national level.

In 2010, the Nagoya Protocol was signed, establishing international rules on such access and benefit sharing between countries. In response, Brazil published the Legal Framework for Biodiversity, Law No. 13,123/2015, which amended the rules on the access to Brazilian biodiversity and benefit sharing.

In 2021, Brazil ratified the Nagoya Protocol through the enactment of Legislative Decree 136/2020 and deposit of the ratification letter before the United Nations.

The matter of benefit sharing involves the sharing of benefits arising from the economic exploitation of a finished product or reproductive material developed from access to genetic heritage or associated traditional knowledge. Benefit sharing can be monetary or non-monetary. Monetary benefit sharing is destined, depending on the case, to indigenous populations, traditional communities, and traditional farmers, or to the National Benefit Sharing Fund, managed by the Federal Government. Non-monetary sharing involves several possible formats (conservation projects, technology transfer, social interest programs, etc.), and is done through an agreement signed, depending on the case, with indigenous populations, traditional communities, traditional farmers, or with the Brazilian Federal Government.

In 2022, the Brazilian Institute of Environment and Renewable Natural Resources ("IBAMA") initiated an operation, aimed at intensifying inspections of genetic heritage and associated traditional knowledge. The focus of such initiative is on verifying compliance of institutions that have access to Brazilian biodiversity, or that economically exploit products arising from this access, with the applicable regulations, thus inhibiting infractions and guaranteeing the sharing of benefits for the preservation and sustainable use of Brazilian biodiversity.

Companies in the pharmaceuticals, cosmetics, and agribusiness sectors, among others, have been investigated.

6 Product life cycle

The management of solid waste is governed by Law No. 12,305/2010, which establishes the National Policy on Solid Waste (PNRS), the main legislation regulating the sector. This law introduced significant innovations in the management and handling of solid waste, which are the result of more than two decades of discussions in the National Congress.

Reverse logistics systems are primarily regulated by the PNRS. This law defines reverse logistics as a tool for returning products, such as agrochemicals, their residues and packaging, batteries, tires, lubricating oils, fluorescent, sodium and mercury vapor and mixed light bulbs, electronic equipment and their components, packaging after consumer use, aiming for the reuse, recovery or proper disposal of such materials. The objective of reverse logistics systems is to enable the collection and return of solid waste to the business sector for reuse in its own production cycle or in others, or another environmentally appropriate destination.

Subsequently, Decree No. 10,388/2020 was enacted to specifically regulate the reverse logistics of expired or unused household medicines and their packaging.

Despite the list of products at the federal level, state legislation can introduce restrictions and additional products, as is the case in the state of São Paulo.

Furthermore, in 2023, Decrees 11,413 and 11,414 introduced changes to the recycling chain and corporate responsibilities, emphasizing the importance of shared responsibility and the reuse of waste in the production cycle.

7 Human Rights Bill

Bill No. 572/2022, which is currently pending before the Brazilian Congress, aims to create a legal framework to establish directives for the promotion of public initiatives related to the protection of human rights, and to set regulations on governmental and corporate responsibility regarding violations of human rights and damage caused to socio-environmental victims.

Although human rights are protected by the Brazilian Federal Constitution and a few other laws, the bill's justification reports that the legal framework lacks specific regulation on effective responsibility of public and private agents.

If enacted into law, the bill will regulate the extension of corporate responsibility, including mechanisms of control related to the production chain with the purpose of avoiding violation of human rights in the lower levels.

The bill brings establishes that companies must be aware of the potentially damaging effects of their operations, conducting mandatory due diligences and being responsible to prevent serious consequences to the society. It also details the need to adopt measures to end corporate activities that violate human rights.

The bill, which is under discussion without a clear approval timeline, clearly intends to raise awareness regarding corporate responsibility toward human rights and outlines rigorous consequences for companies that fail to address ESG matters. The bill is still under discussion and there is no clear timeline for its possible approval.

8 Sustainable business opportunities

The growing attention to ESG has resulted in further development of sustainable business, which encompass those businesses and investments in activities, products, or services aiming to achieve goals related to sustainability, regarding benefits to the environment and society, and to bring forth legacies to the communities impacted by the respective projects.

Such increased interest in sustainable business is reflected within Brazilian legislation, which provides legal incentives for these kinds of projects / activities. On this, please find below examples of the main legislation with incentives or market regulation on this matter:

- Federal Law No. 14,119/2021, which established the National Policy for Payment for Environmental Services, defined as a voluntary transaction through which a provider of environmental services (activities that benefit the maintenance, recovery, or improvement of ecosystem services, which in its turn refers to relevant benefits for society provided by ecosystems) is paid for such, as per conditions established between parties, and relevant legislation.
- Federal Law No. 14,133/2021, which provides for the regime applicable to public contracts and bidding procedures in Brazil, has innovated in relation to the previous law (Federal Law No. 8,666/1993) regarding ESG practices:
  - ESG Criteria in procurements: In contracting for works, supplies, and services, including engineering services, a variable compensation may be set according to the contracted party's performance, based on goals, quality standards, environmental sustainability criteria, and delivery times as defined in the tender documentation and the contract.
  - Winning supplier's obligation to implement an integrity program: In contracting for major works, services, and supplies, the procurement documents must set forth the winning supplier's obligation to implement an integrity program within six months of the execution of the contract.
- Possibility of requiring a minimum percentage of labor composed of women victims of domestic violence and people that served their full sentence in prison: The bidding notice may, as provided for in the applicable regulations, require that a minimum percentage of the labor force is composed of women victims of domestic violence, and people discharged from prison.
- ESG tie-breaking criteria: Inclusion of (i) the development of equity actions among men and women in the workplace; (ii) development of an integrity program; and (iii) environmental impact mitigation practices.
  - Federal Law No. 12,651/2012, which provides for the Cota de Reserva Ambiental ("CRA"), a title representative of an area with native vegetation, existing or under-recovery, which may be transferred, for free or for a price.
  - Federal Decree No. 10,828/2021, which regulates the Green CPR, a credit instrument that works as an economic mechanism to promote environmental conservation and adoption of sustainable technologies and practices in farming and forestry productivity for reducing environmental impacts.
  - Federal Law No. 13,576/2017, which established the National Biofuels Policy – RenovaBio, providing for decarbonization goals for such industry, methods for the certification of biofuels production and the possibility of issuance and commerce of decarbonization credits (CBIOs).

- Federal Decree No. 10,387/2020, which alters the wording of Decree No. 8,874/2016, including the indication of priority projects that provide relevant environmental or social benefits in specific urban mobility, energy, and basic sanitation projects, for funds raising, with tax incentives, through securities described in Law No. 12,431/2011.

At the state and municipal levels, the legislation also provides incentives for establishing sustainable businesses, including tax incentives, the provision of certificates/seals, among others.

In addition to legislative measures, federal, state, and municipal government branches are also carrying out programs to encourage sustainable business, including REDD+ programs such as *Floresta+* and *Floresta+Carbono*, the National Zero Methane Program, the *Amazônia + Sustentável* Plan, ABC+ Plan, *Renovar Frota +Verde* action, State Plans for Decarbonization, *Recicla+* Program, among others.

The Brazilian Bank for Economic and Social Development (BNDES) has a series of mechanisms in place to generate direct benefits to environmental quality and reduce social and regional inequalities in Brazil. Its main incentives include:

XIII. Financial support to ESG initiatives related to: (i) organizations making investments that result in the best use of natural resources; (ii) renewable energy system implementation projects; (iii) improvements in the urban mobility sector; and (iv) improvements in the urban mobility sector.

XIV. Sustainable finance solutions: BNDES issued green bonds in the international market and green financial bills in the domestic market. In 2021, the BNDES launched a sustainability bond framework, expanding the possibilities for raising green, social and sustainable bonds. The BNDES also has partnerships with multilateral organizations, in a current portfolio that brings together entities such as the IDB, JBIC, KFW, NDB, AFD and NIB.k.

XV. Strategic international partnerships: The BNDES has several agreements to expand funding mechanisms for sustainable projects in Brazil, as well as to mobilize private investment in infrastructure projects.

XVI. Structuring of key-projects: The BNDES is currently responsible for structuring projects to attract investments for environmental preservation. Furthermore, it plays a key role in the development of public-private partnership projects in social infrastructure sectors, mainly in health, public lighting and basic education.

Also, in relation to these topics, Brazil's National Congress is currently discussing bills of law on the carbon credit market. It should be noted that Brazil is considered a country with some of the largest opportunities for such a market.

Finally, sustainable businesses may also be subject to financial instruments issued in Brazil, including green bonds, social bonds, sustainability bonds, and sustainability-linked bonds.

9 Administrative and judicial scrutiny over ESG Compliance

Issues related to ESG have been subject to administrative and judicial evaluation, considering the increase in scrutiny from regulatory agencies over such matters (including CVM, for example) and an increase in judicial cases brought forth by concerned parties, including participation from consumers, society, and non-governmental organizations, as well as due to media attention and possible reputational impacts, especially in relation to greenwashing, social washing, and similar practices.

ESG-related topics subject to administrative and judicial oversight in Brazilian evaluation are: (i) Diversity in companies' staff, managers, and directors; (ii) Contradictions and inconsistencies in sustainability reports; (iii) Criteria for adequate disclosure of environmental information to investors; (iii) Due diligence duties of companies' administrators and directors; (iv) Anti-corruption and compliance practices; (v) Legal nature of carbon credits and respective applicable legislation; (vi) Methodologies for accounting for and reaching goals related to sustainable business and obtaining of certificates, among other criteria.

In addition, as further detailed in the Environmental Law section of this publication, Brazilian Courts (including the Federal Supreme Court) have been addressing cases involving climate litigation in Brazil, taking into account governmental policies regarding the combating of deforestation, financial initiatives related to climate change, indemnification for environmental damages related to climate change or air pollutant emissions, among others. It should be noted that Brazil has signed all climate change international treaties and has legislation on the matter, including Law No. 12,187/2009 (National Climate Change Policy), Decree No. 11,550/2023 and other state and municipal legislation.

It should be noted that the inspection of ESG factors is not limited to Brazilian borders, even for Brazilian companies, given that companies that operate internationally must comply with the regulations of the respective countries where they carry out business. For example, the U.S. Securities and Exchange Commission has addressed cases of accountability based on information disclosed by Brazilian companies. Due to the publication of regulations resulting from the European Green Deal, importers and exporters will soon potentially be subject to compliance with additional regulations.

10 National and International ESG Guidelines

The integration of ESG frameworks and practices within companies, as well as the release of sustainability reports, is an increasingly widespread practice in Brazil, even if carried out voluntarily, based on ESG criteria and indexes such as the standards of the International Finance Corporation, Global Reporting Initiative, Sustainability Accounting Standards Board, International Financial Reporting Standards, Dow Jones Sustainability Indices, Task Force on Climate-Related Financial Disclosures, Task Force on Nature-Related Financial Disclosures, Climate Bonds Standard, United Nations Sustainable Development Goals, UN Global Compact Brazil Local Network, among others.

In addition, certain sectoral associations are discussing and publishing ESG guidelines for companies and institutions, including the Brazilian Banks Federation (FEBRABAN), the Brazilian Banks Association (ABBC), among others.

Finally, rules established in other jurisdictions may be applicable to companies in Brazil, especially if involving transactions and investments with foreign companies. As such, we highlight the recent proposal for directives on corporate sustainability adopted by the European Commission in the context of the European Green Deal, which aims to promote sustainable and responsible corporate conduct in the global value chains of companies, according to which companies, in some cases even if not established in the European Union, will be required to identify and, if necessary, prevent, eliminate, or mitigate adverse impacts of their activities on human rights, such as child labor and worker exploitation, as well as on the environment, for example pollution, deforestation, carbon emissions and loss of biodiversity.

11 Governance

In light of the United Nations Sustainable Development Goal No. 16 (Peace, Justice and Strong Institutions), companies are encouraged to adopt integrity and anti-corruption programs to mitigate risks and foster an ethical business environment. As a corporate governance tool, a solid compliance program enables the establishment of a safe environment for interaction among the company, its investors, stakeholders, and management, and the protection of the company, its directors, and officers from potential administrative, civil and criminal liability.

Finally, the implementation of a compliance program is not mandatory under Brazilian legislation, unless required in specific cases, such as for entering into government contracts as provided for by Federal Law No. 14,133/2021 (New Public Procurement Law), and for certain entities that receive public financing.

In this regard, each company will determine, on a case-by-case basis, the level of governance it intends to implement, following best practices, guidelines and legal standards provided by the legislation, especially the guidelines issued by the Brazilian Office of the Comptroller-General (CGU).[31] Companies are encouraged to adequately manage third parties, including their supply chain, which encompasses the conduction of risk-based third-party due diligence, in particular due to the strict liability of companies provided for by Federal Law No 12,846 of 2013, the Clean Company Act, in case third parties commit wrongful acts in their benefit or interest (Section. 5, III). Moreover, third party management is one of the components of an effective compliance program, pursuant to Federal Decree No. 11,129 of 2022 (Section. 57, III). In connection to ESG efforts, companies should also promote the identification, prevention, interruption, mitigation and accountability of violations to human rights and environmental impacts not only within the company's own operations, but also in their subsidiaries, third parties and supply chain.

[31] Integrity Program – Guidelines for Legal Entities | Brazilian Office of the Comptroller-General

In addition to the supply chain due diligence activities, an effective compliance program should include periodic risk assessments, as per Federal Decree No. 11,129 of 2022 (Section. 57, V). The assessment must take into consideration the likelihood of risk events taking place, and the potential impact of these incidents to the company's activities. ESG-related risks should also be considered within the risk assessment along with the corporate risks, as environmental risks (e.g.: climate change, environmental disasters, regulatory violations) and social risks (e.g.: work safety issues, forced labor, impact on local communities surrounding the company) may result in significant financial and/or reputational impacts on the company, especially due to the current phenomena of accelerated information dissemination through social media. The governance risks, in turn, are associated with the establishment of proper mechanisms to manage corporate and ESG risks, as leaders play a key role in evaluating and steering the decision-making process considering the ESG risks identified. In this regard, the Brazilian Institute of Corporate Governance (IBGC) published a guide to ESG-related risk assessments.[32]

12 Salary transparency law

Law No. 14,611 (of July 03, 2023) was published in the Federal Official Gazette of Brazil on July 04, 2023, introducing measures aimed at fostering equal pay and remuneration criteria for women and men.

Although there has been no change in the regulations provided for in the Brazilian Consolidated Labor Laws ("CLT") characterizing the right to equal pay – which were already applicable to cases of wage disparity between men and women –, the law introduced important news, including:

I. New penalties for violation of equal pay (Art. 461 of the CLT):

   The payment for wage discrepancies arising from claims of equal pay does not prevent the claim for indemnity for pain and suffering damages in the event of discrimination; and

   The administrative penalty for non-compliance with equal pay on a discriminatory basis increased ten-fold as compared to the new wage due to the discriminated employee, which will be applied twice in the event of recurrence.

II. Measures to ensure equal pay for men and women:

   The law also establishes provisions considered as ways of ensuring equal pay and remuneration criteria between men and women, such as:

   - establishing wage transparency mechanisms and remuneration criteria;
   - increasing the monitoring against wage discrimination and remuneration criteria between women and men;
   - providing specific channels for wage discrimination complaints;
   - fostering and implementing diversity and inclusion programs in the work environment encompassing the training of managers, leaders and employees on the theme of

[32] Connecting the ESG directives to the risk management | Corporate Risks Management Committee (IBGC)

equality between men and women in the labor market, with benchmarking results; and

- fomenting women training programs for joining, continuing and growing in the labor market, on equal terms with men.

III. Half-yearly wage transparency reports:

The most prominent innovation addressed by the law was the obligation, for companies with 100 or more employees, to publish half-yearly reports on wage transparency and remuneration criteria, observing the regulations provided by the Brazilian General Data Protection Law ("LGPD").

According to the law, the reports would allow for the objective comparison between wages and remuneration of men and women, as well as the proportion of administration, management and leading job positions occupied by women and men.

Failure to disclose the report can make the company liable to pay an administrative fine equivalent to 3% of the payroll, limited to 100 minimum wages.

In cases where there is inequality in wage or remuneration criteria, regardless of non-compliance with the provisions of article 461 of the CLT, the company must submit and implement an action plan to mitigate inequality, including targets and deadlines, also ensuring the participation of union and employee representatives in the workplace.

The law also provides that the Brazilian Federal Government will make available reports and other prominent statistical information, in an integrated way and on public digital platform.

The process of publishing the report is regulated by Federal Decree nº 11,795/2023 and Ordinance nº 3,714/2023 of the Labor Ministry.

FOREIGN INVESTMENT

1 General Rules

Foreign investment has been welcomed in Brazil for a long time and is an important source of capital for the development of the Brazilian economy. On December 29, 2021, the Federal Government enacted the new Brazilian foreign exchange legislation (Law 14,286), which entered into force on December 31, 2022.

The new Law, originated from Bill No. 5,387/2019, **(i)** consolidates more than 40 regulations that provided for aspects relating to the foreign exchange market ("fx market"); **(ii)** amends the Brazilian legislation, in alignment with operational needs arising from global production chains, which facilitates foreign trade and the flow of investment resources; and **(iii)** favors foreign investments in Brazil, as well as Brazilian investments abroad, proportionally to the value of the business and the risks involved.

On November 25, 2022, the National Monetary Council ("CMN") enacted Resolution No. 5,042 ("CMN Resolution 5,042"), according to which the CMN established the general principles that must be observed within the scope of foreign exchange transactions, as well as the outflow and inflow of funds from and into Brazil. CMN Resolution 5,042 came into force on December 31, 2022. According to this rule, the general principles that regulate the foreign exchange market in Brazil are:

(i) competition to render services to the people involved in foreign exchange transactions;

(ii) fulfillment of people's needs, particularly freedom of choice, privacy, transparency, and access to clear and complete information regarding the conditions involved in foreign exchange transactions;

(iii) efficiency of foreign exchange transactions;

(iv) fostering innovation, taking into consideration the legality of the transactions and the diversity of business models;

(v) cost reduction of foreign exchange transactions;

(vi) financial inclusion;

(vii) reliability and quality of products and services offered in the foreign exchange market; and

(viii) integrity, good standing, security and secrecy of foreign exchange transactions or funds transfers.

On December 31, 2022, in order to comply with the new Brazilian foreign exchange legislation, the Central Bank of Brazil ("BC") enacted new rules that further regulate the foreign exchange market and foreign investments in Brazil, in line with the provisions of Law No. 14,286, as follows:

(i) Resolution No. 277 (BC Resolution 277), which regulates the foreign exchange market and the inflow and outflow of amounts in Brazilian *reais* and in foreign currencies in Brazil;

(ii) Resolution No. 278 (BC Resolution 278), which regulates foreign capital in Brazil and the reporting of information to BC;

(iii) Resolution No. 279 (BC Resolution 279), which provides for Brazilian capital abroad;

(iv) Resolution No. 280 (BC Resolution 280), which establishes the definition of residents and non-residents for the purposes of the New Legal Framework for the Brazilian Exchange Market; and

(v) Resolution No. 281 (BC Resolution 281), which establishes transitional provisions that must be in compliance with BC Resolution 278.

The new resolutions seek to modernize, simplify, and ensure greater legal certainty to the provisions of Law No. 14,286 regarding the Brazilian exchange market, as well as to minimize red-tape procedures and increase transparency within the Brazilian exchange market. In addition, the resolutions aim to adjust Brazil's operations according to international standards, thus establishing an advantageous business environment and fostering international investment in Brazil. The stability of Brazilian foreign investment legislation is a clear indication of the country's desire and firm commitment to attracting and welcoming overseas investors.

Foreign investment is not subject to government approvals or authorizations, and there are no requirements regarding minimum investment or local participation in capital (except in very limited cases such as in financial institutions, insurance companies, and other entities subject to the regulating authority of BC). Foreign participation, however, is limited or forbidden in the few areas of activities, further explained in this chapter.

With respect to foreign exchange control, BC is responsible for:

(i) managing the daily control over foreign capital outflows and inflows from and into Brazil (risk capital and loans under any form);

(ii) establishing administrative rules and regulations for registering investments; and

(iii) monitoring foreign currency remittances.

Foreign investments in the form of currency must be officially carried out through financial institutions duly authorized to operate in the fx market. Foreign currency must be converted into Brazilian currency and vice-versa through the execution of a foreign exchange contract with a financial institution authorized to operate in the fx market. Foreign investments can also be carried out through the contribution of assets and equipment intended for the local production of goods or services.

2 Foreign Exchange Market

There used to be two official exchange-rate markets in Brazil (the commercial and floating-rate markets), both of which were regulated and monitored by BC. The choice between one market or the other was mandatory and depended on the nature of the remittance of funds.

In March 2005, BC unified both markets, extinguishing the differences between them and subsequently enacted more flexible exchange rules. Consequently, remittances of funds in and out of Brazil must now flow through one single exchange market, regardless of the nature of payments.

3 Foreign Investment Registration

Foreign direct investments carried out in the form of currency or assets in an amount exceeding USD 100,000.00, or an equivalent amount in other currencies, must be registered with BC. Such registration grants foreign investors the right to receive dividends and interest, and also to repatriate investments. Since December 31, 2022, foreign direct investments in amounts of up to USD 100,000.00 are no longer subject to registration in the BC system.

Since August 2000, foreign investments in the form of capital have had to be registered through the Electronic System of Registration of BC's online data system. Meanwhile, foreign loans also became subject to registration in BC's Electronic System of Registration as of February 2001.

The amount registered with BC as foreign investment includes the sum of:

(1) the original investment (whether in cash or in kind);
(2) subsequent additional investments (including the capitalization of credits); and
(3) potential reinvestment of profits.

The aggregate amount is the basis for repatriation of capital and calculation of any taxes levied on capital gains, as explained below.

4 Remittance of Profits

Since January 1996, profits paid by a Brazilian company to a foreign investor are not subject to withholding taxes. In order to be remitted, the foreign currency must be purchased directly from any financial institution authorized to operate in the fx market, upon the submission of a corporate act declaring dividends and relevant financial statements. Until January 30, 2017, in order to enable the outflow of funds, the distribution of profits also had to be registered in BC's Electronic System of Registration, in the form of Foreign Direct Investment (*Investimento Estrangeiro Direto*). As of January 30, 2017, such registration is no longer necessary. No further approval or consent from BC is necessary, and there is no limitation concerning the amounts to be remitted, provided that the original investment has been registered with BC, as described above.

Payments of profits directly abroad are also permitted in compliance with Brazilian regulations. If the Brazilian subsidiary holds an overseas bank account with sufficient balance to pay the corresponding profits, such funds can be used to pay the foreign investor directly abroad. In such case, registration of the distribution of profits will have to be carried out manually in BC's electronic system.

5 Repatriation of Capital

Foreign capital invested in Brazil can be repatriated at any time, and there is no minimum period of investment.

Repatriation of the investment can be exempt from all taxes, provided that such investment does not exceed the amount established in the Foreign Direct Investment category of BC's Foreign Capital Reporting System (*SCE – IED*). Generally, any surplus above the registered amount will be treated as capital gain and subject to withholding tax.

6 Other Forms of Funding Brazilian Subsidiaries

Brazil's foreign debt challenges, combined with other circumstances, have forced the market to find alternative forms of funding Brazilian companies through the issuance of notes/bonds and commercial papers placed outside Brazil under private and public placements. In recent years, BC has authorized the foreign trade of a large volume of bonds, fixed-rate notes, floating-rate notes, commercial papers, and fixed- or floating-rate certificates of deposit. In contrast, foreign loans contracted before March 18, 2022, and with an average maturity term of up to 180 days, are subject to a 6% tax on financial transactions ("IOF"). On the other hand, Decree 10,997, of March 15, 2022, established that foreign loans contracted as of March 18, 2022, are subject to a 0% IOF tax, regardless of their average maturity term. Interest paid to foreign investors is subject to withholding tax. Finally, an additional source of funding has been the issuance of American Depositary Receipts (ADRs) and International Depositary Receipts (IDRs).

7 Restrictions on Foreign Ownership of Companies

Foreign capital can generally be invested freely in Brazil, and benefits from the same treatment can be granted to Brazilian capital, with a few exceptions, as provided for in our Investment Policies section.

FORMS OF BUSINESS ORGANIZATIONS

In Brazil, two types of corporate entities are most used in business transactions: the limited-liability company and the corporation.

In general terms, the limited-liability company offers a number of practical advantages and is recommended if the partners desire simplicity and flexibility in the corporate structure, including lower maintenance costs and the inapplicability of some legal formalities that are mandatory for the corporations. A limited-liability company is usually suitable for wholly-owned subsidiaries or restricted joint ventures.

A new rule introduced by Law No. 14,195, enacted on August 26, 2021 ("Law No. 14,195"), allows limited-liability companies to issue commercial notes. However, in the event that the partners wish for the company to issue debentures or other securities in the future, in order to become a publicly held company, or to admit other groups of investors, then the adoption of a corporation structure is preferable. A corporation structure is also preferable for ventures with a larger number or different groups of shareholders.

There are two categories of public registries of legal entities in Brazil: civil registries of legal entities and boards of trade. Both have state jurisdiction. A business entity, such as the limited-liability company and the corporation, must be registered with the board of trade of the state where the company's head office is located, as well as with the board of trade of any other state where the company opens a branch. Simple partnerships, associations and foundations are registered at civil registries of legal entities. Corporate documents, such as amendments to articles of associations or bylaws, as applicable, as well as certain minutes of partners meetings, must be filed with the respective registry of the company.

What is more, according to the Brazilian legislation, all entities enrolled with the Brazilian Federal Revenue Office ("Receita Federal") will have 30 days, calculated from the date of issuance of their federal taxpayer identification number ("CNPJ") to provide the Federal Revenue Office with documents that identify their ultimate beneficial owner(s) holding "significant influence" or deemed an "affiliated entity".

Presumed "significant influence" means that the ultimate beneficial owner holds more than 20% of the capital stock of a certain entity, either directly or indirectly, and holds predominant control over corporate deliberations, as well as the power to elect the majority of the entity's managers, even without controlling it.

A legal entity can be deemed an "affiliated entity" in the event that:

(i) the legal entity's equity interest in the capital stock of a foreign entity classifies it as such foreign entity's direct or indirect controlling entity;

(ii) the legal entity is classified as (a) directly controlled by, (b) indirectly controlled by or (c) related to the foreign entity;

(iii) the legal entity and the foreign entity share the same corporate or administrative control, or if at least 10% of the capital stock of each entity belongs to the same individual or legal entity;

(iv) the legal entity is associated to a foreign entity in the form of a consortium or condominium, as provided for in the Brazilian legislation, in any venture; and

(v) the foreign entity is resident or domiciled in a low-tax jurisdiction, or benefits from a preferential tax regime, as provided for by articles 24 and 24-A of Law No. 9,430, of 1996 (the latter of which provides for the controlling entities that are not already included in items I to IV above).

1 Limited-Liability Company

A Brazilian limited-liability company, which resembles an American limited-liability company (LLC), is the most common type of company in Brazil. Nowadays, it accounts for an estimated 70% to 85% of all companies consolidated in Brazil. They range from small enterprises with few partners to some of the largest businesses in the country.

A Brazilian limited-liability company can have one or more partners, who can be legal entities or individuals, Brazilian or foreign. Single-member limited-liability companies were introduced in Brazil in 2019. After the implementation of Law No. 14,195, all individual limited-liability companies (*EIRELI*) in Brazil were automatically converted into single-member limited-liability companies (*SLU*), without requiring any changes to the respective articles of association of such companies. Consequently, the EIRELI corporate type has been discontinued. If the partners are not Brazilian residents, they must have an attorney-in-fact in Brazil with powers to represent them in general corporate matters and to receive services of process on their behalf.

According to Brazilian laws, the company's assets are not linked to the partners' net worth. The partners will only be held liable if they abuse their powers or violate the law or the articles of association.

In the event that the company's assets are not sufficient to bear the company's obligations, and the capital stock has not been fully paid in, the partners (if more than one) will be jointly liable up to the amount of capital stock. If the subscribed capital stock has been fully paid in by the partners, the partners will be solely liable up to the amount of their respective interest in the capital stock.

A Brazilian limited-liability company is organized through articles of association, which is a written agreement between or among the partners, and that must be drafted in accordance with the Brazilian Civil Code. Such agreement must contain a clear statement of the partners' intentions regarding the company, such as the company's purposes, capital stock, administrators, authority of the administrators, etc.

On June 10, 2020, the Department of Business Registration and Integration ("DREI") issued Normative Instruction No. 81/2020 ("IN No. 81/2020"), which changed the requirement for limited-liability companies to state its corporate purpose in its corporate, although this requirement is expressly provided for in the Brazilian Civil Code. Pursuant to IN No. 81/2020, the provision of the corporate purpose in the company's corporate name is optional, but if applied, must correspond to the activity carried out by the respective company.

On June 02, 2021, the DREI issued Normative Instruction No. 55/2021 ("IN No. 55/2021"), which allowed companies to state, in their corporate names, the CNPJ.

The incorporation of a limited-liability company occurs through the registration of the articles of association of the company with the board of trade of the state where the company's head office is located, concomitantly with its registration with the Federal Revenue Office for issuance of the company's CNPJ. Once the company is duly enrolled with the Federal Revenue Office, it will be allowed to open bank accounts in Brazil and execute contracts.

After its incorporation, the limited-liability company must obtain other standard licenses, such as the Municipal Tax ID, the State Tax ID (if applicable) and the Operating License. Depending on the company's activities, other licenses can be required, such as registrations with governmental agencies (for example, the Brazilian National Health Regulatory Agency – *ANVISA*). In case the company carries out import and/or export activities, such company must obtain a license issued by the Foreign Trade Department, called RADAR.

Due to recent legislative changes introduced through Law No. 14,451, of September 21, 2022, which amended Law No. 6,404 of December 15, 1976 ("Brazilian Corporations Law"), amendments to articles of association now require the approval of the simple majority of the capital stock. Law No. 14,451 also introduced other important changes regarding the quorum for deliberating on the merger, amalgamation, dissolution, and termination of the status of liquidation of limited-liability companies, changing the quorum from 75% to the simple majority of the capital stock.

Limited-liability companies must adopt an accounting system, which consists of regular bookkeeping of commercial and financial information related to their activities. DREI Normative Instruction No. 82, of February 19, 2021, provided for the possibility of keeping corporate books of corporations and limited-liability companies in digital form. The corporate books must be signed with any digital certificate issued by an entity accredited by the Brazilian Public Key Infrastructure – ICP-Brazil, or through any other means of certifying the authorship and integrity of digital documents, pursuant to paragraph 2 of art. 10 of Provisional Measure No. 2,200-2, of August 24, 2001, and to Law No. 14,063, of September 23, 2020.

Any remittance of funds to Brazil by foreign partners, either as an investment or as a loan, must be registered with the Central Bank of Brazil's Electronic System. This registration is essential for future payment of profits to foreign partners, repatriation of capital (for capital investments), and/or payment of interest and principal (for loans).

All foreign individuals that hold equity in Brazilian companies must be registered with the National Register of Legal Entities to obtain a CNPJ, if they are a legal entity, or an individual taxpayer identification number (CPF) if they are an individual.

The capital stock of a limited-liability company is divided into quotas, which can be assigned and transferred. The number and ownership of quotas must be identified in the company's articles of association.

If not provided otherwise in the articles of association, transfers of quotas to other partners or third parties are permitted, unless partners representing more than one-fourth of capital stock do not agree with such transfer. Furthermore, in accordance with IN No. 81/2020, partners can assign and transfer their quotas without amending the company's articles of association immediately, through the execution of a separate document for the sole purpose of such assignment and transfer of quotas. Such document must be registered with the respective registry, and the referred transfer, with the new corporate structure, must be reflected within the subsequent amendment and restatement of the company's articles of association.

As a rule, no minimum capital stock is required (exceptions in case of obtaining certain licenses). Nevertheless, the capital stock must be consistent with the company's initial operational needs. In the event that more is needed, the partners can increase the company's capital stock at any time, provided that the existing capital stock has been already paid in, by amending the articles of association.

The partners can pay in the capital stock with cash, credits or assets, and there is no legal time frame set forth by the law for payment thereof. Services cannot be rendered in lieu of paying in capital stock. Capital increases will only be allowed after full payment of the previously subscribed amount.

Decisions taken by the partners in a partner's meeting are binding upon all partners, even if they were absent from the meeting or dissented from the deliberation taken.

Regarding such partners' meetings, Law 14,030/2020, enacted on July 20, 2020, allows the partners to participate and vote remotely in the meetings by means of a digital platform, provided that the necessary regulatory requirements established in the Law are observed.

A limited-liability company may be managed by one or more persons — partners or not —, Brazilian citizens or foreigners, provided that they are resident in Brazil. The manager will be in charge of the company's management and representation. The publication of Law No. 14,451 introduced changes to the quorum for approval of the appointment of non-partner officers. Due to the legislative change, the appointment of non-partner officers now depends on the approval of:

(i) at least two-thirds (2/3) of the partners, in the event that the capital stock has not yet been paid in; and

(ii) holders of quotas corresponding to more than half of the capital stock, in the case that it is fully paid in.

It is worth highlighting that, although partners are allowed to elect officers that reside abroad, it is recommended that the individual to be appointed as officer of a limited-liability company or a corporation be duly enrolled with the Federal Revenue Office and with the CPF, so that such individual can obtain a digital certificate after having been appointed, given that several responsibilities within the role of an officer require such enrollments.

The articles of association may establish different levels of control for the company and determine which matters depend on the partners' prior authorization, in addition to the matters already provided by the law.

Generally, the managers of the company are not liable for acts performed within the regular course of business. However, when they: (i) engage in negligent or wrongful conducts (abuse or misuse of corporate powers), although within the level of their duties or powers; or (ii) act in violation of the Law or the Articles of Association, they will be held personally liable under civil law for the losses they have caused.

The restrictions imposed on management powers, as set out in the articles of association duly filed with the competent registry, are also imposed on third parties negotiating with the company. For this reason, if the current articles of association impose clear limits on the manager's powers, the third party contracting with the company must observe the rules in this corporate document for the business to be effective.

A modification introduced by a law enacted in 2007 has established that the abovementioned rules (previously applicable only to corporations) related to the booking and preparation of financial statements, as well as independent audits, are also applicable to limited-liability companies, or to a group of companies under common control, provided that, in the previous financial year, they held assets in an amount greater than BRL 240,000,000.00 or annual gross revenue greater than BRL 300,000,000.00 . As a result, it is the understanding of certain Boards of Trade that limited-liability companies (or any other corporate type) that meet such requirements have the obligation of publishing their financial statements in the newspaper.

However, on November 25, 2022, the DREI issued Circular No. 4,742/2022/ME, establishing that the publication of financial statements by large-sized limited-liability companies (i.e. companies whose assets exceed BRL 240,000,000.00 or whose annual gross revenue exceeds BRL 300,000,000.00) is optional. As a result, boards of trade must not request confirmation that such statements have been published.

2 Corporation

The main purpose of a Brazilian corporation (*sociedade anônima*), like U.S. corporations, is to make profits and distribute such profits as dividends to their shareholders.

A corporation's equity interest is represented by shares, which can be of different types, according to the advantages, rights, and restrictions attributable to the shareholders. The two (2) major types of shares are common and preferred. Corporations are also allowed to issue debentures.

Publicly held corporations must be registered with, and subject to, the supervision of the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários – CVM*). Corporations can also be privately held.

Only publicly held corporations can issue depositary receipts ("DRs"), which are certificates representing shares in the corporation. DRs are traded on foreign markets, enabling the company to raise funds outside of Brazil.

Brazilian corporations are organized through their bylaws, which are written documents that must abide by the Corporations Law. Such bylaws must be approved in the inaugural general meeting and can be amended in a special general meeting.

To validly exist, a corporation must file with the board of trade the minutes of the inaugural shareholders' meeting and the approved bylaws, a complete list of all the subscribers of the capital stock, and the bank receipt for the initial ten percent (10%) payment (if the capital is paid in cash). As an exception, in accordance with Law 4,595 of 1964, as amended, where the corporation is a financial institution, the percentage of the initial payment must be equal to or greater than fifty percent (50%) of the subscribed capital stock.

As a rule, after submitting the relevant documents to the board of trade, filing usually occurs within five (5) days, unless the board of trade requires changes in the documents or requests additional information.

Like limited-liability companies, corporations must also obtain all other standard registrations, as well as specific ones depending on the type of business to be carried out. Similarly, a corporation's shareholders, whether legal entities or individuals, must be enrolled with the CNPJ or CPF.

Corporations must adopt an accounting system that consists of standard bookkeeping of commercial and financial information related to their activities, in addition to a (i) ledger of nominative shares; (ii) ledger of nominative share transfers; (iii) ledger of minutes from the general meeting of shareholders; (iv) ledger of shareholder attendance; (v) ledger of minutes from executive board meetings; and (vii) ledger of opinions and minutes from the oversight council's meetings.

Pursuant to Law No. 14,195, for closely held corporations, the ledgers mentioned in items "i" to "iv" above can be replaced by mechanized or electronic records.

Unless otherwise provided for by law or bylaws, shareholder decisions require a simple majority of votes, without abstentions being taken into consideration.

Regarding such shareholders' meetings, Law 14,030/2020, enacted on July 20, 2020, allows shareholders to participate and vote remotely in such meetings through a digital platform, provided that the necessary regulatory requirements established in the Law are complied with.

As a rule, each common share held by a shareholder grants the right to a single vote at a shareholders' general meeting. However, Law No. 14,195 included plural voting in the Brazilian Corporations Law for closed corporations, which includes the possibility of granting the right to ten votes for a single common share. This mechanism was previously prohibited by the Brazilian Corporations Law.

The creation of a class of common shares that have plural voting rights depends on a favorable vote by shareholders representing at least half of the voting capital stock; or, at least half of the non-voting preferred shares or those with restricted voting rights, if issued. The company's bylaws, however, may require a larger quorum in order to grant plural voting rights.

The corporation can be managed by a board of officers and a board of directors (required in case of publicly held corporations), or solely a board of officers.

The board of directors is a collective decision-making body that consists of at least three members, appointed at the shareholders' general meeting. If the members of the board of directors are not residents of Brazil, they must appoint a representative who is a Brazilian resident to receive services of process in legal proceedings, according to Brazilian Corporations Law.

The corporations can be managed by one officer, since Supplementary Law No. 182 enacted on June 01, 2021 ("CL No. 182") amended the Brazilian Corporations Law, which provided for a minimum of two officers to act in the management of corporations. The officers represent the corporation and carry out all acts necessary for its normal operation. Further, pursuant to Law No. 14,195, persons resident outside Brazil can also be appointed as officers and are subject to the same considerations established as regards the nationality of managers in limited-liability companies, although they must appoint an attorney-in-fact to receive services of process in Brazil. Formerly, only members of the board of directors were allowed to be non-residents in Brazil.

Generally, officers and directors are only personally liable for their acts when they involve an abuse of power, excess of mandate, or violation of the law.

Corporations also have an oversight council whose basic function, when installed, is to oversee the acts of management.

Most of the corporate documents of a corporation, such as its bylaws, minutes of shareholder's meetings and board of officers' meetings, annual reports, balance sheets, and other financial statements must be published in a widely read newspaper where the company's headquarters is located. The information must be provided in a summary format along with simultaneous publishing of full copies of documents on the same newspaper page on the Internet. Such webpage must provide digital certification of the authenticity of the documents, kept on a separate page issued by an accredited certification authority under the Brazilian Public Key Infrastructure.

Pursuant to CL No. 182, closely held companies with annual gross revenue of up to seventy-eight million *reais* (BRL78,000,000.00) can freely establish the distribution of dividends, subject to the mandatory dividends provided for in article 202 of the Brazilian Corporations Law and the rights of preferred shareholders, as well as in accordance with the provisions of the bylaws and the shareholders' agreement.

As of January 2022, with the entry into force of Law 13,818/2019, which amended art. 289 of the Brazilian Corporations Law, the publications required by the Brazilian Corporations Law are now mandatory only in large circulation newspapers, published in the location in which the company is headquartered. It is worth mentioning that the documents must be published in full on the newspaper's online webpage, and in a summarized form in its physical copy, simultaneously. It is also important to mention that the summarized publication of the financial statements must contain, at minimum, the global information or values related to each group and the respective classification of accounts or records, as well as extracts of the relevant information included in the explanatory notes and in the opinions of the independent auditors and the fiscal council, if applicable.

Especially for closely held companies with annual gross revenues of up to seventy-eight million *reais* (BRL 78,000,000.00), under the terms of article 294, item III of the Brazilian Corporations Law, it is possible for the mandatory publications to be made only electronically, provided they are made using a digital certificate on (i) the Balance Sheet Center of the Public Digital Bookkeeping System (SPED); and (ii) on the company's own website.

While there are no legal sanctions for private companies that do not publish their financial statements, it can still create obstacles or hindrances to their regular business activities. For instance, companies may face difficulties participating in bidding processes, obtaining loans, or financing, or signing contracts with clients or suppliers who require financial statements as a prerequisite for contracting.

3 Other Legal Entities

Brazilian laws provide for other types of corporate entities, such as simple partnership (*sociedade simples)*, secret partnership (*sociedade em conta de participação,* a form of unincorporated joint venture), ordinary partnership (*sociedade em nome coletivo*), limited partnership (*sociedade em comandita simples*), associations and foundations. However, those types of legal entities are not commonly adopted unless there is a specific business decision or operational reason that justifies adopting any of these types of legal entities.

IN No. DREI 81/2020 established that the board of trade can register the corporate acts of any entities duly signed electronically with any digital certificate issued by an entity accredited by the Brazilian Public Key Infrastructure (ICP-Brasil), or any other means of proof of authorship and integrity of documents in electronic form, pursuant to paragraph 2 of article 10 of Provisional Measure No. 2,200-2 of August 24, 2001.

INSOLVENCY, BANKRUPTCY AND REORGANIZATION

1 Legal Framework

Federal Law No. 11,101/2005 (the "Brazilian Insolvency Law" or "BIL"), as amended by Federal Law 14,112/2020, sets out the rules for bankruptcy and insolvency in Brazil. There are three procedures that deal with companies in distressed financial situations: (i) bankruptcy proceeding (liquidation); (ii) judicial reorganization; and (iii) extrajudicial reorganization.

Both the judicial reorganization and the extrajudicial reorganization are intended to give the company in a temporary unhealthy financial situation the chance of reorganizing its activities in order to preserve its existence as a going concern.

On the other hand, the bankruptcy proceeding is applicable when a company's business activities are no longer viable, and has the purpose of liquidating the company's assets under a court-supervised environment. Proceeds of the sale of assets are used to pay off claims according to the priority rules provided for by the BIL. The term "bankruptcy" is understood in Brazil as liquidation, similar to U.S. Chapter 7, regarding filing procedures.

2 Bankruptcy Proceeding

The bankruptcy proceeding is not aimed at reorganizing the financial situation of the debtor, but rather to liquidate its assets and use the proceeds of such sale to pay off creditors.

A bankruptcy proceeding can be filed by the company (debtor), its shareholders, or partners, or any of its creditors.

A bankruptcy proceeding has to be ruled by a Court ("Bankruptcy Court") and is never automatically granted upon filing:

- if requested by the company itself, the Bankruptcy Court must accept the request; and
- if requested by creditors, the Bankruptcy Court will rule on the case after the debtor can present a defense and/or make a deposit of the underlying debt.

Once the Bankruptcy Court accepts the filing and rules that the company is under liquidation, the company is immediately shut down, the officers are compulsorily removed from the company's management, and a trustee is appointed (by the court) to liquidate the company. In a few circumstances, the Court may determine that the company continue to operate for a specific period of time after the bankruptcy ruling, prior to it being liquidated.

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Although the company participates in the proceeding, the purpose of the bankruptcy proceeding is to maximize the recovery of assets to the benefit of the creditors; therefore, the interests of the company's shareholders and officers are subordinated to the interests of the creditors.

The BIL sets out the requirements upon which creditors can file for bankruptcy of the debtor, as outlined below:

- default to provide payment of any liquid obligation stated in a credit instrument in an amount higher than 40 minimum Brazilian monthly wages;
- failure to pay, make a deposit of or post-collateral to secure obligation subject to an enforcement proceeding;
- arbitrarily advancing the liquidation of assets or making payment in a damaging or fraudulent way;
- attempt to perform or performing simulated transactions or disposal of all or substantially all assets to a third party, whether a creditor or not; and
- transfer of establishment to third parties, whether creditors or not, without the consent of all other creditors and without keeping sufficient assets to fulfill its obligations.

A bankruptcy decree entails (i) acceleration of all company's debts; and (ii) conversion of foreign currency-denominated debts into national currency (BRL).

Upon being appointed to serve on the bankruptcy proceeding, the trustee is expected to prepare an inventory and arrange the valuation of the assets. Subsequently, the assets must be sold under a court-supervised competitive process (i.e. auction, competitive process arranged by a specialized agent or other mechanism approved by the Court) within 180 days from the date the trustee concludes the inventory of the assets.

The proceeds of the asset sales will be distributed to creditors in compliance with the credit priority rule set forth in the BIL ("liquidation waterfall").

The liquidation waterfall comprises (i) claims considered bankruptcy-remote (*créditos extraconcursais)*, which have priority over the claims impaired by the bankruptcy proceeding; and (ii) claims impaired by the bankruptcy proceeding. Within each category of claims there is a priority rule, as follows:

1. BANKRUPTCY-REMOTE CLAIMS:

- out-of-pocket expenses related to the management of the bankruptcy estate (*massa falida*) and the bankruptcy proceeding and labor claims strictly related to unpaid wages outstanding in the three months preceding the bankruptcy decree limited to the amount equivalent to five Brazilian minimum wages;
- the amounts effectively disbursed by the creditor of a Debtor in Posession Financing (DIP Financing, as defined below) granted to debtor during the period it was under a Judicial Reorganization Proceeding;
- claims for restitution in cash;

- compensation of the trustee and labor credits arising from work performed or after the bankruptcy decree;
- credits arising from transactions carried out during a Judicial Reorganization Proceeding (in the event of conversion of the Judicial Reorganization into a Bankruptcy Proceeding) or after the bankruptcy decree;
- amounts provided by the creditors to the estate after the bankruptcy decree;
- costs, fees and taxes related to the preparation of the inventory, the management of the Bankruptcy Estate and sale of the assets;
- court costs arising from lawsuits in which the Bankruptcy Estate has faced an unfavorable outcome; and
- tax liability arising from facts that occurred after the bankruptcy decree.

2. CLAIMS IMPAIRED BY THE BANKRUPTCY PROCEEDING

- credits arising from labor relationships up to 150 Brazilian minimum monthly wages per creditor and those resulting from labor accidents;
- secured credits[33], up to the amount of the asset offered as security;
- tax credits, regardless of their nature and time of constitution, except for the bankruptcy-remote tax credits and tax penalties;
- unsecured credits;
- contractual penalties and monetary penalty due to breach of criminal or administrative law, including tax penalties;
- subordinated credits (i.e. credits of equity holders and those owed to the debtor's management members of the debtor --- as long as the management member is not an employee --- provided that the contractual conditions have not been agreed on a commutative basis and under market conditions); and
- interest on claims accruing after the bankruptcy decree.

during the bankruptcy proceeding, an investigation will be opened to assess whether the debtor, its shareholders, directors and/or officers have committed any fraud or wrongdoing that might have caused or helped cause the bankruptcy.

If fraud or wrongdoings are found, the debtor, its shareholders, directors and/or officers can be sued for damages, in accordance with the general rules of civil liability. The BIL does not provide for a specific framework of civil liability of shareholders, officers, and directors of insolvent or financially distressed companies.

As a rule, a shareholder, a director, or an officer is not personally liable for the losses caused by the company to third parties or losses that it suffers as a result of its own activities, provided that such losses are derived from regular management acts, such as those carried out by the administrator within its legal and statutory attributions, in compliance with the company's corporate purpose.

[33] Credits collateralized by mortgages or pledges.

In regard to transactions carried out by the debtor prior to the bankruptcy decree, the BIL sets forth a preference period of up to 90 days, which is counted retrospectively as of one of the following events: (i) the date when the Bankruptcy Proceeding has been requested; (ii) the date when the judicial reorganization proceeding has been requested (in cases of conversion of the judicial reorganization into a bankruptcy proceeding); (iii) the date when the first protest of a commercial title not paid by the debtor has taken place.

Within this period the following acts are considered ineffective:

- payment of any unmatured debt or liability;
- payment of matured debts through means different from those established in the relevant contract;
- granting of mortgages or pledges to secure already existing debt;
- any obligations assumed for free, during a period of two (2) years before the bankruptcy decree;
- waiver to assets which would be inherited by the debtor;
- sale of business without the prior consent of the creditors or the payment of the credits existing at the moment, in the event that the remaining assets are not sufficient to cover such liabilities existing at the time such business has been sold;
- registration of any right over, or transfer of, immovable property after the bankruptcy decree.

In all cases mentioned above, the Bankruptcy Court in charge of the bankruptcy proceeding may consider the corresponding transaction ineffective, regardless of the filing of a specific fraudulent conveyance lawsuit.

Furthermore, any other act and/or transaction carried out with the intent of defrauding creditors is subject to avoidance, as long there is proof of (i) the collusion between the parties to the transaction and the corresponding fraudulent intent; and (ii) actual losses to the bankruptcy estate.

The Bankruptcy Court can void such fraudulent transaction upon request made by creditors, the trustee, or the public prosecutor within 3 years counted from the issuance of the bankruptcy decree. Such request must be filed in the form a specific revocation lawsuit. If the revocation lawsuit is granted, the transaction will be considered void and the assets will return to the bankruptcy estate.

Finally, it is important to mention that a company undergoing a bankruptcy proceeding is prevented from doing business in the country until the conclusion of the proceeding. As a rule, the restriction to doing business in the country does not apply to the partners, shareholders, officers, and directors of the bankrupt company.

3 Judicial Reorganization (*Recuperação Judicial*)

Judicial reorganization is intended to give a company in a distressed financial situation the chance of voluntarily reorganizing its activities, in order to preserve its existence as a going concern, upon the approval of a reorganization plan by the majority of its creditors. Consequently, it is aimed at providing sufficient means for a company to reorganize its capital structure and emerge from a financial crisis.

In order to be entitled to benefit from a judicial reorganization, the debtor:

- must prove that it has been in operation for at least two consecutive years;
- must not have been declared bankrupt before, or, if so, must have obtained a final discharge court decision regarding its previous liabilities;
- must not have obtained judicial reorganization benefits over the past five years preceding the request; and
- must not have had its managers or controlling shareholders sentenced for any type of crime provided for in the Brazilian Insolvency Law.

The BIL, as amended by Federal Law 14,112/2020, incorporated rules for joint filings of judicial reorganization and/or subsequent joinder and/or consolidation of proceedings of multiple debtors. Joint filings (or *procedural consolidation)* are allowed for debtors of the same economic group and result in the coordination of procedural steps of the judicial reorganization, although the corporate independence of the debtors is preserved, and each debtor must provide all documents for the filing and the means by which it intends to restructure.

Bankruptcy Courts can, however, authorize substantive consolidation (i.e., consolidation of assets and liabilities of all debtors) regardless of creditors' approval if:

(i) there is interconnection and commingling of assets in a manner that makes any attempt to separate the debtors excessively burdensome; and

(ii) two or more of the following factual circumstances are met:

   a. existence of cross-guarantees;
   b. debtors have a relation of control or dependency; and
   c. debtors operate as a single entity.

If substantive consolidation is approved, the debtors must present a single consolidated plan for all debtors, which will be submitted to a vote at the general creditors' meeting. Rejection of the plan will result in the liquidation of all debtors (assuming confirmation is not possible under cram-down rules or if no creditors plan has been presented)[34].

[34] The BIL provides that only the debtor has the prerogative of proposing its own reorganization plan. However, the BIL also provides for an exceptional situation in which creditors may submit an alternative plan if the plan proposed by the debtor is not put to vote within 180 days counted from the Judicial Reorganization request's filing.

Given that the judicial reorganization is not designed to wind up the debtor, its officers and directors will keep running the business while the company undergoes the proceeding. thus, during the judicial reorganization, the debtor or its officers will remain conducting the debtor's business activities under the scrutiny of a committee of creditors (if implemented), and a court-appointed trustee. Although the relevant Reorganization Court appoints a trustee to oversee the judicial reorganization and monitor the company's affairs in the benefit of the interests of all stakeholders involved in the proceeding (specially the impaired creditors), such trustee does not manage the company.

On the other hand, the BIL provides that the Bankruptcy Court may remove officers and managers of the debtor if any of them (i) has been sentenced for bankruptcy crimes and/or economic crimes pursuant to specific criminal law; (ii) has strong evidence against them of practice of any of the bankruptcy crimes provided for in the BIL; (iii) has acted in bad faith or with the intent to defraud creditors; (iv) has spent money on personal affairs in excessive amounts and inconsistent with his or her financial situation; (v) has authorized payment of expenses that would not be justified given their nature and/or amount in light of the debtor's business; (vi) has either caused the debtor to be left with unreasonably small capital or entered into transactions harmful to the debtor's regular course of business; (vii) deliberately created or omitted any credit in the submission of the list of creditors that should support the initial filing of the judicial reorganization without reasonable cause and/or Bankruptcy Court approval; (viii) refuses to provide information requested by the trustee and/or committee of the creditors; (ix) has their removal provided for in the reorganization plan.

Removal, however, depends on a Bankruptcy Court ruling preceded by requests filed by interested parties and accompanied by supporting evidence. In other words, court proceedings are needed for an officer of the debtor to be removed from office due to one of the situations provided for above.

All of the debtor's matured and unmatured debts up to the date of the filing of the judicial reorganization request (the “prepetition credits”) are subject to the judicial reorganization, except for a few types of credits, such as those derived from advances on foreign exchange contracts (ACCs), credits arising from certain leasing arrangements, as well as those secured by specific types of collateral (*e.g.,* credits collateralized by fiduciary lien and credits with retention of title). Furthermore, certain credits related to the agribusiness financing are also considered bankruptcy-remote pursuant to specific statutes governing the issue.

On the other hand, debts originated after the date the filing of the judicial reorganization request are also not subject to the judicial reorganization and must be paid according to their original conditions (these are the so-called “post-petition” credits). Also, obligations incurred by a debtor prior to the filing of a judicial reorganization will maintain their original contractual conditions unless the reorganization plan provides otherwise.

In summary, the judicial reorganization proceeding comprises the following phases:

- The debtor files the judicial reorganization request seeking a court decision authorizing it to take advantage of the judicial reorganization;
- Upon fulfillment of several procedural and formal items, the Bankruptcy Court grants a decision authorizing the processing of the judicial reorganization procedure (“processing order”). Such decision immediately stays all collection lawsuits filed against the debtor and suspends the enforceability of credits due but not collected yet (except, as a rule, for tax collection lawsuits and bankruptcy-remote claims).

- This “stay period” lasts 180 days from the date when the processing order was granted, subject to one extension of 180 days, provided that the debtor did not cause any delay in the judicial reorganization.
- concomitantly with the processing order, the Bankruptcy Court also appoints a Trustee, which will be in charge of overseeing the debtor's activities and report them in the judicial reorganization records through periodic reports.
- after the processing order is granted, the trustee has the duty to publish a list with all creditors and their respective credits. creditors have the right to challenge the figures and the nature of their credit in case they are inaccurate.
- in parallel, within 60 days counted from the processing order, the debtor has the obligation to file a reorganization plan, setting out a detailed description of the alternatives that the company will follow to implement the reorganization, and the payment plan for all the debt subject to the Judicial Reorganization, including maturity extension, interest rate caps, discounts applied to principal amounts, as well as any other relevant features related to the restructuring such as additional collateral granted.
- If the debtor fails to file the reorganization plan in a timely fashion, the Judicial Reorganization must be converted into a Bankruptcy Proceeding. Because of that, the initial plan filed by debtor is often a placeholder, and it is usual for debtors to subsequently file a new reorganization plan or amendments to the reorganization plan previously filed.
- After the filing, creditors can file their written objections to the reorganization plan.
- If any objection to the reorganization plan is filed, the Court must call a general creditors' meeting to put the reorganization plan to a vote. As a rule, the purpose of the creditors' meeting is to approve, reject or propose amendments to the reorganization plan presented by the debtor.
- In the creditors’ meeting, the creditors must be represented by fully empowered attorneys-in-fact responsible for carrying out discussions about the features of the reorganization plan, as well as challenging and proposing amendments to it, as necessary.

According to the approval process provided for in the BIL, each class of creditors must either accept the reorganization plan or reject it. Regarding the judicial reorganization proceeding, there are four classes of creditors provided for in the BIL:

- Class One – Labor Claims: holders of credit rights deriving from labor legislation or indemnities arising from labor accidents;
- Class Two – Secured Claims: holders of credit rights secured by in *rem* collateral (i.e. mortgages, pledges etc.);
- Class Three – Unsecured Claims: unsecured creditors, as a whole, general privilege and special privilege; and
- Class Four – Micro and Small Business: creditors holding credits framed as micro or small business.

Within Class One (Labor) and Class Four (Micro and Small Business), acceptance of the reorganization plan requires holders of more than one-half in number of claims voting to accept the plan. Within Class Two (Secured) and Class Three (Unsecured), acceptance requires holders of more than one-half in real amount and in number of claims voting to accept the plan.

At its discretion, the Bankruptcy Court can approve a reorganization plan that has not been accepted by all classes of creditors, provided that such plan meets certain voting standards and does not discriminate creditors within the dissenting class (cram-down). The cram-down standards are: (i) approval of the plan by more than one-half of claims in real amount regardless of the classes of creditors; (ii) approval of the plan by two classes of creditors or one class if there are only two classes of creditors; (iii) within the dissenting class, the plan must have been approved by one-third of the creditors: in number of creditors and real amount if the dissenting class is either the unsecured or secured claims; or in number of creditors if the dissenting class is either the labor class or the micro and small business class.For the purposes of both a straight approval or a cram-down decision, voting quorum is verified according to the holders of claims (number of claims and corresponding real amounts) that attend the creditors' meeting.

Creditors may present an alternative reorganization plan in the following situations: (i) expiration of the stay period (as extended, if it is the case) without a reorganization plan being put to vote; or (ii) rejection of the debtor's plan, provided that confirmation is not possible pursuant to cram-down rules. Creditors representing more than 50% of the BRL amount of claims that attended the creditors' meeting may vote to approve a 30-day period for creditors to present an alternative reorganization plan. In this case, the stay period will be extended for an additional 180 days as of either the expiration of the original stay period or the creditors' meeting that approved the 30-day period. The creditors' plan must be supported by more than 25% of the BRL amount of all claims subject to the judicial reorganization or, alternatively, 35% of the BRL amount of claims that attended the creditors' meeting at which the debtors' plan was rejected.

Further, the creditors' plan must (i) meet the same formalities and requirements provided under the BIL for the debtor's plan; (ii) provide for the release of guarantees granted by individuals in connection with claims of creditors who supported the creditors' plan; (iii) not create any new obligation (not provided by law or existing contracts) to the debtor's shareholders; and (iv) not result in burden to the debtor or its shareholders higher than the burden that the debtors and its shareholders would have experienced in the event of liquidation of the debtor.

the judicial reorganization plan (either the one proposed by the debtor or the alternative one proposed by the creditors) only becomes effective after judicial confirmation. As a general rule, if the reorganization is not approved at the creditors' meeting, the Bankruptcy Court must convert the Judicial Reorganization into a Bankruptcy Proceeding, provided that creditors did not vote for an alternative reorganization plan and confirmation is not possible under cram-down rules.

If the Court confirms the reorganization plan, debtor and creditors will be strictly bound by it. Upon such decision, debtor will be under supervision of the Bankruptcy Court and under judicial reorganization protection for the period of two years, even if the reorganization plan provides for extensions of maturities longer than two years. Default on the plan during such supervision period can cause the conversion of the judicial reorganization into a bankruptcy proceeding.

The reorganization plan can provide several alternatives for the company to emerge from the financial crisis, including grace periods, haircuts, postponement of maturity dates, mergers, drop-downs, sale of assets, replacements of managers, increase of the capital stock, conversion of debt into equity, Debtor in Possession Financing (DIP Financing), among any other lawful means approved by the creditors.

Generally, the debtor has discretion to propose the payment conditions to creditors; however, already matured labor claims must be paid within one year from the approval of the reorganization plan. The 1-year deadline can be extended to two years, provided that (i) the debtor provides sufficient guarantee for payment of the labor claims; and (ii) labor creditors approve the extension at the creditors' meeting. Similarly, wage-related claims of up to 5 minimum wages that had been matured for three months prior to the filing of the judicial reorganization request must be paid within 30 days.

Additionally, the company under a judicial reorganization is not allowed to dispose of its non-current assets without the Bankruptcy Court's and creditors' approval.

In general, there are two mechanisms for sale of non-current assets within the context of a judicial reorganization: (i) a sale pursuant to the BIL's article 66, which requires court approval, followed by potential objections by creditors; and (ii) sale of an isolated business unit [*Unidade Produtiva Isolada – "UPI"*] established under the reorganization plan.

In both cases, provided that the sale is carried out under a competitive process pursuant to BIL's rules, the sale and purchase will be clear of encumbrances and liabilities, and free from succession, including labor, tax, anti-corruption and environmental obligations.

The amendment made to the BIL by Federal Law No. 14,112/2020 stimulates the availability of new financing to debtors (the abovementioned DIP Financing) by (i) granting priority to the DIP Financing lenders over other claims, in the event of subsequent bankruptcy liquidation of the debtor; and (ii) insulating the DIP Financing, guarantees related thereto, and corresponding credit priority, from the uncertainty arising from litigation.

Throughout the process of judicial reorganization, the Bankruptcy Court can authorize DIP Financing secured by fiduciary liens and/or other security interest in non-current assets of the debtor or third parties to fund debtor's activities, the restructuring expenses, or the necessary measures to preserve the debtors' assets.

The DIP Financing will have priority over virtually all other claims against the debtor in the event of bankruptcy liquidation (see above) and potential reversal of the decision authorizing the DIP Financing will not adversely impact the DIP Financing's priority.

Further, Bankruptcy Courts may authorize the creation of subordinated liens in the debtors' assets regardless of the consent of the holder of the existing lien except for assets subject to fiduciary liens and/or fiduciary assignments. In any event, the guarantee will be limited to the proceeds resulting from the sale of the underlying asset that exceed the value of the first lien guarantee.

Any person can be the provider of the DIP Financing, including creditors (subject to or not subject to the judicial reorganization), shareholders and other companies of the debtors' economic group.

As indicated above, the granting of DIP Financing by a good-faith investor must not be rendered void or unenforceable as a result of subsequent liquidation, provided that the debtor has received the corresponding amounts provided under the DIP Financing instrument.

In addition, the credit priority of the DIP Financing and the guarantees granted to a good-faith investor must not be adversely affected by modifications to the Bankruptcy Court's decision that authorizes the DIP Financing, provided that the funds have already been disbursed to the debtor. On the other hand, if the Judicial Reorganization is converted into a bankruptcy liquidation prior to the full disbursement of the DIP Financing amounts, the relevant financing contracts will be automatically terminated, and the credit priority and guarantees will be limited to the funds disbursed to the debtor prior to the bankruptcy decree.

4 Extrajudicial Reorganization

the extrajudicial reorganization allows a debtor and certain of its creditors to draft a reorganization plan, aiming at restructuring the debtor's indebtedness. in specific circumstances, the extrajudicial reorganization allows a debtor to impose such workout on other creditors of the same class of creditors (*e.g.,* secured, and unsecured), or of a certain group of creditors of the same nature, and subject to similar payment terms within a same class (*e.g.,* suppliers and creditors that hold unsecured notes).

Although such proceeding is deemed "out-of-court", the effects of the private reorganization plan and its imposition on other creditors depend on a Bankruptcy Court's confirmation.

In summary, the BIL allows a debtor to file for Extrajudicial Reorganization and request a Bankruptcy Court to impose the reorganization plan on other creditors, provided that creditors representing more than 50% of a same class or group of creditors have accepted and executed the reorganization plan. Furthermore, a debtor can file for an Extrajudicial Reorganization upon gathering support of 30% of the BRL amount of each group of impaired claims and secure the additional votes within 90 days from the filing date. Debtors can request that the Bankruptcy Court convert the extrajudicial proceeding into a judicial reorganization proceeding if they cannot secure the required majority within the 90-day period.

All claims existing on the date of the extrajudicial reorganization request filing, except for tax claims and bankruptcy-remote claims (*créditos extraconcursais),* may be impaired by an extrajudicial reorganization. Consequently, the BIL, as amended, now allows debtors to use the Extrajudicial Reorganization also to impair labor claims. However, impairment of labor claims depends on previous negotiations with the labor unions that represent the debtor's employees.

BIL's original wording did not explicitly provide for a stay period in extrajudicial reorganizations. Brazilian Courts, however, have consistently ruled that the processing of an extrajudicial reorganization guaranteed a stay period (similarly to the judicial reorganization stay) in order to prevent impaired claimants from taking actions and enforcing claims against the debtor.

The amendment to the BIL included a specific provision stating that the stay period applies to the extrajudicial reorganization proceedings provided that the debtor has gathered support of the minimum required majority to file for the extrajudicial reorganization request.

Upon the filing of the extrajudicial reorganization request, a public notice is released, and creditors can challenge the reorganization plan within 30 days, on the following limited grounds:

- debtor has failed to meet the 50% threshold to cram down the plan over non-supporting creditors;
- the reorganization plan entails acts forbidden by law or fraudulent transactions; and
- non-compliance with any other requirement or formality imposed by law that may apply to the case.

If an objection is filed, the debtor will have a 5-day term to reply to it. Afterwards, the Bankruptcy Court will make a ruling (i) analyzing the objections (rejecting or granting them); and (ii) provided all objections are rejected, confirming the reorganization plan and determining its imposition over the non-supporting creditors.

Unlike the judicial reorganization, the rejection of the extrajudicial reorganization plan does not cause the bankruptcy liquidation of the debtor.

Once the Bankruptcy Court rules on the reorganization plan, interested parties can appeal. Generally, and pursuant to the BIL's rules, such appeal neither stays the proceeding nor prevents the implementation of the reorganization plan.

Confirmation of the reorganization plan entails (i) replacement of the old indebtedness subject to the Extrajudicial Reorganization for the restructured indebtedness to be paid according to the terms and conditions of the reorganization plan; and (ii) dismissal of any lawsuit filed to collect on debt subject to the reorganization plan.

Finally, the amendment to the BIL established a protection to creditors and investors against fraudulent conveyance claims related to transactions carried out within the context of implementation of an extrajudicial reorganization plan, in the event of subsequent bankruptcy liquidation of the debtor.

INSURANCE, REINSURANCE, HEALTH, AND PRIVATE PENSION

1 Supervision

The Brazilian Private Insurance Council (*Conselho Nacional de Seguros Privados* – "CNSP") is the regulatory body in charge of enacting the rules that regulate the establishment, organization, operation and transaction of insurers, reinsurers, brokers, and open private pension plans. The Superintendence of Private Insurance (*Superintendência de Seguros Privados* – "SUSEP") is the agency in charge of enforcing and regulating these rules and monitoring the market as a whole. Both the CNSP and SUSEP are under the aegis of the Ministry of Finance.

Pension funds (or "closed private pension funds"), which are more closely related to benefits plans by specific sponsoring companies, are regulated by the National Supplementary Pension Plan Council (*Conselho Nacional da Previdência Complementar* – "CNPC") and supervised by the Superintendence of Supplementary Pension Plans (*Superintendência de Previdência Complementar* – "PREVIC"), affiliated with the Ministry of Finance.

The Supplementary Healthcare System is complementary to the Brazilian public healthcare system and regulated by both the Supplementary Healthcare Council (*Conselho de Saúde Suplementar* – "CONSU") and the Brazilian Private Healthcare Agency (*Agência Nacional de Saúde Suplementar* – "ANS"), which is responsible for the establishment, organization, and supervision of the health-insurance market and companies in such sector (for instance, cooperatives, group healthcare companies, and self-insurance companies).

2 Legal Framework

Most general legal rules applicable to insurance and reinsurance contracts are provided for in the Brazilian Civil Code, in Decree-Law No. 73/1966, and in Supplementary Law No. 126/2007. Specific provisions on life and non-life insurance are subject to specific regulations issued by the CNSP and SUSEP.

Within the context of Pension Funds and the Supplementary Healthcare System, contracts and supplementary pension plans are subject to specific laws and regulations established by PREVIC and CONSU/ANS, respectively.

As a rule, insurance agreements – particularly those not involving large risks – are considered as consumer contracts and, as such, are also subject to the Brazilian Consumer Protection Code, which prioritizes the protection of consumer rights by establishing comprehensive guidelines and principles. As for large risks contracts, specific rules provided for in Resolution CNSP Nº 407/2021 apply, which establish that the contractual conditions can be freely agreed to between the parties.Finally, Bill 29/2017 is under discussion at the Brazilian Congress, which aims at creating a new insurance law in Brazil. If approved, the Bill will repeal the provisions established in the Civil Code and will further create a new regulation applying to insurance and reinsurance contracts.

3 Licensing Process

The incorporation, transfer of control or restructuring (among other acts) of insurers, reinsurers, capitalization companies, open private pension funds, and healthcare companies in Brazil involve a series of procedures provided for in law and regulation ,and depend on SUSEP's or ANS' prior authorization and ratification, including the submission of business plans and identification of shareholders.

There are numerous requirements and specific documents required during the licensing process. The business plan, for example, must be updated every calendar year and, considering a new rule enacted in 2024 (SUSEP Circular No. 700/2024[35]), it must contain, among others: (i) a Sustainability Plan; (ii) a Cybersecurity and Data Protection Corporate Plan; (iii) a Conduct Plan regarding the relationship between the insurer and the insured; and (iv) a Compliance and Risk Management Plan.

In order to operate in Brazil, an insurance company must necessarily be incorporated in Brazil as a joint-stock company. There is no restriction on foreign capital interest as to the ownership of Brazilian insurance companies, but direct control must be held by individuals, legal entities authorized by SUSEP or a holding company or fund with purposes of holding equity interests in insurance companies.

The minimum capital stock of an insurance company or open private pension company is the higher amount considering the base (fixed) capital stock and the risk-based capital stock (which must consider operational, credit, underwriting and market risks).

The minimum capital varies depending on the segment in which the company is rated.

According to the current regulation, companies are divided into five segments, considering the volume of written premiums and technical reserves: S1, S2, S3, S4 and Microinsurance. The higher is the segment, the greater is the demand for capital stock.

In this regard, the minimum capital required is: (i) BRL 15,000,000.00 for Supervised framed in Segments 1 or 2; (ii) BRL 8,100,000.00 for Supervised framed in Segment 3; (iii) BRL 3,960,000.00 for Supervised framed in Segment 4; and (iv) BRL 3,000,000.00 for Supervised operating exclusively in microinsurance.

[35] This rule will come into force on August 01, 2024.

There are highly detailed and specific rules regarding both the calculation of the risk-based capital and the procedures necessary for adopting corrective and recovery plans.

4 ESG (Environmental, Social and Governance)

Sustainable business has consistently steered focus towards financial markets, due to potential issues that can result in financial losses involving the environmental, corporate and social perspectives .

As a result, the Brazilian financial market, and regulatory agencies, such as SUSEP, have incorporated ESG (Environmental, Social and Governance) criteria and practices into their frameworks and policies.

In this regard, SUSEP enacted Circular No. 666/2022, which provides for sustainability requirements that must be complied with by insurance companies, open supplementary private pension entities, capitalization companies and local reinsurers.

According to the regulation in force, the management of sustainability risks is included within the general context of the Internal Controls System ("SCI") and the Risk Management Structure ("EGR"). In addition, sustainability risks must, whenever possible, be taken into consideration in the mandatory categories of underwriting, credit, market, operational and liquidity risks.

In turn, supervised companies must develop a materiality study in order to identify, evaluate and classify by materiality levels their sustainability risks, which includes the characteristics of their own activities, operations, products, services, customers, suppliers and service providers activities.

For such materiality study supervised companies must:

(i) adopt methods, processes, procedures and specific controls to identify, measure, classify, address, monitor, and report, in due time, the risks to which the companies are exposed;

(ii) establish limits regarding the concentration and/or restrictions of risks for carrying out business operations, which can potentially expose certain economic sectors, geographic regions, products, and services to sustainability risks; and

(iii) exclusively in regard to supervised companies classified under segments S1 and S2, include, in their quantitative risk measurement methodologies, projections of events associated with sustainability risks, including long-term prospects, and relevant information to sustainability risk management.

The criteria and procedures to be implemented for risk pricing and underwriting must be integrated into the underwriting risk management and be expressly included in the underwriting policy and/or internal regulations relating to the policy. These criteria must consider, among others, the insured's/client's actual and previous commitment to sustainability and their ability and willingness to mitigate risks involving sustainability.

Moreover, supervised companies must draft a Sustainability Plan in order to establish principles and guidelines to be complied with when carrying out their business operations. This document must be reevaluated at least every three years.

Finally, the supervised companies must publish, by April 30 of each calendar year, a Sustainability Report, describing the actions implemented to enforce the Sustainability Plan and the most important aspects relating to the management of the sustainability risks to which they are exposed.

5 Selling Insurance Plans and Certification

An insurance broker, whether an individual or a legal entity, is the facilitator legally authorized to intermediate sales of insurance contracts. Insurance distribution in Brazil is also possible through insurance agents (mainly retail, banking and financial institutions), which include insurance representatives and general management agents (regulated in 2021). Group policies can also be retained by group insurance policyholders.

According to the Brazilian law, an insurance company cannot incorporate a sister brokerage company since brokers' shareholders are prevented from holding corporate stake in insurance companies. Brokers and their shareholders are also prohibited from maintaining employment relationship or acting as directors or officers of insurance companies. Some financial groups do have both insurance companies and insurance brokers, however, the latter is linked to a holding company or a bank – but never to the insurance company.

Insurance brokers are regulated by Law No. 4594/1964, Decree-Law No. 73/1966, and the regulatory rules issued by CNSP and SUSEP.

A specific license is required by law for insurance brokers to operate in Brazil. After demonstrating compliance with the applicable requirements, a certificate is issued by SUSEP. Besides, only licensed insurance brokers are authorized to intermediate insurance contracts and receive the brokerage fee or commission for the commercialization of an insurance contract.

Regarding reinsurance brokerage, it is an activity regulated by Supplementary Law No. 126/2007 and CNSP Resolution No. 451/2022. The reinsurance broker must be a legal entity authorized by SUSEP to intermediate reinsurance contracts.

As of 2021, SUSEP enacted a regulation to introduce Open Insurance – a virtual ecosystem of standardized sharing of consumer data and services – which would later be integrated with Open Banking to enable the cross-selling of banking and insurance products. This joint ecosystem expands the possibility of innovation within the financial sector and enables the development of new insurance and banking products, the so called "Open Finance". This innovation introduced a new form of purchasing insurance via an intermediate company that processes insurance purchase orders directly from consumers (through devices such as smartphones and computer apps). As a result, insurers gained a new method to approach and market their products on the internet.

6 Reinsurance

The Brazilian law and regulation provide for two types of reinsurers: local and foreign, being the latter classified as admitted or occasional. Admitted and occasional reinsurers are foreign companies, whereas local reinsurers are companies incorporated under the Brazilian law with head offices in Brazil and organized as joint-stock companies.

A local reinsurer must have at least BRL 60,000,000.00 in capital and must meet the risk-based capital and solvency-margin requirements determined by SUSEP.

Admitted and occasional reinsurers are foreign companies that are registered with SUSEP and that must comply with specific obligations, such as: (i) having a net equity of, at least, USD 150,000,000.00 ; (ii) having an individual attorney-in-fact domiciled in Brazil; and (iii) having submitted numerous documents, including their financial statements. A new Circular No. 700/2024 was issued by SUSEP to provide for a new regulation on the documentation to be submitted by foreign reinsurers to obtain or renew their licenses. This new rule will come into force on August 01, 2024.

Admitted reinsurers must also establish a representative office in Brazil, authorized in advance by SUSEP and named as such, with the single role of representing the admitted reinsurer. Such representative must be domiciled in Brazil and hold a power-of-attorney.

The representative office can be: (i) a Brazilian company or a branch office, owned by the admitted reinsurer; or (ii) a third party contracted to perform these representation services.

An admitted reinsurer must also keep an escrow-account with SUSEP worth a minimum of USD 5,000,000.00 in the event that the admitted reinsurer operates in all lines of business, or a minimum of USD 1,000,000.00 if it works solely in the life reinsurance segment.

There are two advantages that a local reinsurer has over admitted and occasional reinsurers:

(i) a preferential offer of 40% of each transfer; and

(ii) exclusive rights to reinsure coverage for survival in life insurance, as well as to reinsure complementary pension funds' transactions.

In contrast to admitted reinsurers, occasional reinsurers are not required to have a representative office nor to keep reserves under any circumstances in Brazil, however, their headquarters cannot be located in a tax haven[36].

Through new rules applicable to reinsurance and retrocession operations, certain provisions regarding the limits of reinsurance transfer were amended, as follows:

(i) Intragroup restrictions were dismissed. Previously limited to 50%, such limit is no longer a requirement.

[36] Tax havens are countries or geographical locations that do not tax income, or rather tax income, however, at a rate of less than 20%, or whose internal laws provide for relative secrecy to the owners of corporations or their representatives.

(ii) Limits on global transfers by insurers were reduced to 10%. The previous 50% limit of the annual premium was increased to 90%. Insurers must submit to SUSEP, by the end of March of the subsequent calendar year, technical justification for any percentage higher than 90%, considering all operations per calendar year; and

(iii) For local reinsurers, retrocession transfers can be increased up to 70% of the premiums relating to the underwritten risks (except for financial, rural, and nuclear risks), considering all of the reinsurer's operations per calendar year.

Admitted and local reinsurers must keep a proper internal control system. There is no minimum structure for such requirement, but rather minimum elements that must be considered when setting up the internal controls of each reinsurer, as listed by CNSP Resolution No. 416/2021.

The size and complexity of such structure depends on the complexity of each company's operations.

In terms of reporting information to SUSEP, admitted reinsurers are also required to submit a Periodic Information Form ("FIP") every month, which is a set of tables to be completed by each company with information on its structure, financial statements and operations.

7 Reinsurance Contracts

Brazilian insurers and local reinsurers can assign risks in reinsurance and retrocession transactions to local, admitted, and occasional reinsurers, with or without the intermediation of reinsurance brokers.

As for reinsurance contracts, the local regulation establishes requirements for writing and structuring contractual documents, such as the need for:

(iii) an insolvency clause; and

(iv) a ban on direct-payment clauses (except in cases of insolvency of the transferor, provided that payment of indemnity has not been made from the reinsurer to the transferor or from the transferor to the insured party, in case of treaty contracts, or in all other cases, whenever there is a clause that, in such case, demands direct payment).

If there is an intermediary to the contract, the intermediation clause cannot limit or restrict the direct relationship between transferors and reinsurers, nor grant powers to reinsurance brokers beyond the powers needed and appropriate to perform their role. Regulation establishes that, among other requirements:

(i) the contract between the reinsurer and the transferor must be ratified/signed within 180 days from the initial term of the risk coverage. After this period, if not formalized, the reinsurance contract will be construed as non-existent from the outset; and

(ii) reinsurance contracts that cover risks within the national territory must be governed by the Brazilian law. However, if there is an arbitration clause, it can apply to foreign law.

Notwithstanding the above, if local, admitted, and occasional reinsurers do not have the necessary capacity to reinsure the risk, as requested by the insurer, Supplementary Law No. 126/2007, as amended by Supplementary Law No. 137/2010, establishes that the reinsurance risk can be transferred to foreign reinsurance companies.

INTELLECTUAL PROPERTY RIGHTS

1 General Overview

Intellectual property in Brazil denotes not only industrial property rights but also other rights related to creations of the mind, such as copyright and software.

Following the definition of "industrial property" introduced by the Paris Convention, industrial property rights in Brazil cover products and service trademarks, certification trademarks , collective trademarks and position trademarks , patents of invention and utility model patents, industrial designs, geographical indication and protection against unfair competition. It also encompasses technology transfer, franchising, technical and scientific services.

Industrial property is mainly regulated by the Brazilian Industrial Property Law (Law 9,279 of 1996 – "LPI"), the Paris Convention, and its Stockholm Revision, several norms issued by the Brazilian Patent and Trademark Office ("BPTO"), and the Central Bank of Brazil. Industrial Property Law 9,279 of 1996, which entered into force on May 15, 1997, consolidated the various rules governing the subject and introduced changes to the current protection of industrial property rights in Brazil.

The BPTO is the federal agency in charge of regulating and granting patent rights, registering trademarks, industrial designs, and geographical indications, as well as of approving licensing agreements and any other agreements involving industrial property rights, technology transfer and technical and scientific services as mentioned above.

In 2023, the BPTO issued Ordinances 26 and 27 establishing new rules and formalizing certain requirements in relation to the recordal or registration of technology transfer and franchise agreements, as well as the annotation of licenses and assignments of industrial property rights. Ordinance No. 26/2023 expressly repealed the BPTO's Normative Instructions No. 16/2013, No. 39/2015 and No. 70/2017; and Ordinance No. 27/2023 expressly repealed BPTO's Resolution No. 199/2017.

The key updates introduced by the ordinances are:

- Possibility of registering licensing agreements for the licensing of non-patented technologies (know-how);
- Payment of royalties over trademark application licenses;
- Dismissal of the requirement to (i) include parties' initials on all pages of the agreement and its exhibits; (ii) appoint two witnesses' signatures; (iii) present the corporate documents of assignee, franchisee or licensee; (iv) submission of the registration form ("ficha cadastro") at the BPTO's website; and (v) provide the notarization and apostille/consularization of documents signed abroad digitally; and
- Acceptance of digital signatures without an ICP-Brasil certification.

The ordinances published by the BPTO mark a significant improvement in the procedures for registering agreements. The ordinances simplify and streamline the requirements and formalities for such agreements. Furthermore, the ordinances are in line with the BPTO's efforts to modernize and enhance its services, and to foster the development and innovation of the Brazilian intellectual property system.

The changes above are limited to the agreements registered with the BPTO's General Coordination of Technology Contracts.

2 Trademarks

As previously stated, Brazil is a signatory of the Paris Convention, and therefore, trademarks that have been registered with the appropriate governmental agencies of other signatory countries have priority in the granting of local registration and protection. However, if a foreign holder applies for registration of a trademark in Brazil without a priority claim, as established in the Paris Convention (within six months of the foreign application), then priority protection from the Paris Convention for the interim period of time before application in Brazil will not be granted.

In order to be registered, the trademark must be new, lawful, and cannot be identical or confusingly similar to previous applications or registrations, nor may it be an expression of common use or a generic expression.

According to the LPI, visually perceptible and distinctive signs that are not included in the legal prohibitions can be registered as trademarks. Based on such definition, the BPTO included the possibility of registering the following traditional categories of trademarks:

a. Word - when the sign consists of one or more words, provided that these elements are not associated with any figurative element.
b. Compound - when the sign is made up of a combination of nominative and figurative elements or even just nominative elements whose spelling is presented in fanciful or stylized form.
c. Figurative - when the sign consists of drawings, images, figures and/or symbols.
d. Tridimensional - when the sign is constituted by the distinctive plastic form itself, capable of individualizing the products or services to which it applies.

Recently, the BPTO started to accept a new modality, the position mark, in which the protection is characterized by the application of a sign in a singular, specific, and invariable position of a given support object, resulting in a set capable of identifying the business origin and distinguishing products or services from others that are identical or similar.

Trademark protection in Brazil is obtained through registration of the trademark with the BPTO. However, Law 9,279 introduced two exceptions to this rule:

a. For well-known trademarks, special protection is granted, regardless of whether they have been registered in Brazil before. This provision is aimed at protecting holders from piracy of well-known trademarks that are registered outside of Brazil, but not in Brazil. It also reinforces the protection of Article 6 *bis* of the Paris Convention, which has long granted protection for well-known trademarks regardless of their registration.

b. For any person who, in good faith, at the date of priority claim or of the application filing with the BPTO by a third party, had been using an identical or similar mark for at least six months in Brazil, to distinguish or certify a product or service that is identical, similar, or akin, will have preferential right to registration.

Registration of a trademark is valid for a period of ten years and is renewable for successive ten-year periods. The extension must be requested during the last year in which registration is in effect (called the ordinary term) or within a six-month period following the ordinary term (called the extraordinary term) against payment of a surcharge. A trademark registration can be canceled if:

a. it is not used for five years from the date of its registration;
b. its use is interrupted for more than five consecutive years; or
c. the mark has been used in a modified form that implies alteration of its original distinctive character, as found on the certificate of registration.

Trade names in Brazil are not governed by the Industrial Property Law, and therefore are not subject to registration with the BPTO, although Law 9,279 of 1996 forbids the registration of trademarks identical or confusingly similar to third parties' trade names if it leads to confusion or association between those distinctive signs. Trade names are regulated by the Paris Convention, which assures protection to the owner of a trade name in all signatory countries, without filing or registration obligation, as well as by specific regulations issued by the National Department of Commerce Registry that require the registration of trade names with the Commercial Registry. Even though the Paris Convention demands that the protection of trade names be afforded throughout Brazilian territory, the Brazilian Civil Code in force since January 11, 2003, states that protection of corporate names is limited to the Brazilian state where the company is registered. However, there is a special provision of law that allows a company to expand its trade name protection to other states in Brazil through the submission of special requests to the commercial registries of each state where protection is desired.

2.1 Madrid Protocol

On October 02, 2019, Decree No. 10,033/19 was published, implementing in Brazil the Protocol on the Madrid Agreement for the international registration of trademarks, signed in Madrid, Spain, on June 27, 1989.

With the Protocol now in effect in Brazil, Brazilian titleholders who wish to register their trademarks in any of the other 120 countries that are part of the Agreement can do so directly with the BPTO, filing a single international application and paying only one fee.

The BPTO also receives trademark applications from international and Brazilian companies that enter the Protocol and choose Brazil as their designated country.

The BPTO, as designated office, has up to eighteen months to complete an initial analysis of the application, under penalty of automatic allowance. This first review can result in an office action or abeyance (which interrupts the 18-month review period) or a final decision (allowance or rejection of the application).

The Protocol is an advantage for trademark owners as it not only simplifies the registration process in several countries but also significantly reduces the costs of filing and maintaining trademarks in such countries.

In view of the accession to the Madrid Protocol, Brazil has sought to harmonize trademark registration procedures between national applications and designations received through the Madrid Protocol.

To this end, it is important to stress two substantial changes: Brazil adopted the trademark regime in a multiclass system and co-ownership, which stills need to be implemented. However, until now, the BPTO's system has not allowed national applications to be filed through the multiclass system.

As in other countries, in order to analyze the registrability of the trademark in a multiclass system, the BPTO Examiner will carry out an anteriority search exclusively within the classes claimed in the application under analysis, except for cases of correspondence in the former national classification, as is currently the case.

2.2 Trademark licensing agreements

Trademarks can be subject to licensing agreements, provided that they are registered or in the process of registration with the BPTO.

Until 2023, trademark applications could not generate royalties, which meant that the trademark had to be duly granted by the BPTO before remittance of royalties.

However, the Specialized Federal Prosecutor's Office ("PFE"), through Opinion 00035/2020/CGPI/PFE-INPI/PGF/AGU, analyzed the possibility of paying royalties for applications of trademark applications. The PFE understood that these are intangible assets with property value, protected by Articles 130 and 195, III, of LPI, and are part of the assets of its owner, and thus generate its effects.

On July 11, 2023, the BPTO published Ordinances No. 26 and 27/2023, in order to formalize changes to the administrative procedure.

3 Patents

Industrial Property Law establishes two types of patents: patents of invention and patents of utility model, depending on the degree of the inventive procedure involved. For both kinds of patents, the law requires that the product or the process to be patented result in an inventive procedure, be new and have an inventive activity and industrial application.

Patent protection is obtained through patent granting from BPTO. An invention patent is valid for a period of 20 years, calculated from the filing date of the patent application. Utility models are valid for 15 years as of the filing date.

Given the usual delay of the BPTO in issuing patents, the legislation used to have a provision in the sole paragraph of article 40 of the LPI, aimed at remedying such delay. This article established that "the term of validity must not be less than 10 years for the invention patent and 7 years for the utility model patent, counting from the granting date". However, on May 07, 2021, the Brazilian Federal Supreme Court ("STF") ruled on the

direct action for the declaration of unconstitutionality - ADI 5529, filed by the Attorney General's Office ("PGR") in 2016, whose subject matter was the sole paragraph of article 40 of the LPI.

By a majority of the votes, the STF declared the unconstitutionality of the sole paragraph of article 40 of the LPI, arguing that the extension of the term was of "unfair and unconstitutional" character, "privileging the private interest to the detriment of the community".

Therefore, the President of the BPTO announced that, in compliance with the preliminary decision of ADI, the provisions of the sole paragraph of article 40 of the LPI are no longer applicable to patents that granted from April 07, 2021.

The BPTO has been adopting several measures to decrease the backlog[37] on patent analysis, such as signing cooperation agreements with other patent offices, including the European Patent Office (EPO), Patent Office in Argentina (AR), Patent Office in Japan (JP) and the United States (USA), as well as using the results of searches made in other countries.

As informed above, to be patentable, an invention must be new and capable of use in industry. An invention is considered new when it is not part of the "state-of-the-art". The "state-of-the-art" includes all data and information made available to the public in Brazil or abroad, written or verbally, by use or by any other means before the filing or priority date. It includes the contents of patents in Brazil and abroad. An invention is deemed as of industrial use when it can be made or used in industry, including agricultural industry.

The patent holder must use the patent in Brazilian territory within three years from the granting date, in order to avoid the possibility of having its patent subject to mandatory licensing to a third party. A patent can also be subject to mandatory licensing if its owner exerts his rights in an abusive manner, or whenever the sales volume of the patented products do not meet local market requirements.

3.1 Patent licensing agreements

[37] Furthermore, on July 27, 2017, the BPTO issued a public consultation on a proposal to reduce the current patent backlog by streamlining examination of pending applications.

According to the proposal, eligible applications would form a separate queue and would be allowed as published or notified upon their national phase entry. This means that such applications would not undergo substantive examination. Letters patent would be issued with a general disclaimer calling attention to the non-patentable subject matter set forth in Articles 10 and 18 of the Brazilian Industrial Property Act.

It is important to note that this consultation is a preliminary step and has the purpose to invite the public to contribute with inputs on the proposed streamlined procedure. We noted several contributions, especially from Brazilians intellectual property associations, regarding the consultation. In the case that BPTO decides to move forward with the implementation of an Act, it will come in force.

Patents can be the subject of a licensing agreement if they are registered with the BPTO or in the process of registration.

Patent applications cannot generate remittance of royalties until the patent is granted by the BPTO.

However, royalties can be charged and credited in licensee's financial statements for payment after the patent granting, from the date of the registration request of the patent licensing agreement before the BPTO.

The PFE is still assessing the possibility of also applying this understanding for the potential payment of royalties for patent applications.

4 Industrial designs

Any ornamental shape of an object, or the ornamental combination of outlines and colors applicable to a product, which result in a new visual effect, can be considered an Industrial Design.

Granting an industrial design, unlike patent regulation, is not subject to prior examination by the BPTO regarding its merit. Registration is immediately published and granted by the BPTO if the application complies with all legal requirements. However, the applicant can, at any time, request examination by the BPTO concerning the novelty and originality of its industrial design.

Registration is valid for a period of ten years from its filing date and can be extended for three consecutive five-year periods.

4.1 Industrial design licensing agreements

Industrial designs can be subject to a licensing agreement provided that they are duly registered with the BPTO or in the process of registration.

The PFE is still assessing the possibility of also applying this understanding for the potential payment of royalties for industrial designs applications.

5 Technology license

Technology in Brazil is defined as know-how not protected by a patent of invention or utility model. Until 2023, the basic concept of the Brazilian rules regarding the use of technology by a Brazilian party had been that technology is subject to "transfer" to a Brazilian party, rather than to a "license".This rationale has prevailed since 1975, due to the former (and repealed) BPTO Normative Act 15.

However, as previously mentioned, on July 11, 2023, the BPTO published Ordinances No. 26 and 27/2023, which expressly recognized the possibility of registering a license agreement for non-patented technologies (know-how), which must be registered under the "Technology Supply" category (Ordinance no. 26/2023, article 2, III, a).

The deduction of the fees paid as compensation for the technology supply for tax purposes is restricted to the five-year period of the agreement (see Article 364, Paragraph 1 of the Income Tax Regulation instituted by Decree No. 9,580/2018). This term may be extended for an additional period of five years if the contracting parties can demonstrate that the technology was not completely transferred to the receiving party or that the agreement is essential to the maintenance of the competitiveness of the receiving party.

Since 2017 the parties are free to stipulate the term of the agreement in accordance with the necessary duration of the know-how provision, provided that the agreement is executed for a determined term (indefinite terms are not accepted by the BPTO, according to its rules).

6 Technical and scientific services

Agreements involving the rendering of technical and scientific services, where there is transfer of know-how (through, for example, provision of reports and data) from one party to the other party are subject to recordation with the BPTO. These services usually involve engineering services and should not be confused with the category of “professional services”, which are exempt from registration with the BPTO to enable the remittance of payment abroad and the payment can be made through any commercial bank.

The BPTO only accepts that payments for technical and scientific services that take place based on man/hour or man/day costs.

In 2015 the BPTO issued a Resolution listing certain contracts for technical and scientific assistance services which are not subject to registration with the BPTO because they do not imply technology transfer, such as preventive maintenance services for equipment and/or machinery.

7 Franchising

Franchising is defined as a system through which a franchisor grants a franchisee the right to use a trademark or patent (in practice and according to Brazilian legal doctrine, the right to use trademark is essential in a franchise deal), along with the right to the exclusive or semi-exclusive distribution of products or services, and potentially also the right to use the technology of implementation or management of related business or operational system developed or retained by the franchisor.

New Law 13,966, known as Franchising Law, modifies certain aspects of Law 8,955 and regulates the terms of a franchising agreement, clarifying the relationship between franchisor and franchisee. The new Law came into force on March 27, 2020.

The former Law created the "Franchise Disclosure Document", which establishes the inclusion of mandatory pieces of information that must be disclosed to the potential franchisee, including a more detailed description of the franchise in which the prospective franchisee intends to engage, as well as information about the franchisor, both of which are crucial elements for the prospective franchisee to decide whether to engage with the business investment.

A franchisee can obtain the cancelation of the franchise agreement even after it is signed if the Franchise Disclosure Document is not delivered to the prospective franchisee at least 10 days prior to execution of the franchise agreement, preliminary agreement or any other agreement related to the franchise deal or the payment of any amounts by the franchisee. In this regard, for instance, it is required that the Franchise Disclosure Document be delivered by the franchisor to the franchisee at least ten days prior to signing the franchise agreement or payment of any fee by the franchisee to the franchisor.

The cancelation of the franchise agreement can obligate the franchisor to return all amounts paid by the franchisee plus damages.

7.1 Franchising agreements

Franchising agreements executed between a local franchisee and a foreign franchisor must be registered with the BPTO.

Even if the franchise agreement includes only trademark *application*, the remittance of payments abroad due for the franchise agreement will be allowed.

8 Registration

As a rule, agreements related to industrial property rights, technology transfer and technical and scientific services involving transfer of know-how, must be approved by, and registered with the BPTO for the enforcement of the obligations in relation to third parties. Registering a licensing agreement with the BPTO is not mandatory for the authority to admit documents issued by the licensee as proof of actual use of the licensed trademarks or patents, in the event that a third party requests cancelation due to lack of use.

Additionally, upon changes in fiscal laws, registering contracts with the BPTO or the Central Bank of Brazil is no longer mandatory for the purposes of remittance of royalties abroad and deductibility of payments as operational expenses for Brazilian income tax purposes.

Such registration, however, is still recommended to ensure the existence of an official document that proves and sets parameters for the Brazilian Federal Revenue Service (*Receita Federal do Brasil*) when analyzing transfer pricing and other tax obligations.

9 Software

Software is regulated by Law 9,609, known as the Software Law, enacted on February 19, 1998. The law contains provisions regarding:

a. Copyright protection for software;
b. Rules for marketing software; and
c. Penalties imposed in the case of infringement of software copyrights and marketing.

“Software” or “computer programs” are defined as “the expression of an organized set of instructions in natural or codified language embedded in physical media of any nature to be necessarily used in automated machines to handle data, devices, peripheral instruments or equipment, based on digital or analogous techniques to make them operate in a specific manner and for specific purposes.”

The law grants authorship protection for software programs for 50 years from the first day of January of the year following the software’s publication or, in the absence of publication, 50 years from the date of the software's creation.

In terms of protection for foreign individuals, the law applies the international principle of reciprocity. Protection extends to foreign individuals domiciled outside Brazil, provided that the country where the software was created grants the same rights to Brazilians.

Software Law 9,609 establishes that authorship of the software is already assured, regardless of its registration. However, the author can pursue registration of the software with the BPTO in order to allow the shift of burden of proof in civil procedures. Registration can be requested on a secret or non-secret basis, and the software registration is automatically issued, if it complies with formal requirements.

10 Copyright

Copyright protection extends to original works of authorship in any tangible form of expression, such as books, letters, conferences, music compositions, cinematography works, photographs, translations, and any other kind of transformation of the original works, drawings, paintings, sculptures, and other tangible forms thereof.

Copyright is regulated by Copyright Law 9,610, enacted on February 20, 1998, which protects and regulates all creative works of inspiration. Additionally, Brazil is a signatory to two other major international treaties, the Bern, and Geneva Conventions.

Copyright ownership is vested in the author of the work (or contributors if developed jointly). The duration of a copyrighted work is for the entire life of its author, and seventy years thereafter. If the work was created by two or more authors, the seventy-year term commences following the death of the last surviving author.

Copyright registration is not a prerequisite for obtaining protection. However, registration is always helpful to deter piracy, and as proof of ownership in case of litigation. In this case, the author can register their work with specialized entities, in accordance with the nature of such work.

Recently, due to the growing market for e-sports, avatars, gaming, NFTs and the metaverse, companies' intellectual property assets, especially copyrights, must also undergo review in order to address these new challenges.

11 Tax Aspects

11.1 Withholding Income Tax (IRRF)

Generally, the payment (credit, delivery, employment, or remittance) of royalties or fees abroad under intellectual property rights agreements is subject to withholding 15% in income tax (or a 25% rate if the beneficiary is domiciled in a "low-tax jurisdiction" as defined by Brazilian tax law). Treaties signed by Brazil to avoid double taxation may change the standard rates above.

The IRRF is an ordinary burden on the beneficiary of the payment abroad, and, as a rule, is deducted from the amount to be paid. Nevertheless, the parties can formally agree that the Brazilian payer will assume the burden of the IRRF owed by the beneficiary domiciled abroad. In this situation, Brazilian tax legislation establishes that the Brazilian payer must gross up the IRRF tax basis.

Amounts withheld in Brazil as IRRF can generate credits for the beneficiary domiciled abroad that can offset its foreign income tax, if such provision is contained in a treaty to avoid double taxation between Brazil and the beneficiary's country, or if it has been provided for in the legislation of the country to which remittance is being sent.

11.2 Contribution for Interference with the Economic Order (CIDE)

CIDE is levied on the payment (or credit, delivery, remittance, or employment) of remuneration to parties domiciled abroad, related to:

a. Supplying technology;
b. Providing technical support (i.e., technical support services or specialized technical services) with or without technology or know-how transfer;
c. Transferring and licensing trademarks;
d. Transferring and licensing to exploit patents;
e. Administrative assistance and those of similar nature; and
f. Royalties of any kind.

There is a CIDE exemption to payments related to software licenses, unless the source code of the software is provided to the payer (in which case the agreement is considered technology transfer, according to the Brazilian legislation). However, this is a controversial matter, because Brazilian tax authorities deem certai methods of software payment (e.g., Software as a Service) taxable, given that they are more similar to a service.

Payment of CIDE is incumbent on the company domiciled in the country, given that, unlike the IRRF, this contribution is due by the payer domiciled in Brazil and not by the foreign beneficiary.

11.3 PIS/COFINS-Importation

PIS/COFINS-Importation is levied at a joint rate of 9.25% on the importation of services (and at a joint rate of 11.75% on the importation of goods). Services subject to these taxes include those performed in Brazil or abroad, whose results are verified in Brazil. The taxable basis of PIS/COFINS-Importation taxes is the amount paid (or credited, delivered, used, or remitted) abroad before the withholding income tax (IRRF) deduction, plus the Services Tax (ISS) and the PIS/COFINS-Importation tax amounts. If the Brazilian company is under the non-cumulative system and if the “services” imported could be regarded as inputs used or consumed in the company’s core business, then PIS/COFINS-Importation collected may be offset against PIS and COFINS accruing on the Brazilian company’s monthly revenue.

The levy of PIS/COFINS-Importation on payments abroad as intellectual property rights used to be a controversial matter in Brazil. Because most of the agreements involving intellectual property rights does not involve a “to do” obligation (but the mere license of rights), there are legal grounds to sustain in courts that these specific transactions do not characterize a service rendering and should not subject to the levy of PIS/COFINS-Importation.

Nevertheless, tax authorities have been rendering administrative decisions on the sense that agreements involving the payment of royalties are not subject to PIS/COFINS- Importation, provided that the amount of royalties charged in the respective agreement is segregated from other amounts charged as technical services technical assistance and other services rendered under the same agreement. In addition, certain methods of royalty payment are deemed fully taxable because of its similarity to a service provision (e.g., Software as a Service).

11.4 Services Tax (ISS)

The Services Tax (ISS) is a municipal tax levied on the provision of services at a range of 2% to 5%, depending on the nature of the service and the location (municipality) of the Brazilian company. The ISS is also levied on imported services, in which case the payer is responsible for collecting ISS due on service importation. Some intellectual property rights were included in the list of services subject to ISS (such as trademark license, software license and franchising). Because these agreements in general do not involve a performance obligation (but the mere licensing of rights), there are legal grounds to sustain in court that the ISS should not be due in these cases.

11.5 IOF tax

Currency transactions to pay royalties or fees abroad are subject to the Tax on Financial Transactions (IOF) at a 0.38% rate. The IOF taxpayer is the Brazilian company that pays the funds abroad, but the Brazilian bank in charge of the currency exchange is responsible for collection and payment.

11.6 Deductibility

Generally (applicable to all expenses), only necessary, usual, and regular expenses made in connection with a company's business may be deducted from the tax basis of Corporate Income Taxes (IRPJ and CSLL).

In addition to the general deductibility rule above, Brazilian income tax legislation used to establish fixed limits for the deductibility of certain intellectual property rights expenses on the calculation of IRPJ. These specific conditions for tax deductibility needed to be analyzed on a case-by-case basis up to 2023.This changed after Law No. 14,596 of June 14, 2023 was enacted, amending the transfer pricing ("TP") rules for the purposes of calculating Corporate Income Taxes. As a result, from 2024 on, the deductibility of royalties in transactions involving related parties and parties that benefit from more beneficial tax treatment must comply with the "arm's-length" principle, based on a balance of risks and benefits between the entities involved in the transaction. TP rules prohibit the deduction of royalties when it results in "double non-taxation".

Regarding the local payment of royalties, the discussion on the applicability of the fixed limits for the deductibility of royalties and payments for technical assistance have been repealed. Thus, royalties and technical, scientific, administrative or similar assistance services are no longer subject to the maximum deductibility percentages and, also, are not subject to the new TP rules on local transactions.

INTERNATIONAL TRADE

1 Brazilian Trade System

1.1 Introduction

The Brazilian Foreign Trade Chamber ("CAMEX") is the governmental body in charge of defining the Brazilian international trade policy.

The agency in charge of trade remedies investigations is the Trade Defense Department (DECOM), part of the Secretariat of Foreign Trade (SECEX), both of which are under the Ministry of Development, Industry, and International Trade (MDIC). DECOM is the authority responsible for analyzing the existence of dumping and subsidies, and the resulting injury.

The Executive Management Committee under CAMEX is responsible for setting provisional or definitive anti-dumping, countervailing and safeguards duties, as well as for approving price undertakings.

The Federal Revenue Office of Brazil (RFB) is the main governmental body in charge of customs controls and focuses primarily on customs clearance procedures and the collection of duties. Under the RFB, customs activities are managed by the Coordination of Customs Administration (COANA).

Imported goods may be subject to inspection by other governmental bodies during customs clearance procedures if they are subject to import licensing requirements. The main governmental bodies in charge of import licensing activities are the Ministry of Health, the Brazilian Health Oversight Agency (ANVISA), and the Ministry of Agriculture, Livestock and Food Supply (MAPA).

2 Importing goods

2.1 Before you Ship

2.1.1 Qualification as an importer/exporter

Prior to engaging in foreign trade, Brazilian companies must qualify as importers/exporters with the RFB. Importers and exporters have access to the SISCOMEX, which is the electronic system used by the companies to submit their operations to customs clearance procedures.

In order to be qualified as an importer/exporter, the company must submit an application for a RADAR registration in the limited or unlimited modes. RADAR is an internal electronic system of the RFB in which the company's customs and tax records are maintained. This system is used for risk management purposes in international trade transactions.

As a rule, the limited RADAR allows companies to make imports limited to a total value of USD 150,000.00 in every six-month period and the unlimited RADAR allows companies to make imports of any value.

2.1.2 Tax classification of imported goods

As a rule, prior to importing goods, the importer must classify them in the Mercosur Common Nomenclature (NCM). Import licensing requirements and duty rates are determined based on the classification of imported goods in the NCM.

NCM is an eight-digit nomenclature based on the Harmonized System (HS) of the World Customs Organization (WCO). Hence, the first six digits of NCM are equivalent to the first six digits of any other nomenclature that is also based on the HS.

NCM CODE: 8535.30.13 → HS CODE

Classification of goods in the NCM is done in accordance with the General Rules for Interpretation of the Harmonized System and the Explanatory Notes of the Harmonized System.

In the event of doubts about classification of goods in the NCM, importers may file a request for ruling with the RFB. The requirements for this request are provided for in RFB Normative Instruction 2,057/2021[38].

2.1.3 Import licensing requirements

Prior to authorizing the shipment of goods abroad, a Brazilian importer must verify import licensing requirements in SISCOMEX, which are determined in accordance with the type of importation and the goods classification in the NCM.

As a rule, imports are not subject to any import licensing. In the event that an import license is necessary, licensing will either be automatic, with registration of the operation in SISCOMEX (after arrival of the goods), or non-automatic (registration of the operation depends on licensing prior to shipment of the goods abroad).

[38] Available at: (http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=122078#2312685)

Since 2014, the authorities have been modifying the SISCOMEX to implement the Single Window initiative as provided in the World Trade Organization (WTO) Trade Facilitation Agreement[39]. Among the main improvements promised by this initiative are those related to facilitating the requirement of import licenses, such as:

- importer requiring the import license only once, for several operations;
- consenting bodies analyzing the requirement through the same platform; and
- consenting bodies performing jointly the physical verification of the product.

The general rules on import licensing are provided for in SECEX Ordinance 23/2011[40].

2.2 Entry procedures

2.2.1 General

Import operations must be reported on Import Declarations registered in the SISCOMEX. This declaration must list the customs value of the goods, the respective classification in the NCM and other information about the import operation. Duties are calculated by the system and transferred online from the importer's bank account to the National Treasury.

After the operation is reported in SISCOMEX, the importer must give the customs authorities documents that support the operation (commercial invoice, bill of lading, packing list, and certificate of origin, if applicable), and the goods are then selected for one of the channels for customs clearance.

The following channels exist for imports:

- the green channel, in which the goods are released without further examination;
- the yellow channel, in which the documents are examined and if no problems are identified, the goods are released;
- the red channel, in which the documents and the goods are examined and if no problems are identified, the goods are released; and
- the gray channel, in which the goods are submitted to a special examination procedure, focused on customs valuation. If no problems are identified, the goods are released.

The customs clearance procedures for importation are set out in detail in Brazilian Customs Regulations[41] and in the RFB Normative Instruction 680/2006[42].

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[39] Decree 8,229/2014 (planalto.gov.br)

[40] SECEX Ordinance 23/2011, articles 12 to 29 (mdic.gov.br)

[41] Decree No. 6,759 of February 05, 2009, Articles 542 to 579 (planalto.gov.br)

[42] RFB Normative Instruction 680 of October 02, 2006 (receita.fazenda.gov.br)

2.2.2 Indirect importation

Brazilian companies may import goods directly or indirectly (through other companies). Goods can be imported directly in the following cases:

- imports of goods that shall be booked as fixed assets of the importer;
- imports of inputs to be used in the manufacture of products by the importer; and
- imports of goods to be distributed in the country by the importer to clients.

Brazilian legislation provides for two kinds of structures to import goods through other companies:

- imports on behalf of another company ("*importação por conta e ordem*"); and
- imports of goods pre-ordered by other companies ("*importação por encomenda*").

When acting as a service provider importing goods on behalf of another company, the importer is only in charge of customs clearance and does not acquire title to the imported goods. The purchaser of the imported goods may advance funds to the importer to cover payment of import duties, customs expenses, etc., and must pay the exporter directly.

On the other hand, when goods are pre-ordered by a third party before they are imported, the importer acquires title to the goods. The company that has pre-ordered the importation may not advance funds to cover import duties, customs expenses, etc., and the importer will pay the exporter.

In both cases, it will be necessary to file at customs authorities the contracts executed between the companies prior to the first importation (service agreement in the case of imports on behalf of other companies, and a purchase and sale agreement in the case of imports pre-ordered by other companies). All companies must apply to RADAR and be qualified as an importer/exporter.

Each of the abovementioned structures to import goods is subject to a different tax treatment.

2.2.3 Authorized economic operators

The WCO Framework was the WCO's response to the threat of terrorism. Its goal is to enhance international supply-chain security in a way that does not impede, but rather facilitates the movement of goods. This goal is to be achieved through increased cooperation between customs administrations in importing and exporting countries and between customs administrations and businesses.

The partnership of customs administrations and businesses consists of granting benefits, such as faster processing of goods by customs through reduced examination rates, for companies that meet minimal supply-chain security standards and best practices. These companies were called "Authorized Economic Operators" (OEA) within the WCO Framework. These benefits translate into savings in time and costs to companies and allow the customs authorities to focus on other companies' operations. According to the WCO Framework, each customs administration must create its own program to establish this partnership with the private sector.

Brazilian companies may be qualified to the OEA program in two different modes: security and conformity (levels 1 and 2). Different criteria are applied to each type of OEA in order to grant the certificate, varying from the control of cargo units to the reliability of its accounting system. The benefit is a faster processing of goods by customs authorities through reduced inspection rates.

This regime is regulated by RFB Normative Instruction 1,985/2020.

2.3 Import Duties, Taxes, and Fees

As a general rule, goods imported into Brazil are subject to the following taxes, which must be paid by the importer upon registration of the Import Declaration:

(i) **IMPORT TAX (II):** levied on the customs value of the imported good at different rates depending on the good's classification in the Mercosur Common Nomenclature ("NCM");

(ii) **EXCISE TAX (IPI):** levied on the customs value of the imported good plus the Import Duty. The IPI rate also varies in accordance with the good's classification in the NCM;

(iii) **STATE VALUE-ADDED TAX (ICMS):** levied on the customs value of the imported good plus the II, the IPI, and the social contributions PIS/COFINS-importation;

(iv) **PIS/COFINS-IMPORTATION:** levied on the customs value of the imported good, normally at a combined rate of 11.75%[43] - some goods are subject to different rates; and

(v) **FREIGHT SURCHARGE FOR RENOVATION OF MERCHANT MARINE (AFRMM):** calculated at a 8% rate over the cost of international ocean freight.

The customs value of imported goods is determined in accordance with the provisions of the Customs Valuation Agreement of the World Trade Organization (WTO), which states that the customs value, as a rule, is the transaction value. If the transaction value cannot be used, alternate valuation methods provided by the Customs Valuation Agreement will be applied. Please note that, according to Brazilian legislation, international insurance and international freight costs are included in the customs value of imported goods.

The ICMS is a state tax owed on local sales and import operations. Its rates vary in accordance with the state in which the taxable event takes place, the goods being sold or imported, and the type of operation performed.

The IPI and the ICMS are normally creditable taxes. This means that, as a general rule, amounts paid in prior transactions may be offset against taxes due on subsequent transactions. The PIS/COFINS-importation may also be creditable if the importer collects the social contributions PIS/COFINS levied on local transactions, under the non-cumulative system.

[43] Please note that on June 22, 2015, Law 13,137/2015 was published, increasing PIS/COFINS - Importation combined rate from 9.25% to 11.75%. Such innovation became effective on May 1, 2015.

2.4 Tax Incentives

2.4.1 "Ex tarifário"

Capital goods, such as machinery and equipment, information and telecommunication goods are entitled to a reduction of the Import Duty rate to 0% if there is no local production of similar products. This reduction can be granted only to goods classified in tariff codes marked in the Mercosur Tariff Schedule (TEC) as BK (for capital goods) and BIT (for information and telecommunication goods). It is granted through the creation of an exception ("*Ex tarifário*") to the TEC. The application for this reduction must be filed by the importer prior to importation. After the exception has been granted, it remains valid for two years, and anyone that imports such goods benefits from the reduction of the Import Duty rate.

2.4.2 Drawback

The special drawback customs program is an export incentive applied under:

(i) **Suspension:** inputs are imported with suspension of import duties. These inputs must be used to make goods that must later be exported;

(ii) **Exemption:** the interested company shows that it has imported inputs with regular collection of taxes and has used these inputs to make goods that have already been exported. This company is allowed to import inputs with exemption of import duties in the same quantity and quality of those imported previously; and

(iii) **Refund:** like the exemption option, the interested company shows that it has imported inputs with regular collection of taxes and has used these inputs to make goods that have already been exported. This company is refunded the import duties levied on the imported inputs.

The first two options in the program - suspension and exemption - are regulated and administered by the Foreign Trade Secretariat (SECEX). These are the most commonly used options by Brazilian companies. The third option, refund, is under the RFB administration and is not currently being used as a result of a lack of regulation.

An interested company must request the special drawback program prior to importing goods with suspension or exemption of duties.

2.4.3 RECOF-SPED

Brazilian companies may benefit from the special industrial warehouse program (RECOF-SPED), which allows imports and local purchases of inputs with suspension of taxes. These inputs must be used primarily in the industrialization of products that can either be exported or sold in the local market. The RECOF-SPED is regulated by RFB Normative Instruction 2,126/2022[44].

2.4.4 Manaus Free Trade Zone (ZFM)

The Manaus Free Trade Zone was created to attract industries and trade to the Amazon region. All imported goods are exempt of taxes, provided that they are consumed within the free trade zone or exported abroad. Sales or transfers of these goods to other parts of Brazil result in payment duties suspended at the time of importation. Sales from other parts of Brazil to the Manaus Free Trade Zone are treated as exports.

Additionally, companies that have their industrial project approved by SUFRAMA (Superintendence of the Manaus Free Trade Zone) and perform the minimum manufacturing operations required by SUFRAMA and established in the respective PPB (Basic Production Process), may sell the manufactured goods to other parts of Brazil with an 88% reduction of the Import Duty triggered on the importation of the respective inputs. In addition to a lower Import Duty, these sales are exempt of IPI and benefit from lower rates of PIS and COFINS social contributions.

The aforementioned benefits are valid through 10/05/2073.

Companies established in the Manaus Free Trade Zone may also benefit from a 75% reduction of Corporate Income Tax (IRPJ) for a 10-year period. This benefit is granted by SUDAM (Superintendence for the Amazon Development).

These tax benefits are also applicable to certain specific areas of the Western Amazon region, which covers the states of *Acre, Amazonas, Amapá, Rondônia* and *Roraima*.

[44] RFB Normative Instruction 2,126/2022 (receita.fazenda.gov.br)

3 Trade Agreements

Brazil is a member of the Latin American Integration Association (ALADI)[45], which was instituted in 1980 through the Montevideo Treaty to "promote economic and social development, harmony and balance throughout the region" (Preamble of the 1980 Treaty). As an ALADI member, all Brazilian exports to other ALADI members are granted with a minimum tariff preference, called the Regional Tariff Preference. Additionally, Brazil has entered into free trade agreements, so-called Economic Mutual Assistance Agreements ("ACE"), with several ALADI members in which higher tariff preferences were negotiated.

Brazil also executed the MERCOSUR Treaty on March 26, 1991, in Asuncion, Paraguay, which intended to constitute a common market between Brazil, Argentina, Paraguay and Uruguay. Chile, Bolivia (both since 1996), Peru (2003), Colombia, Ecuador (both in 2004), Guyana and Suriname (the latter two in 2013) are associate members. Venezuela is a full member since August 2012, but its rights and obligations are suspended since August 2017[46]. Through Economic Mutual Assistance Agreements, the goal is to establish a free trade zone throughout MERCOSUR and with all associate members.

Since January 01, 1995, there have not been tariff barriers between MERCOSUR member countries, which means that products originating in one member country and sold in the other countries, are not subject to customs duties. Additionally, a customs union was established to take effect on January 01, 1995. As such, a Common External Tariff (TEC) was established with the goal of preventing cashflow deviations in trade.

Outside Latin America, Brazil has executed, together with the other MERCOSUR members, trade agreements with the following countries or trade bloc: Egypt, India, Israel, Palestine, Singapore and the South African Customs Union (SACU). In 2019, Mercosur concluded the negotiations of the trade agreements with the European Union and EFTA, which still need to be ratified.

4 Trade Remedies

Trade remedies' regulations are divided into the following instruments:

- Anti-dumping measures
- Countervailing measures
- Safeguarding measures

[45] Current ALADI members: Original: Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela. Other members: Cuba, Nicaragua, and Panamá.

[46] Decision on the suspension of the Bolivarian Republic of Venezuela from Mercosur in applying the Ushuaia Protocol on the Democratic Commitment in Mercosur" (itamaraty.gov.br)

The abovementioned instruments follow the applicable rules provided by the General Agreement on Tariffs and Trade 1994 (GATT) and the relevant WTO agreement. Anti-dumping rules were substantially amended in 2013. Changes to the countervailing and safeguard measures decrees are expected, as they were subject to public consultations in 2014 and 2017, respectively.

Brazil has implemented the public interest clause that may suspend or reduce the application of trade remedies measures. The public interest is regulated by Decree No. 8,058/2013 and SECEX Order 8/2019.

4.1 Anti-Dumping Measures

In Brazil, the imposition of anti-dumping measures is set out by Decree No. 8,058, dated July 26, 2013, which abides by the rules set forth by Article VI of the GATT 1947 and the WTO Anti-Dumping Agreement (ADA).

According to these regulations, dumping occurs when a foreign company exports products to Brazil at less than their normal value, i.e. if the export price of the exported product is less than the comparable price in the ordinary course of trade for a like product when shipped for consumption in the exporting country. If such dumping causes or threatens to cause material injury to an established industry in Brazil or materially lags the establishment of a domestic industry, Brazilian authorities may impose anti-dumping measures to offset the effects of dumping.

A dumping investigation in Brazil starts when local producers or business associations file a written petition together with a questionnaire at the Trade Remedies Department (DECOM) of SECEX (Foreign Trade Secretariat) setting out evidence of possible dumping practices of a certain company or companies in their exports to Brazil. Once accepted, the merits of the petition will be reviewed and an investigation will be initiated. Recently, the authorities regulated in further detail the requirements and deadlines for the habilitation of the domestic producers in the case of fragmented industries[47]. This change has facilitated the access of several industrial and agricultural sectors to trade remedies.

Investigations must be concluded within ten months from the initiation date, subject to an additional eight-month extension under special circumstances.

Within six months from the initiation of the investigation, but never before sixty days from the initiation, DECOM will provide a preliminary determination about dumping, injury and causal link and may impose a provisional measure on imports of the product under investigation, providing that:

- all interested parties have had opportunity to express their opinions about the investigation;
- dumping, injury, and causal link to the domestic industry are affirmatively determined on a preliminary basis; and
- authorities understand that such measures are necessary to prevent any injury during the course of the investigation. In case the provisional duty is applied, a retroactive collection of the anti-dumping duty may be imposed on the imports up to 90 days prior to the date of

[47] SECEX Ordinance n. 41/2018 (mdic.gov.br)

imposition of the provisional duty, in case certain criteria are met, such as the rapid increase of imports after the investigation.

During the investigation, the exporter may undertake satisfactory obligations to adjust prices or to cease exporting at dumping prices. SECEX should accept and CAMEX (Foreign Trade Chamber) must approve this undertaking. In this case the dumping proceeding may be terminated or suspended with no imposition of duties.

Anti-dumping duties and price undertakings proposed by exporters will remain in force only as long as the need exists to mitigate dumping and the resulting injury. However, these duties will cease five years following imposition, subject to extension if there is evidence that extinction of such duties could result in dumping and injury to domestic industry.

It is interesting to point out that the anti-dumping regulation ruled on several instruments to ensure the effectiveness of the dumping duty, such as:

- reviews related to the imposition of the duty (due to change in circumstances; sunset review); and
- reviews related to the scope and the collection of the duty (new shippers' review; anti-circumvention review; restitution review; redetermination review).

4.2 Safeguard Measures

The imposition of safeguard measures in Brazil is governed by Decree No. 1,488, dated May 11, 1995, which abides by the rules set forth by Article XIX of the GATT 1947 and the WTO Agreement on Safeguards (SG Agreement).

As provided for in GATT Article XIX, a safeguard measure may be imposed on a product only if that product is being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to domestic industry. Unlike anti-dumping, safeguard measures seek to protect national industry irrespectively of any unfair trade practice and its origin. It is applied when the domestic industry shows no competitiveness compared to foreign products.

During a safeguard investigation the interested parties will have the opportunity to submit any evidence that might be relevant to the investigation. Moreover, hearings may be scheduled.

Safeguard measures will remain in force only to the extent necessary to prevent or to remedy serious injury and to facilitate adjustment of the domestic industry. However, such measures will cease four years following imposition. These measures may be extended if there is evidence that:

- they are still necessary to prevent or to remedy serious injury, and
- the domestic industry is not adjusting in accordance with the agreements settled with the government.

4.3 Subsidies and Countervailing Measures

The application of countervailing measures in Brazil is governed by Decree No. 10,839/2021, which is based on the WTO Agreement on Subsidies and Countervailing Measures (ASCM).

Countervailing measures seek to offset subsidies granted by a state to certain companies or sectors that end up artificially lowering their production costs. The imposition of countervailing duties depends on the conclusion, during an investigation, that the subsidy granted by another state results in injury to domestic industry.

Countervailing duties remain in force only as long as needed to mitigate or to prevent material injury. However, these duties will cease five years following imposition, subject to extension if there is evidence that the extinction of such duties could result in injury to national industry.

INVESTMENT INCENTIVES

Brazil's tax system is heavily based on the concession of tax incentives. In this regard, there are municipal, state, and federal tax incentives; incentives granted based on geographical location, to specific industries, types of products, etc.

Although many other incentives demand a case-by-case analysis, we have detailed below some of the main tax incentives that can be enjoyed in Brazil.

1 SUDENE Area

Investment in the northeast of Brazil can be carried out through an agency called SUDENE ("*Superintendência do Desenvolvimento do Nordeste"*), based on an investor's own project or a third party's project. Industrial and agricultural companies seeking to establish a business venture in the SUDENE area must submit a proposal to the agency, which, after approval, will entitle them to the following financial and tax incentives:

(i) Financial support from the Northeast Investment Fund ("*Fundo de Desenvolvimento do Nordeste*");
(ii) Income tax reduction;
(iii) Import Duties and IPI exemption or reduction in imports; and
(iv) State and municipal incentives.

Law 14,753/2023 extended the deadline for the approval of projects benefiting a 75% reduction and 30% reinvestment of income tax, including additional non-refundable taxes, to December 31, 2028, which amounts to a ten-year tax incentive period.

Legal entities are allowed to invest a portion of their corporate income tax in shares of the Northeast Investment Fund instead of making payments to the federal government. Such fund will then invest in the subscription of shares of companies installed in the SUDENE area. A legal entity or group of legal entities that individually or jointly control the voting capital of a company located in the SUDENE area can allocate its income tax reduction as an investment to that controlled company.

2 SUDAM Area

Investment can be carried out via the agency called SUDAM ("*Superintendência do Desenvolvimento da Amazônia"),* which is similar to that in the SUDENE area, but designed for investments located in the north of Brazil, primarily in the Amazon region. SUDAM has the financial support of the Amazon Investment Fund ("*Fundo de Desenvolvimento da Amazônia*").

Law 14,753/2023 also extended the deadline for approving projects that benefit from tax incentives of SUDAM, within the same terms than SUDENE.

3 Manaus Free Trade Zone (Zona Franca de Manaus- "ZFM")

It is possible for any company to establish an affiliate in the ZFM, which can benefit from an exemption of Import Duties on imported goods for internal consumption within the ZFM, and for any level of industrialization and storage of imported goods that are subsequently exported.

Depending on SUFRAMA's prior approval of a specific project, it is also possible to import raw materials, parts, and components, without paying import duties and IPI, provided that such goods are used to manufacture products listed in the manufacturer's project in accordance with the basic production process established by the tax authorities for such products. Once the final product leaves the ZFM to be traded into the country, the import duty related to imported raw materials, parts, and components is paid with an 88% reduction. This transaction is exempt from the Tax on Manufactured Products ("IPI").

Constitutional Amendment No. 132/2023 ("EC 132/2023"), which introduced the tax reform on consumption in Brazil, provides for the maintenance of the ZFM until 2073 with an extension to free trade areas.

In addition, EC 132/2023 provides:

(i) That the IBS (sub-national tax on goods and services) and CBS (federal contribution on goods and services) legislation must guarantee the competitive advantage of the Manaus Free Trade Zone, and there may be tax advantages; and

(ii) For the continuation of the IPI for products that are also industrialized in the ZFM, in accordance with the criteria to be established in a supplementary law.

According to EC 132/2023, the supplementary law that will establish the IBS and the CBS will have powers to decide on maintaining the competitive advantages and favorable tax treatment of the ZFM and General Free Trade Zones existing on May 31, 2023.

4 Tax Incentives for Technological Innovation

There are federal tax incentives in Brazil created by the government to stimulate research and development of technological innovation in the country.

For such tax incentives purposes, the law considers technological innovation as the conception of a new product or industrial process, as well as the inclusion of new features or characteristics into the product or, alternatively, industrial process involving incremental improvements and effective gain in quality or productivity, thus resulting in more competitiveness in the market.

Some of the main federal tax incentives for technological innovation established by the Brazilian tax legislation (mainly Law 11,196/05) are mentioned below:

(i) Special deduction of expenditures with technological research and development of technological innovation for corporate taxes (IRPJ and CSLL) purposes (i.e. deduction of more than 100% of the effective expense).

(ii) 50% reduction of IPI (Federal Excise Tax) on equipment, machinery, devices, instruments and spare parts and tools related to such goods, to be used in research and technological development.

(iii) Full and upfront depreciation in relation to new machinery, equipment, devices, and instruments to be used in research and technological development, for corporate taxes (IRPJ and CSLL) purposes.

(iv) Accelerated amortization of expenditures through the purchase of intangible assets exclusively related to the technological research and development of technological innovation for IRPJ purposes.

(v) Zero Rate of Withholding Income Tax (WHT) - Trademarks, Patents and Cultivars: zero rate of WHT levied on remittances abroad for the registration and maintenance of trademarks, patents, and cultivars.

Deduction of donations destined to projects carried out by Scientific and Technological Institutions (ICT): exclusion of the net profit, for corporate taxes purposes (IRPJ and CSLL), of up to two and a half times the expenditures of money with scientific and technological research and technological innovation projects carried out by ICT. Note: such tax incentive cannot be combined with the tax incentives mentioned in items “(i)” to “(v)” above or with other specific deductible donations allowed by law.

LABOR ASPECTS

One of the most significant features of Brazil's labor system is that the laws regulate the details of labor/management relations to a much greater extent than in other countries. In addition, the concept of collective bargaining is distinctively strong in Brazil.

1 Brazilian Labor Code

Most of Brazil's employee rights are compiled in what is known as the Brazilian Labor Code, or the CLT ("*Consolidação das Leis do Trabalho"*). As of November 2017, Law No. 13,467/2017 ("Labor Reform") modified certain significant aspects of labor relations, in order to make labor relations in Brazil less bureaucratic and more flexible. The basic labor rights granted to employees in Brazil are as follows:

1.1 Employment relationship

Brazilian Labor Law defines the "employee" as the person (individual) who is hired by a company to render services on a personal and frequent basis. This person rendering services is economically dependent on the contracting company and, most importantly, subordinated to representatives or other employees of the contracting company ("elements that define an employment relationship")[48] . Please note that subordination is the main aspect that defines an employment relationship.

Employment relationships in Brazil are usually set for an indefinite term and can be terminated at any time. Employment agreements for a definite term are possible only when executed in accordance with the specific legal requirements and for a maximum of two years. If the employment relationship continues after the expiration of this two-year period, the contract automatically becomes effective for an indefinite term.

Also, the parties may set a "Probationary Period" before the indefinite term employment agreement becomes fully effective, for a maximum term of 90 days (or two shorter successive periods). The applicable collective bargaining agreements may set shorter maximum terms.

[48] Article 3 of the Brazilian Labor Code.

1.2 Legal limit of Regular Working Hours

The Brazilian legislation stipulates that working hours in Brazil are limited to 44 hours per week or eight hours per day (item XIII, Article 7 of the Brazilian Constitution), unless provided for otherwise in a collective bargaining agreement entered into with the workers' union. The Labor Reform also authorized the "12x36" work system (twelve hours of work followed by thirty-six hours of rest), provided that the constitutional limit of weekly working hours is observed. Despite the lack of regulations on the matter, other working schedule systems are also deemed valid by the labor courts, provided that such systems are in compliance with general regulations.

1.3 Salary

In Brazil, as a rule, salaries are paid monthly on a fixed basis, although variable salaries are also a possibility. Likewise, it is possible to establish a mixed compensation arrangement, where the salary is partially fixed and partially variable (commissions, premiums, bonuses, etc.).

Salaries must be paid in Brazilian currency up to the fifth business day of the month after the worked month. Salary advances are customarily granted up to halfway through the month, while salaries are usually paid in the last business day of the worked month.

Furthermore, salary adjustments are defined annually through collective bargaining agreements attempting to offset inflation.

1.4 Vacation

Upon completion of each twelve-month work period, employees are entitled to paid vacation of up to thirty calendar days, plus an additional payment equal to one-third that amount.

If vacations are not granted within the 12 months subsequent to the completion of each vacations' acquisitive period, the employer must pay the vacation period in double.

Upon an employee's request, vacation periods can be divided into a maximum of three periods, of which one period must not be shorter than 14 days and none can be shorter than 5 days. Employees may also waive 10 vacation days in exchange for the payment of the corresponding amount.

1.5 Minimum Wage

Employees in Brazil are entitled to a mandatory federal minimum monthly wage, which is annually adjusted by the Brazilian government (BRL 1,412.00 – as of January 01, 2024). Some Brazilian states also set a regional minimum wage, which must be complied with by a company carrying out its activities in that state. In addition, collective bargaining agreements can also set a minimum salary, which must be granted if higher than the Federal/State minimum wages.

1.6 13th Salary

Employees in Brazil are entitled to an annual bonus, called the 13th salary ("*13º salário*"), usually paid at the end of the year, on the basis of one-twelfth of their December earnings for each month worked that year. The employer must pay 50% of the 13th salary in advance between February and November of the same year to which the 13th salary corresponds, at the employer's discretion, unless the employee requests the advancement of such amount together with his/her vacations.

1.7 Profit/Results Sharing

Employees in Brazil are entitled to participate in a profits/results sharing plan of the company, implemented by a specific program negotiated between employers, employees, and workers' union, pursuant to Federal Law 10,101/2000.

1.8 Overtime Pay

Employees in Brazil are entitled to overtime pay with an additional allowance of at least 50% of the hourly rate. The legal eight-hour working day may be extended by up to two hours per day, as overtime.

For work performed on Sundays and holidays, in addition to the payment of the overtime work rendered with the applicable additional premium, the employee will be entitled to a compensatory day off within the same week. If not granted, the employee is entitled to receive a payment equivalent to one additional (full) day of work for the compensatory day off not granted, without losing the payment of potential overtime work rendered within that week..

Some categories of employees are exempt from receiving overtime upon the accomplishment of legal requirements.

1.9 Maternity Leave

Employees in Brazil are entitled to paid maternity leave of 120 days (the amount paid by the employer is offset by social-security contributions). Law 11,770/2008 establishes that employers can extend maternity leave for an additional 60-day period, provided that the employer pays the employee's salaries during this additional period and the employee has joined a program of the federal government called "*Empresa Cidadã*" ("Citizen Company"). Employers granting this benefit to their employees are entitled to a tax benefit.

In 2022, Law 14,457/2022 allowed the extension of the leave to be shared between both parents, an alternative that is still pending regulation. Additionally, as an alternative to the extended maternity leave, Law 14,457/2022 allowed employees to opt for a 120-day reduction of 50% in their working schedule, without salary reduction.

1.10 Paternity Leave

Employees in Brazil are entitled to five (5) days of paternity leave; Law 13,257/2016 establishes that employers can extend paternity leave for an additional 15-day period (totaling 20 days), provided that the employer pays the employee's salaries during this additional period and the employee has joined the same program "*Empresa Cidadã*" ("Citizen Company") applicable for maternity leave. Employers granting this benefit to their employees are entitled to a tax benefit.

1.11 Prior Notice Period

In cases of dismissal without cause, the employer must grant the employee prior notice of dismissal of thirty (30) days in addition to three (3) days for each completed year of work for the company, limited to a total of ninety (90) days. Applicable collective agreements can have additional rules on prior notice.

1.12 Remunerated Weekly Day Off

Employees in Brazil are entitled to a 24-hour rest period for each week of work, preferably on Sundays. There are certain economic activities which are authorized by law to work on Sundays.

Even if work is authorized on Sundays, it requires the respective compensatory rest to be granted within the same week, to avoid double payment for that day (Precedent 146 of the Superior Labor Court). Therefore, employees cannot work for more than six consecutive days without enjoying a weekly day off.

2 Other contributions or charges

Companies are also subject to the following social contributions or charges:

2.1 Social Security ("Instituto Nacional de Seguridade Social"- "INSS")

Generally, companies must pay from 20% to 31.8% of the payroll to the Brazilian Social-Security Administration ("INSS") – other companies, depending on the activity carried out, pay their social-security contributions on gross income at rates that vary between 1% and 4.5%. Additionally, employees have 7.5% to 14% (as of January 01, 2021) of their monthly earnings deducted from salaries and withheld by the company for the INSS, subject to the limits provided for by law.

Payment of certain labor-intensive services (*e.g.,* outsourcing, construction) is subject to an 11% withholding tax assessed on the total amount invoiced. The amount withheld may be offset against the social-security tax to be paid by the service provider.

2.2 Guarantee Fund for Length of Service ("Fundo de Garantia do Tempo de Serviço" – "FGTS")

Every month, an amount equivalent to 8% of the employee's monthly earnings must be deposited by the employer into the employees' Guarantee Fund for Length of Service (a type of unemployment savings fund), in a blocked account registered at the "*Caixa Econômica Federal*" (a Federal Savings Bank in Brazil). If an employee is dismissed without cause, such employee is entitled to withdraw the deposits made into the FGTS account during his/her employment with the company. The employer will also have to pay a fine of 40% of the total amount deposited into the employee's account in the case of termination without cause on the employer's initiative. The employee also has access to the Fund upon retirement, or in specific occasions, as provided by law.

Mandatory severance pay for termination of employment contracts in Brazil varies according to the type of termination, as follows:

2.2.1 Termination without cause, on employer's initiative

(i) Prior notice (30 days plus 3 days for each completed year of service in the same company, up to a maximum of 90 days of prior notice period);
(ii) Balance of wages from the termination month;
(iii) Unused earned vacations plus additional one-third payment;
(iv) Pro-rated vacation plus additional one-third payment;
(v) 13th salary (or pro-rated 13th salary, depending on the termination date);

(vi) FGTS deposits: deposit in employee's blocked account (equal to 8% of employee's pay) in the termination month, based on the balance of wages, as well as prior notice and 13th salary;

(vii) Forty percent (40%) FGTS fine based on the amount deposited in employee's FGTS account;

(viii) Any other labor right related to termination provided for under the current Collective-Bargaining Agreement;

(ix) Any other compensation or benefit contractually agreed with the employee.

The payments above must be made within 10 days of the employee's last day of work.

2.2.2 Termination with cause, on employer's initiative

(i) Balance of wages in the termination month;

(ii) Earned vacation plus additional one-third payment;

(iii) FGTS deposits: deposit in employee's account (equal to 8% of employee's pay) in the termination month.

Permitted circumstances for dismissal with cause are set out in Article 482 of the Brazilian Labor Code. Such circumstances entitle the employer to terminate the employee's employment immediately, without notice and without making payment in lieu of notice.

2.2.3 Termination as a result of employee's resignation

(i) Balance of wages in the termination month;

(ii) 13th salary (or pro-rated 13th salary, depending on termination date);

(iii) Earned vacation plus additional one-third payment;

(iv) Pro-rated vacation plus additional one-third payment;

(v) FGTS deposits: deposit in employee's account (equal to 8% of employee's pay) in the termination month, as well as on 13th salary.

2.2.4 Resignation based on constructive dismissal ("indirect termination") due to serious fault committed by employer.

If an employee feels that his or her employer has committed a fundamental breach of the employment contract, he or she can request indirect termination of his or her employment contract citing the employer's fault. In this situation, the employee must seek an order from the labor courts, recognizing indirect termination and ordering payment of all sums due on termination of the employment contract, along with any other outstanding payments that can potentially have been the cause of the indirect termination, such as previously unpaid wages.

If the employee wins the case, the same amounts due on dismissal without cause must be paid.

2.2.5 Termination by mutual agreement.

Law No. 13,467/2017 set a new termination alternative, by mutual agreement, entitling the employee to the following severance:

(i) Half of the prior notice that would be due on a termination without cause on employer's initiative;
(ii) Balance of wages from the termination month;
(iii) Unused earned vacations plus additional one-third payment;
(iv) Pro-rated vacation plus additional one-third payment;
(v) 13th salary (or pro-rated 13th salary, depending on the termination date);
(vi) FGTS deposits: deposit in employee's blocked account (equal to 8% of employee's pay) in the termination month, based on the balance of wages, as well as prior notice and 13th salary;
(vii) Half of the FGTS fine based on the amount deposited in employee's FGTS account that would be due on a termination without cause by employer's initiative;
(viii) Any other labor right related to termination provided for under the current Collective-Bargaining Agreement;
(ix) Any other compensation or benefit contractually agreed with the employee.

2.2.6 Mass termination

As of November 2017, Law No. 13,467/2017 stated that collective dismissals must be treated equivalently to individual dismissals, and that no previous authorization of the labor union is necessary for such proceedings to be carried out.

However, according to recurrent decisions issued by the Brazilian labor courts, it is mandatory to negotiate with the unions before mass redundancies are effectively carried out, under the pain of having the terminations annulled and the company compelled to negotiate with the union.

For this purpose, the courts understand mass termination as the simultaneous termination of a collectivity of employees, resulting in a considerable reduction, in percentage terms, in the total number of a company's employees or in the total number of employees of a certain establishment. However, there is no definition on the minimum number of terminated employees that is considered as mass termination.

Such understanding was validated in 2022 by the Brazilian Federal Supreme Court, which agreed that **collective dismissals require prior involvement of the labor union** – however, the dismissals do not require consent from the union nor the effective execution of a collective agreement. As a result, the definition of a mass termination and the effective involvement of the labor union in such matters remain uncertain.

LIFE SCIENCES & HEALTHCARE

1 General Rules

The Brazilian Public Health Oversight System ("SNVS") is linked to the Brazilian Unified Health System ("SUS") and operates in an integrated and decentralized manner throughout the national territory. Responsibilities are shared between the three spheres of government - Federal Government, states, and municipalities, with no subordinate relationship between them. Also, it is important to highlight that the Brazilian government, through the SUS, is Brazil's largest purchaser of medicines. The Ministry of Health's 2024 budget for the health system amounted to a little over BRL 219,69 billion[49] (Transparency Portal 2024). Law No. 9,782/99 establishes SNVS actions and provides for the competence of the Federal Government. The Brazilian Health Regulatory Agency ("ANVISA") aims to regulate and carry out nationwide actions. GM/MS Ordinance No. 1,378/13 establishes the overall responsibilities and powers of states and municipalities.

Besides the SNVS, Brazil also has the Supplementary Healthcare System – which is a complement to the Brazilian public healthcare system – regulated by the Brazilian Supplementary Healthcare Agency (*Agência Nacional de Saúde Suplementar* – "ANS").

Law No. 9,961/2000 created the ANS and established its purpose, structure, attributions, and revenue. This law also provided for the ANS's competencies, which include regulating the Supplementary Health System, especially regarding the operation of private healthcare plan operators.

Law No. 9,656/1998 is also directly related to the sector and provides for private healthcare plans and insurance (services operated and rendered by healthcare plan operators).

2 National Health Regulatory Agency (ANVISA)

ANVISA's mission is "To protect and promote the health of the population, through intervention regarding the risks arising from the production and use of products and services subject to health oversight, in a coordinated and integrated action within the scope of the Brazilian Unified Health System."

Therefore, ANVISA is responsible for the licensing of establishments and registration of (certain) products in the following sectors:

(i) Pesticides

(ii) Pharmaceutical supplies

[49] Available at: https://portaldatransparencia.gov.br/funcoes/10-saude?ano=2024. Access in 29/04/2024.

(iii) Food

(iv) Medicines

(v) Cosmetics

(vi) Health Products

(vii) Pharmacies and drugstores

(viii) Cannabis products

(ix) Blood, tissues, cells, and organs

(x) Sanitizing products

(xi) Tobacco products

Additionally, ANVISA is responsible for reviewing standards related to licenses, good practice certificates, registration, and inspection of premises.

2.1 ANVISA's licensing, records, and authorizations

To operate in Brazil, the companies (manufacturers, importers, distributors, transporters etc. of health-related products) must obtain the following licenses that ANVISA issues:

(i) OPERATING AUTHORIZATION | AFE/AE | It is required of companies that carry out activities of storage, distribution, packaging, shipping, export, extraction, manufacturing, fractioning, import, production, purification, repackaging, synthesis, transformation and transportation of medicines and pharmaceutical inputs intended for the use of humans, products for health, cosmetics, personal hygiene products, perfumes, sanitizing, and filling of medical gases.

(ii) GOOD PRACTICE CERTIFICATE | CBPF/CBPDA | The Good Practice Certificate is the document issued by ANVISA, attesting that a certain establishment complies with the procedures and practices required by the specific rules of the Agency. The Certificate can be of Good Manufacturing Practices (CBPF) or Distribution and Storage (CBPDA). These documents are not mandatory for companies to operate. However, under ANVISA's rules, the manufacturers and distributors of products that are subject to sanitary oversight must comply with these specific rules regarding the procedures and practices established by ANVISA, and those certificates, especially the CBPF, are necessary for manufacturers and importers to register products with ANVISA.

PRODUCT REGISTRATION AND NOTIFICATIONS

(i) Products EXEMPT from registration but subject to prior notification of manufacture, import, or sale to ANVISA (illustrative list):

Food	Cosmetics	Medicines	Sanitizing Products
Sweeteners, mineral water, candies, chocolates, chewing gums, chocolates and cocoa products, salt, among others, according to RDC No. 27/2010.	Grade 1 and Grade 2 personal care products, cosmetics, and perfumes that are not part of Exhibit I of the RDC No. 752/2022.	Medicines with low health risk: Low-risk medicines (RDC No. 576/2021). Traditional Herbal Products (PTF) (RDC No. 26/2014) Dynamized medications (RDC No. 721/2022).	Sanitizers classified as risk 1, according to RDC No. 59/2010.

(ii) Products SUBJECT TO ANVISA registration: Other products not included in the illustrative list are subject to registration with ANVISA, according to the specific RDC for each case.

(iii) Registration of pesticides (MAPA): The Ministry of Agriculture, Livestock and Food Supply (MAPA) is the authority responsible for pesticide registration in Brazil, while ANVISA is only responsible for the Toxicological Assessment of the product.

We always recommend evaluating the applicable and current regulation, given that ANVISA has been consistently updating the list of products that are subject to registration or notification.

RESTRICTIONS ON FOREIGN APPLICANTS

Only companies established in Brazil can request a Business Operation Permit (AFE, *Autorização de Funcionamento de Empresa*) or a Special Permit (AE, *Autorização Especial*). Thus, an international company that intends to sell medicines in Brazil must have a commercial agreement with a Brazilian company (that already has an AFE/AE) – a local commercial representative. The company does not have to be a subsidiary of the foreign company. This Brazilian company can be only an importer that will assume the technical and legal responsibility of the international company in Brazilian territory.

2.2 Other important regulatory licenses in the Health Sector

There are other important regulatory licenses issued by other authorities, which companies in this sector must obtain, for example:

(i) SANITARY PERMIT (STATE AND/OR MUNICIPAL LEVEL): Companies that provide services related to the health sector must obtain a similar permit from the local health authority where the company will be established. This permit must be renewed annually. How long it takes to obtain these permits depends on the local authority's efficiency.

(ii) REGISTRATION WITH UNION/PROFESSIONAL COUNCIL: Companies that provide services related to the health sector must register with the respective unions or professional councils related to the company's activities. The company must appoint a technician who must also register with the respective professional council. This technician will supervise manufacturing and other regulated activities.

2.3 Penalties

Not holding the applicable sanitary licenses can subject the offender to the following penalties:

(i) warning;

(ii) a fine ranging from BRL 2,000.00 to BRL 1,500,000.00 depending on how serious the violation is;

(iii) cancelation of the permit; and/or

(iv) partial or total closure of the respective unit.

It is important to highlight that no penalty will be enforced without ensuring the due process of law, which includes the right to defense and adversary proceedings for all parties involved under the terms of the applicable legislation.

3 National Supplementary Healthcare Agency (ANS)

The ANS's mission is to promote the defense of the public interest in supplementary healthcare, to regulate the sector's operators – including their relations with providers and consumers –, and to contribute to the development of health-oriented actions in Brazil.

Therefore, ANS is responsible for regulating and inspecting private healthcare plans provided by health plan operators, protecting the interests of consumers and the safety of individuals. The ANS plays a fundamental role within the Supplementary Healthcare Sector, as its work is essential to ensure the proper operation of healthcare plans and, consequently, the adequate access of beneficiaries to covered health services.

3.1 ANS's registrations and authorization

Any entity must obtain authorization from the ANS to operate in the health insurance sector. The authorization process involves three stages:

(i) Operator Registration: Granted by the Directorate of Norms and Operator Qualification (DIOPE).

(ii) Product Registration: Granted by the Directorate of Norms and Product Qualification (DIPRO).

(iii) Authorization to Operate: Once the first two stages are completed and there are no pending issues, the DIOPE publishes the authorization to operate in the Federal Official Gazette of Brazil.

The authorization to operate does not have an expiration date. However, authorized operators must comply with ANS requirements to maintain their status. To request registration, entities must submit all required documents listed in Annex I of Resolution No. 543/2022.

3.2 Penalties

Entities that do not hold the necessary health licenses to operate will be subject to the following penalties:

(i) Warning;

(ii) Fine ranging from BRL 5,000.00 to BRL 1,000,000.00 depending on how serious the violation is;

(iii) Cancelation of the authorization, and sale of the operator's customer portfolio; and/or

(iv) regarding administrators, members of administrative, ruling, advisory, fiscal and similar boards: temporary inability to exercise the positions.

As with ANVISA, it is important to highlight that no penalty will be enforced without the due process of law, which includes the right to defense and adversary proceedings for all parties involved under the terms of the applicable legislation.

LITIGATION AND ARBITRATION

1 Litigation in Brazil

The Brazilian Judiciary Branch is organized by the Brazilian Federal Constitution, which divides the judicial structure into federal and state courts. In general, Brazilian courts have jurisdiction over litigation in any way connected with the Brazilian territory.

The federal courts have exclusive jurisdiction over any lawsuit that the federal government or any of its agencies or quasi-governmental bodies is party to or has interest in, as well as over cases involving foreign states or international agencies. All labor and electoral courts are also subject to federal jurisdiction. On the other hand, all private and commercial litigation is subject to being heard and decided on by state courts.

In general, civil procedure rules are federal and applicable throughout the country, which allows attorneys to practice everywhere in Brazil. All decisions are taken by judges, and jury trials are only permitted in crimes committed against someone else's life, such as cases of first-degree murder and abortion.

Brazilian service of process is very formal and conducted entirely by a judge, resulting from constitutional guarantees of due process of law and a full right to a fair defense. Thus, any failure related to the service of process may cause an entire proceeding to be considered null and void.

A lawsuit begins with a written complaint to the competent court setting out the pertinent facts leading to litigation, as well as the respective claims by the plaintiff. Apart from that, the complaint must also indicate any evidence that is intended to be produced to support claims, a request of service of process upon the defendant, as well as the amount in dispute corresponding to an economic assessment of the claim.

In certain types of lawsuits, the plaintiff is entitled to plead for a preliminary injunction relief, or a precautionary measure grounded on the urgency of the matter. These types of requests can be granted by the judge beforehand, i.e., before the defendant is even heard on the merits, provided that the plaintiff provides evidence of sufficient color of right (fumus boni iuris) and danger in the case of delay of judgment (periculum in mora).

After service of process, the defendant is entitled to submit a formal written defense. Besides antagonizing the claim on its merit, the defendant can also present a countersuit, plea for a lack of jurisdiction, challenge the economic assessment of the claim, or even the authority or impartiality of the court. Additionally, the defendant can also request the lawsuit to be preliminarily dismissed (avoiding its analysis on the merits) in light of the formalities not fulfilled by the plaintiff (e.g., due to defective initial complaint, parties without standing or interest in the lawsuit, or even absence of some postulates necessary for the constitution of the valid and regular development of the proceedings). Due to the promulgation of the Brazilian Civil Procedure Code (enacted in March 2015 and effective in March 2016), all issues related to the respondent's defense are mandatorily addressed through a single motion (up to March 2016, procedural issues were submitted to the Court through independent and specific motions).

Once the defendant presents its defense, the plaintiff is entitled to an opportunity to rebut the defendant's allegations. Subsequently, parties are usually subpoenaed to indicate the evidence they intend to produce to support their respective claims.

The Brazilian Civil Procedure Code states that evidence may be collected through documents (including all kinds of media), examinations carried out by judicial experts, direct inspections, witness' and parties' depositions, and other means. As a rule, the burden of proof falls on the party that alleges a fact. Thus, the plaintiff must present evidence that supports the claim and its grounds, while the defendant must prove the counter-facts that impair, modify, or terminate the lawsuit. Some exceptions do apply, especially:

(i) in claims related to consumer relationships or the environment and

(ii) when it is clearly easier for one of the parties (whether it is the plaintiff or the defendant) to prove a certain fact. In such cases, Brazilian law stipulates that the burden of proof is reversed.

It is important to emphasize that Brazil grants more powers to judges to control the proceedings and to obtain evidence than one normally finds in civil law countries. Hence, discovery is not allowed, and attorneys, for instance, cannot privately collect depositions or make requests for admission or ask questions addressed to the opposing party, except during the court hearing. It is also worth highlighting that Brazilian case law tends to reaffirm judges' abovementioned powers, granting them the prerogative to decide what evidence is necessary to the proceedings and, hence, what shall be collected, if any.

After having produced all evidence, the parties present their final briefings, with a summary of facts and the solution that ought to be given to the dispute in question, opening the phase for the lower-court judge to render his/her final decision. The cases, in the first instance, are usually decided by a single judge.

Regardless of whether the lawsuit is filed in a federal or state court, the parties have a constitutional right to appeal to an appellate court. In the state system, every state has its own state court of appeals. The federal appellate system, on the other hand, consists of five circuit courts of appeal.

While first instance decisions are rendered by a single judge, the appellate courts' decisions are rendered by a judging panel, composed of three or more judges, depending on the appeal. One of the judges comprising the judging panel (the so-called reporting judge) is responsible for conducting the proceedings of an appeal through to its outcome. The Brazilian Civil Procedure Code allows the reporting judge to render a final decision on the merits by themselves if the appeal or the appealed decision runs against a binding precedent or decision taken in repetitive cases by the Brazilian Federal Supreme Court/Superior Court of Justice.

In addition, the Brazilian system allows an enormous multiplicity of appeals, particularly interlocutory appeals, that can delay proceedings for lengthy periods. In regard to interlocutory appeals, the Code of Civil Procedure allows parties to challenge certain types of decisions (there is a list set out in the Code, but interlocutory appeals based on matters outside the list can be admitted) that are rendered during first trial proceedings, steering them toward being resolved by the appellate courts even before the first trial decision on the merits is rendered. The most common decisions challenged by means of interlocutory appeals are preliminary injunction reliefs.

At a higher level, the judicial structure has two superior courts that are called the "*Superior Tribunal de Justiça*" (Superior Court of Justice) and the "*Supremo Tribunal Federal*" (Brazilian Federal Supreme Court), both located in Brasília, the capital of Brazil. Broadly speaking, the former has jurisdiction over any case decided by a state or federal court of appeals if the decision rendered by these courts violates any federal law. The latter has jurisdiction over constitutional issues and may also revisit decisions rendered by any court if the Brazilian Constitution happens to be violated.

As Brazil is a civil law jurisdiction, all decisions in the country must be based on statutory laws. Where there is no specific statutory provision, the courts may decide based on analogy and general uses and practices, or by applying the general principles of law. In general, precedents are not binding, but there have been several changes in the recent years to give special authority to decisions rendered by the superior courts. Constitutional Amendment No. 45, which came into force in 2004, introduced into the system the possibility of the Supreme Court to issue, in certain cases, binding precedents. The Civil Procedure Code grants similar powers to the Superior Court of Justice - the decision taken by the Superior Court of Justice in repetitive cases will have to be followed by the lower courts.

Finally, it is important to mention that, since 1996, Brazil has an arbitration act, admitting the possibility of resolving civil and commercial litigation, not bearing inalienable rights, through arbitration.

Initially, there was a controversy of whether this act was constitutional, as it puts aside the judicial structure. However, in 2001, the Brazilian Supreme Court upheld the constitutionality of the act, validating contractual arbitration provisions, thus removing lingering doubts in that regard. In 2015, the Brazilian Arbitration Act was updated through the enactment of Federal Law No. 13,129/2015, which introduced important reforms and developments, thus making arbitration even more common in Brazil.

In addition, Federal Law No. 13,129/2015 authorized the government to resolve its disputes through arbitration, provided that the proceedings are not confidential, and the case is decided exclusively in accordance with the substantive law chosen by the parties.

In this regard, both domestic and foreign arbitration awards are fully enforceable in Brazil. Foreign arbitration awards, however, need first to be ratified by the Brazilian Superior Court of Justice, despite the fact that Brazil has ratified the New York Convention on the Enforcement of Foreign Arbitral Awards.

Finally, mediation is another method that has been increasingly used. In 2015, Brazil enacted its first Mediation Law (Federal Law No. 13,140/2015). According to this law, mediation can be used in all types of disputes subject to a negotiation between the parties and, in general, can be carried out by any impartial third party – without decision-making power, appointed or accepted by the parties –, with the purpose of assisting them, so that they can identify consensual solutions to solve the dispute. Mediation will only be binding if the parties enter into an agreement by the end of these proceedings.

MARITIME LAW

1 General Rules

Maritime Law is traditionally known as the oldest branch of law, and in Brazil this is not too far from the truth. The basic law governing maritime matters was enacted in 1850 (Law No. 556) and is known as the Brazilian Commercial Code.

Generally, the Brazilian Commercial Code sets out the entire private structure concerning ships, as well as the people involved in shipping activity, main contracts, insurance, loss due to collision, gross average, and liabilities.

In addition to the issues addressed by this imperial Act, there are other important rules dealing with specific issues of maritime law, such as Marine Mortgage, Special Brazilian Records, Oil Spills at sea, etc. Moreover, decrees and normative rules were enacted with the purpose of adapting this very old Code to the requirements of the current scenario of the maritime commercial matters.

Navigation safety is fundamental for a steady development of maritime activity. In Brazil, this issue remains under the competence of the Maritime Authority and is duly exercised by the Brazilian Navy through their Directors of Ports and Coasts.

In addition to the Maritime Authority's investigative powers, exercised through the Port Captaincies located around Brazil, the law entitles it to regulate the activity regarding navigation safety aspects and the relationship with other uses of the sea, such as cable installation, submarine scientific research, etc.

However, the aforementioned regulatory competence is exercised by the Maritime Authority through the Maritime Authority Rules (NORMAMs), which also deal with matters related to vessels certification, classification societies, foreign vessels in transit in Brazil, pilot services, naval inspection activities, ships ballast water, maritime meteorology, administrative investigation, and others.

In order to better demonstrate the development of the maritime activity in the country, it is appropriate to describe the main institutions and their respective roles within the maritime system and Brazilian navigation.

Recently, Law No. 14,301/2022, generally known as BR do Mar, was enacted in order to facilitate the use of foreign vessels in Brazil and increase the competitiveness and modernization of the industry.

Among several changes, the Brazilian Shipping Companies, in specific cases set forth in the Law and since they are duly qualified according to BR do Mar, are entitled to:

(i) time charter of foreign vessels from their foreign wholly-owned subsidiaries; and

(ii) foreign charter vessels from foreign wholly-owned subsidiaries of other Brazilian Shipping Companies, provided that such vessels are in their full possession, control, use and under a bareboat charter agreement.

Currently, there is no need to request authorization for voyage or time charter of foreign vessels, for cabotage navigation operation, for replacement of vessels of similar type and under repair, for refurbishment, and for conversion or docking in the maximum proportion of 100% of its tonnage, whether or not in the Brazilian territory.

Additionally, an important change in the landscape is that BR do Mar allowed the bareboat charter of a foreign vessel by an economic group from the chartering company (which can be progressively increased over the years) for cabotage navigation, regardless of the existence of a vessel construction agreement or a Brazilian vessel under the domain of the company that is operating the chart, provided that the flag is suspended.

As a result, the Brazilian Shipping Companies will be allowed to charter foreign vessels and operate in cabotage navigation, even if they do not have their own Brazilian vessel or an agreement in force for vessel construction

The Port Captaincy plays a fundamental role in the marine-traffic regulation. The Maritime Authority enforces its rules through the Port Captaincy. Such authority is responsible for, among other matters, the safety at sea, comprising the waters of Brazilian jurisdiction and for incidents that can result in the pollution of waters under Brazilian jurisdiction.

The Port Captaincy is part of the federal administration, a subset of the Ministry of Defense, and it operates in Brazilian territory as Maritime Authority, through its representatives established in all organized ports and seaside locations. The Port Captaincy has authority to implement rules on a wide range of issues related to safety at sea. This Maritime Authority also regulates pilot services, determines the minimum safety crew required for each ship, determines the mandatory equipment to be carried on board ships and platforms, establishes the limits of domestic navigation, and sets out rules concerning naval inspections and surveys.

Considering the authority of the Port Captaincy in regulating and controlling safety at sea, the provisions of Federal Law No. 2,180/1954, which governs the Maritime Tribunal's establishment, entitle the Port Captaincy to investigate marine accidents.

2 The Maritime Tribunal

The Maritime Tribunal, whose jurisdiction comprises the entire Brazilian territory, is a self-regulating body that assists the Judicial Branch. The Maritime Tribunal is connected to the Navy Command, with the purpose of judging matters related to sea, rivers, and lakes. Considering the technical approach of issues related to the Maritime field, Federal Law No. 2,180/1954 regulates the proceedings of investigation and judgment of administrative infractions concerning accidents and relevant facts observed at maritime, lacustrine, and fluvial navigation.

The proceedings commence with an investigation carried out by the Port Captaincy, whose conclusions, when duly referred to the Maritime Tribunal, will grant a due judgment and the imposition of penalties. Such penalties can vary from fine to suspension of the maritime activities, among others.

Although defined as a tribunal, the institution, which is a subset of the Navy, consists of an administrative body, and is composed by seven judges:

(i) a President, Navy's General Officer on or off-duty;
(ii) two military judges, off-duty officers of the Navy; and
(iii) four civil judges, experts in insurance, maritime and public international law.

After receiving the investigation records, the Maritime Tribunal analyzes all evidence gathered and decides whether the Port Captaincy report on the accident is sufficient for judgment of the case, or if further evidence is required to give grounds to the adjudication.

For that purpose, there is a Special Navy Prosecutor at the Tribunal and this person is competent to review the entire investigation, referred by the Port Captaincy, and also to request whatever is necessary to judge the case. Pending the Maritime Tribunal's review and judgment, there is no statute of limitation on tort claims.

The Maritime Tribunal, as mentioned, is an administrative body whose decisions serve as guidelines for adjudication by the State and Federal Courts. The judgments of the Maritime Tribunal are limited to the technical aspects of the case, whose enforcement results in the imposition of administrative penalties, such as fines, suspension of seafarer certificates, licenses, etc.

Despite those attributions, the Maritime Tribunal is also competent to record marine mortgages and liens, and to register shipping owners and vessels, according to their tonnage.

3 Specialized Judicial Body in the State of Rio de Janeiro

In order to improve the judicial adjudication of Maritime issues, the State Courts of Rio de Janeiro have created specialized bodies for maritime cases.

Maritime judicial adjudication is now performed by the judges who are in charge of bankruptcy and all corporate issues, considering that this area was comprised by the Commercial Code.

Maritime activity is commonly governed by customary and written rules in a mix of sources from Common Law and Civil Law frameworks, which require expert judges familiar with such matters, in order to make proper judgments.

Consequently, the State of Rio de Janeiro included maritime cases under the authority of these bodies, that are dedicated to addressing corporate and commercial matters.

4 Brazilian Agency of Waterway Transport- ANTAQ

The Brazilian waterway transport market has been regulated by the Brazilian Agency of Waterway Transport (ANTAQ) since the adoption of Federal Law No. 10,233/2001. As part of the Brazilian Ministry of Transportation, this agency plays a fundamental role in the market by regulating, supervising, and controlling maritime transport services rendered by private entities, including the commercialization of port infrastructure.

Under waterway transport rules, ANTAQ is entitled to (i) authorize companies to offer maritime services within Brazilian ports and/or with Brazilian cargo, (ii) authorize foreign vessels to be chartered by Brazilian Shipping Companies, (iii) control shipbuilding procedures, when required by legislation, (iv) approve proposal for revision/adjustments of port rates, (v) create rules for the Port Authorities, (vi) organize bidding proceedings for concession of Organized Ports or for the authorization of Terminals for Private Use, among other important functions of the maritime and port activity.

Law 14,047/2020, enacted due to the COVID-19 pandemic landscape, now expressly establishes that ANTAQ is also competent to regulate the occupation and exploitation of port areas and facilities not provided for in specific legislation.

Since its advent, ANTAQ has organized, supervised, and regulated the entire industry. The Agency plays an essential role, not only in the operations of vessels in waters of Brazilian jurisdiction, but also in the chartering of foreign ships and in activities related to organized ports and terminals of private use.

5 Ship Registration

To address maritime issues, focus must be placed on the ship. Under Brazilian law, many parts of Brazilian maritime activity such as domestic transport, as well as the transport of Brazilian State cargo and a percentage of importing cargo, even on an oceangoing way, in principle, shall be performed with a Brazilian registered ship.

According to the terms of the Federal Law No. 7,652/1988, amended by Law No. 9,774/1998, Brazilian ships are those duly registered within the Brazilian Maritime Authority at the location of the owner's residence or wherever the ship is supposed to be operated.

The registration of vessels is also important for demarcation of extraterritoriality of the Brazilian Law, given that such rules are always applicable to every act performed on board of ships under the Brazilian flag and registered in Brazil.

Vessels with more than 100 tons of gross tonnage must be registered with the Maritime Tribunal in Rio de Janeiro. For vessels whose volume is lower than 100 tons, the registration process is simple and remains under the Port Captaincy's competence.

The registration can also take place abroad at any Brazilian embassy or consulate, which will issue a temporary registration. The temporary registration in valid until the ship's arrival in the port where it will be registered definitively.

A ship cannot be registered to foreigners who do not reside in Brazil, except for boats used for sport and recreation.

6 Brazilian Special Registry- REB

In times of great scarcity of jobs in the marine sector, the Special Brazilian Registry was created as a tool to promote the maritime industry and the Brazilian maritime activities as a whole.

Within the maritime context, it is important to mention the Special Registry of Ships at the Maritime Tribunal, which enables the owner and/or carrier of the ship to obtain tax exemptions, increase the number of international crew members, contract insurance abroad, and receive financial aid from the Merchant Marine Fund.

The Registry was enacted by Federal Law No. 9,432/1997 and is regulated by Federal Decree No. 2,256/1997. It is a complementary registry to the Ship Registration.

Any Brazilian ship, operated by Brazilian shipping companies, is eligible for the Registry. Foreign vessels can potentially be eligible, depending on the type of navigation and in case of bareboat chartered by Brazilian shipping companies with the due suspension of the flag.

7 Tax Incentives for Building, Maintaining/Repairing Conversion of Ships and Modernization of Ports

In order to advance the naval industry in Brazil, the Brazilian Customs Code provided for certain important tax exemptions on the importation of spare parts for maintenance and repair of ships. The same rule is applied on the importation of spare parts and equipment for modernization and conversion of ships.

A few requirements must be fulfilled for the Treasury to grant these exemptions:

(a) the beneficiary must be registered with the Treasury for that purpose;
(b) the transportation of imported goods must be carried out in ships under the Brazilian Flag or chartered by Brazilian shipping companies; and
(c) the modernization or conversion of ships must be registered with the Maritime Tribunal before the Brazilian Special Registry.

There is also a tax system for importing parts and equipment to be used in the shipbuilding process or to replace a part and equipment that was already imported and used in the shipbuilding chain.

Law No. 11,033/2004 established a tax system for Modernization and Expansion of the Port Infrastructure (REPORTO). This tax framework was established to expedite the acquisition of capital goods by its beneficiaries.

REPORTO was established in August, 2004, and was initially intended to be in effect until December 31, 2007. This term was extended until December 31, 2011, by Law No. 11,726/2008, until December 31, 2015 by Law No. 12,688/2012 and until December 31, 2020, by Law No. 13,169/2015. Law No. 14,301/2022 reestablished the referred tax framework for the period between January 01, 2022, and December 31, 2023.

REPORTO suspends the levying of several taxes (IPI, PIS, and COFINS) on domestic sales of machines, equipment, spare parts, and other goods to be used as fixed assets of companies that benefit from this system, for exclusive use in ports for loading, unloading, and cargo-transfer services, operational support and security systems, environmental protection services, dredging services, and in professional training centers for worker training and education.

In the event that the beneficiary of REPORTO is the direct importer of goods, it will also benefit from the suspension of the import duty, IPI, PIS-importation, and COFINS-importation taxes on the transaction. However, the suspension of the Import Duty will only apply to machines, equipment, and other goods for which there is no similar domestic product.

The suspension of taxes under REPORTO will be converted into an exemption, provided that the imported goods are applied on the purposes declared to the customs authorities in order to obtain the tax relief.

MERGERS, ACQUISITIONS, JOINT VENTURES, AND PRIVATE EQUITY

1 General Overview

The Brazilian market offers many opportunities for companies that wish to expand their activities in Brazil by acquiring or merging with local companies, or even by teaming up with local partners.

With the exception of certain regulated sectors such as telecommunications, aviation and rural land, there are no limitations on the percentage of a Brazilian company's capital stock that can be held by a foreign investor, and no special prior approvals to be obtained, apart from antitrust approvals from the Administrative Council for Economic Defense ("CADE"). For more details on such rules, please see Competition Law chapter.

2 Legal Framework

2.1 Acquisitions

The most common way for a foreign investor to expand activities in Brazil is the direct acquisition of one or more existing Brazilian companies, often using a pre-existing Brazilian holding company as the vehicle for such acquisition.

Such company then receives direct investment from the foreign entity, and if necessary, for obtaining funding.

In general, Brazilian companies are acquired through the same mechanisms generally used internationally. Buyers and sellers execute an agreement establishing terms and conditions for the acquisition, including the usual representations and guarantees related to the business being acquired. The accuracy of such representations and guarantees, as well as the overall status of the business are determined prior to closing, through due diligence reviews carried out by accountants, lawyers and experts appointed by the buyer.

Upon acquisition, the buyer is free to dismiss directors and officers of the acquired company and to appoint new directors and officers (the latter, as executives of the company, must be residents of Brazil).

According to Brazilian tax laws, capital gains from the sale of assets by a non-resident located in Brazil (including shares or quotas of capital) are taxable, even if both seller and acquirer are non-residents. In this last scenario, tax may be due on the date of the sale and/or payment of the assets, and the acquirer or its attorney-in-fact in Brazil is the party responsible for withholding the applicable capital gains tax when the acquirer is a non-resident.

Acquisition of listed shares must be preceded by an analysis of the existing dispersion of the company's shares. Depending on the volume of shares on the market (free float), a public tender offer to purchase shares from the market will be required, and minority shareholders can be granted the right to a tag-along at up to 100% of the price paid by the shares of the controlling block.

Except for certain regulated sectors (such as telecommunications, aviation, and energy) and CADE (if the transaction triggers legal thresholds), there is no need for prior regulatory approval in order to carry out the acquisition.

According to Brazilian tax laws, the sale of a majority of capital triggers the requirement for certain tax "clearance" certificates from the target company, which will be required for filing acquisition documents.

2.2 Mergers

The Brazilian law establishes the rules for the merger of two or more companies resulting in a new company ("*fusão*"), spin-offs ("*cisão*"), and a merger of one company into another ("*incorporação*").

A *fusão* is rarely carried out within the context of an acquisition (usually regarded as a too troublesome with virtually no gains in comparison to the *incorporação*).

Meanwhile, a *cisão* is often carried out to reorganize a company prior to selling its shares, carving-out assets and liabilities that are not to be included in the sale.

An *incorporação*, in turn, is carried out when a portion of the purchase price must be paid with shares of the acquiring company (an *incorporação* results in the former partners of the sold company receiving newly issued stock of the acquiring company).

Prior to deciding between a *fusão*, *cisão* or *incorporação*, the company to be sold must be assessed on its capability to obtain debt clearance certificates from the tax authorities – a requirement established in Brazilian law for any company that intends to merge with/or into another company, or to undergo a spin-off.

Similar to acquisitions, mergers also require certain tax "clearance" certificates from the target company, which will be required for filing merger documents.

2.3 Joint Ventures

In addition to incorporating a new company or acquiring an existing one, foreign investors can also enter into joint ventures with Brazilian parties or other foreign investors. Joint ventures in Brazil are usually structured in the form of a "*limitada*" or a "*sociedade anônima*." The rights and obligations of the joint venture's partners are typically regulated by joint venture agreements, articles of association, bylaws, shareholder's agreements, and applicable corporate law.

2.4 Private Equity

Typically, private equity organized in Brazil takes the form of a private equity investment fund – "*Fundo de Investimento em Participações*" or "FIP". The FIP is organized and exists in accordance with rules set by the Brazilian Securities and Exchange Commission ("*Comissão de Valores Mobiliários*" or "CVM"). An FIP is authorized to invest in stocks, debentures, warrants, and other securities that are convertible or negotiable in stocks of privately or closely held corporations, where the FIP participates in the invested company's decision-making process, by virtue of:

(i) interest in the controlling block;

(ii) shareholders' agreement; or

(iii) other agreements or proceedings that assure the FIP's influence on the company's strategy.

The FIP must be managed by a legal entity authorized to do so by the CVM, including financial institutions. The FIP has been commonly opted for due to its tax advantages. However, over the past few years, tax authorities have been trying to restrict such advantages. Therefore, the tax impacts of investing in an FIP must be analyzed individually.

A question often asked by foreign investors interested in acquiring a Brazilian company is whether they should acquire assets or stocks. While in other countries the acquisition of assets can offer more protection from potential liabilities of the seller, that is not always the case in Brazil, particularly concerning tax and labor liabilities.

Brazilian tax law stipulates that assets that once belonged to a company can be targeted by tax authorities to cover tax liabilities if the company selling the assets does not have sufficient funds to pay off such liabilities. In addition, if the purchasing company also "inherits" the employees of the company selling the assets, labor courts often declare the purchasing company a successor, in interest of the selling company. Such practice can potentially expose the purchasing company to pay out severance packages, social security and other labor liabilities incurred by the employees prior to the transfer of their labor agreements from the selling company.

In conclusion, although an asset deal can in fact provide a certain degree of protection against the selling company's past liabilities, each situation must be analyzed individually, not only to ensure that the structure makes sense from a tax perspective, but also to verify whether the asset deal is ultimately worth the additional efforts involved, in comparison to a stock deal.

3 Trends and Developments

M&A activity in Brazil slowed down during 2023, following the slower pace which started in second half of 2022 compared to the very intense pace throughout the Covid-19 pandemic period and at the beginning of 2022. There were certain factors that caused this deceleration throughout 2023, such as:

(i) still high interest rates;

(ii) the continued reduction in liquidity, which was heavily impacted by a credit' crisis during the first quarter of 2023, influenced by the insolvency proceedings of two relevant players in the market, one in retail and another in the energy sector, both severely impacting the financial of Brazilian large financial institutions;

(iii) the decline in value of companies listed in the stock exchange, which generated uncertainty regarding the real value of companies in general.

These are domestic and international factors that are still subject to volatility and uncertainty, making it hard to predict the next trend. However, the overall perspective is that some of these factors are heading toward a resolution (such as credit crises), whereas others may require more time (such as interest rates and valuation issues).

In terms of political outlook in Brazil, the approval of the tax reform (relating to consumption) poses a positive sign towards lowering bureaucracy, reducing inefficiency and therefore, incentivizing investment. At the same time, stock markets continue to be skeptical in relation to the commitment of the Federal Government to control Government spending. Global outlook with wars in Ukraine and in the Middle East generate more volatility and instability in the global markets, reducing the appetite for investors to accept more risk in investing in developing country economies such as Brazil.

However, despite negative international and domestic factors, several sectors of the Brazilian economy, such as oil & gas, energy, mining, telecommunications, and infrastructure, among others, are undergoing a process of consolidation and restructuring that continues to push for stronger M&A activity. Meanwhile, other sectors, including agribusiness, education, health, technology, and resilient consumer goods will continue to benefit from inherent capabilities of the Brazilian economy.

Simultaneously, Brazil continues to be an important destination for many funds that were raised for private equity purposes, and which had Brazil as a primary or secondary focus within Latin America. Eventually, these funds must be deployed. Low valuation of listed companies and distressed M&A show signs of becoming another sign of activity, together with companies that were set to undergo their initial public offering, but were heavily impacted by the closing of the equity markets in Brazil and in many other jurisdictions.

Within the regulatory environment, the Brazilian government is still focused on approving the regulatory framework under the tax reform, which will drain a lot of the political efforts throughout 2024, together with Municipal elections. The lack of control of the Brazilian Congress will continue to be a significant hurdle for the Federal government to push against certain privatizations and infrastructure reforms proposed or undertaken during the previous presidential government administration. As a result, privatizations are unlikely to continue at the Federal level, whose preferred choice will be to revert to the model of concession bids aimed at infrastructure expansion, with more focus on balancing future prices and the payment of the initial concession fee. However, at the state level, certain important Brazilian states whose government is more in line with right-wing tendencies will likely continue to carry out privatizations in the infrastructure sector (such as in ports, sanitation, toll roads, social infrastructure, etc.).

MINING SECTOR

1 Legal and Regulatory Framework

Mining activity, referring to exploration (understood as the research of the existing deposits) and exploitation of mineral resources, is regulated by article 176 of the Brazilian Federal Constitution, by the Brazilian Mining Code, by special laws and by regulations issued by the National Mining Agency ("ANM").

Pursuant to Article 176 of the Brazilian Federal Constitution, there is a constitutional separation between the ownership of the surface (real estate properties) and the mineral resources existing on it, the latter belonging to the Brazilian Federal Government (article 20, IX FC). For this reason, mining activities may be carried out only upon prior authorization (*'Mining Title'*) granted by the Brazilian Federal Government through an administrative proceeding carried out by the ANM.

There are two main competent authorities whose duties are complementary to each other:

(i) The National Mining Agency, incorporated by Federal Law No. 13,575/2017, member of the indirect Federal Public Administration, submitted to the special autarchic regime and linked to the Ministry of Mines and Energy, in substitution of the prior National Department of Mineral Production ('DNPM').

(ii) Ministry of Mines and Energy ("MME").

Furthermore, the Mining Code (article 2) provides for the following regimes of exploitation of mineral resources (i.e. types of mining titles): **(i.)** Authorization and Concession; **(ii.)** Mineral Licensing ('*Licenciamento Mineral*'); **(iii.)** Small-Scale Mining Consent (*'Permissão de Lavra Garimpeira'*), and **(iv.)** Monopoly Regime.

The differences between such regimes concern the mineral substance's purpose of exploitation, the miner (whether an individual or a legal entity) and the size limitation of the area for each mineral substance. Given its applicability to all types of mineral substances, the most common regime is *'Authorization and Concession'*, further explained below.

2 Foreign Participation

According to the Mining Code, exploration authorizations may be granted both to Brazilian individuals and Brazilian entities.

Constitutional Amendment No. 06, of August 15, 1995, extinguished the distinction between companies of domestic and foreign capital, requiring only that the mining entity be Brazilian, i.e., that it has both headquarters and administration in the country, irrespective of capital origin and control.

In light of the above, Brazilian regulations currently allow for direct or indirect foreign investment in mining in Brazil (except for mining rights located at border areas), and most of the foreign investments are made via acquisition of a Brazilian company which already holds the mining rights. The other alternative would be a greenfield operation, which would require initial geology studies followed by the organization of a Brazilian entity and the application of the mining licenses.

It is important to highlight that there is a restriction still in force for foreign capital regarding activities carried out in border areas, as explained in item 2.2 below.

2.1 Mining Entities

For the carrying out of mining activity – from a business standpoint –, any of the corporate types existing in Brazil are permitted, i.e., the mining entity may be organized under a corporation, a limited-liability partnership, or as any other form deemed to be the most beneficial.

Entities that seek authorization for exploration or exploitation, once incorporated and registered under the National Department of Commerce Registry ("DNRC"), have 30 days to file before the ANM the bylaws or articles of association and shareholders agreements in force, as well as any future modification thereof.

Entities holding Exploitation Permits located near or over the same mining zone can obtain permission for the formation of a Mining Consortium, by means of a Federal Government Decree. For the formation of a consortium, the Mining Code refers to a "mining proximity", which does not necessarily regard physical proximity, but rather mines located in the same deposit or mineralized zone for which the formation of the consortium must enhance extraction productivity or capacity.

Because this is an activity of national interest, certain requirements must be fulfilled as to the incorporation of operating entities and carrying out of the work.

2.2 Real Estate and National Safety Aspects

There are legal restrictions to foreign capital regarding activities that are carried out over the border line (with the exception of exploration and exploitation of mineral substances for immediate use in civil construction).

The legal definition of "border line" is: "*the internal border 150km (one hundred and fifty kilometers) wide, parallel to the earthly division line of the national territory*".

The competent body to govern the operation of certain activities over the "*border line*" is the National Defense Council ("CDN", the acronym for '*Conselho de Defesa Nacional*'). Interested parties must request prior authorization from the CDN, in compliance with the following requirements, which must be expressed in the entities' bylaws or articles of incorporation:

(i) at least 51% (fifty-one percent) of the capital must be held by Brazilians;
(ii) two-thirds of the entities' employees must be Brazilian;

(iii) the entities' administration must be composed, effectively, of Brazilian nationals (voting majority).

The procedure for obtaining the CDN's consent is commenced before the ANM itself, through the filing of the requirement and agency's initial analysis. Besides the documentation usually required, interested parties must submit specific documents, such as:

(i) evidence of administrators' or quota holders' nationality; and
(ii) nominal register, listing the nationality and number of shares of all shareholders, in the case of corporations.

Such documents will be forwarded to the Council for assessment and issuance of opinion, favorable or not, after which the process will return to the ANM and proceed within the normal course.

There still are restrictions to foreign participation – by individuals or entities – in a company holding real estate rights over rural properties located over the "border line". Since the easements needed for the mining activities are "integrating parts of the mines" – as established in the Code – and such easements are a real estate right, – as pointed out by the specific legislation on "border lines" –, there must also be prior consent from the CDN for the introduction of an easement.

Such foreign participation is subject to the same aforementioned procedures, not only in the case of headquarters, but any facility with representation powers or delegations.

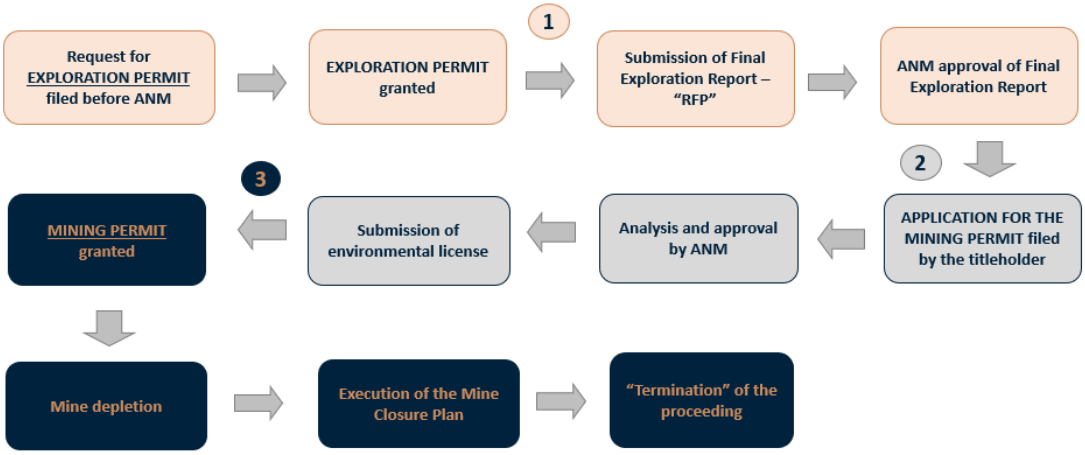
3 Overview of Authorization and Concession Regimes

As described above, the authorization/concession regime is the most common, due to its applicability to all types of mineral substances. Essentially, the Authorization and Concession Regime is composed of 2 phases:

(i) **Exploration Phase (mining title "*Exploration Authorization*"):** throughout this stage, exploitation is not allowed (as a rule), and the purpose is to carry out all the work necessary for the definition of the deposit as well as the appraisal, and the determination of its economic feasibility. After the work is completed, the miner must submit a document known as '*Final Research Report*' ('RFP'), which holds the definition of the deposit.
(ii) After the RFP has been approved, the preparatory stage for mining commences through the presentation of the application for exploitation within one year of such approval. During this stage, the presentation of an environmental license will be required as a condition to grant the Exploitation Permit, as explained below. If such an environmental license is not presented, the exploitation application may be rejected by ANM.
(iii) **Development Phase (mining title "*Exploitation Permit*"):** understood as the set of coordinated operations aimed at the industrial development of the deposit, that being, the extraction of useful mineral substances contained inside until their beneficiation.

As a general rule, the Exploitation Permit grants to the miner the right to exploit the deposit until it is depleted, provided that it does not cause the forfeiture of the title.

It is worth noting that in addition to the abovementioned mining authorizations, the miner must still obtain the relevant environmental licenses. In practical terms, both administrative procedures to obtain the mining and environmental licenses must run together, since the submission of the environmental installation license is a condition for the granting of the Exploitation Permit.



3.1 Exploration Authorization

Companies interested in carrying out exploration works (such as drilling), for the purposes of studying the existence of technically and economically feasible deposits, must apply for an '*Exploration Authorization*' before the ANM. The decision of the ANM on the approval or not of the issuance of the Exploration Authorization is appealable.

The Exploration Authorization can be assigned or transferred upon prior approval of the ANM.

According to ANM's own criteria, the validity of the Exploration Authorization is granted for up to four years, with one single extension allowed upon duly justified request submitted for ANM's approval, save for a few exceptions.

Accordingly, Decree No. 9,406/2018 limited the permission of successive extensions of the Exploration Authorization (which was previously allowed) to the following scenarios: **(i.)** impossibility of entrance in the real estate property; ii) absence of permits and authorizations required to carry out the exploration work, provided that the miner has been diligent and has not contributed to the delay of issuance, in any event.

The holder of the authorization is obliged to implement its exploration work, submitting to the National Mining Agency an RFP on the existence of technically and economically feasible deposits. Such Report is prepared under the supervision of an entitled technician, within the term of the authorization's validity or its renewal term. Failure to submit the technical report within the due term would subject the holder to the payment of a fine and such area will be declared available and offered for interest third parties (i.e., tender procedures).

The holder of the Exploration Authorization is allowed to carry out works on public or private areas. As for private areas, the landowner or occupiers are entitled to a negotiable fee for the occupation of the area, in addition to compensation for damages that may be caused and arise due to the exploration works. In the case of use of public areas, the compensation for damages is also applied, but the fee for the occupation is waived.

If the landowner or occupiers cannot reach an agreement on the abovementioned fees with the holder of the license, then the case will be submitted to the Court's evaluation.

Once the Exploration Authorization is issued by ANM, its respective holder must:

(i) commence the exploration works within 60 days of the issuance;

(ii) not interrupt the exploration works without justification (after commencement), for a period of more than 3 consecutive months or 120 days accrued and not consecutive. In any event, the initiation or reinitiation, as well as the interruptions of the works must be promptly notified to ANM;

(iii) provide notification to ANM if another substance that is not encompassed in the Authorization is found, for which ANM must authorize a new term for the exploration works; and

(iv) pay an annual fee until the RFP is submitted to ANM. This Annual Fee per Hectare (in Portuguese, "*Taxa Anual por Hectare*") is set and updated annually by the ANM through a Resolution, and the amount to be paid by the titleholder is calculated according to the size of the area relating to the Exploration License.

In the event that the holder of an Exploration License does not apply for the Mining Concession within the term (or extended approved term) established in the Mining Code, the explored area will be declared available for mining requests by third parties (i.e., tender procedures).

3.2 Exploitation Permit

The application for the Exploitation Permit must also be supported by several documents, such as the Economic Development Plan (PAE) and a statement of funds availability, among others, as listed in the Mining Code.

If the applicant of the Exploitation Permit does not comply within the due term, with additional requirements (including the presentation of the environmental license) that may de demanded both from ANM or MME, at their sole discretion, the area will be declared available for mining concession for third parties interested in the area (i.e. tender procedure).

The MME is the competent authority for issuance of the Exploitation Permit, except for mineral substances that can be explored under Licensing Regime, whose competence of issuance lies with ANM (art. 2, XVIII, Law No. 13,575/2017).

Within 90 days of the publication of the Exploitation Permit, the holder must file for writ of entry to the mine with ANM.

The holder of the mining concession must comply with all the requirements established in the Code, such as:

(i) initiate the mining works provided for in the Mining Plan, within 6 months from the publication of the Exploitation Permit;
(ii) carry out the work in accordance with the Mining Plan approved by ANM (non-compliance is subject to penalties that can either result in a warning, fine or forfeiture of the Exploitation Permit);
(iii) extract only the mineral substances indicated in the Exploitation Permit;
(iv) promptly notice ANM of any discovery of new mineral substances not included in the Exploitation Permit;
(v) not suspend the mining works without notice to ANM;
(vi) submit to ANM, by March 15 of each year, the report of the exploitation activities of the previous year.

The holder of the Exploitation Permit, through requirement duly justified to ANM, can obtain temporary suspension of the mining activities, or waive its mining title. In both cases, the requirement must be submitted together with a report of the works carried out, the status of the mineand its potential for the future.

In case of request for suspension of the works, the miner is authorized to interrupt the activities while the request for temporary suspension of mining is pending decision by ANM. The Agency will evaluate the mining area on site and issue a technical report publicizing the decision. If the requirement for suspension of the works is denied, or the waiver is consummated, ANM will suggest the necessary measures for the continuation of the works and imposition of the penalties, if applicable.

3.3 Mine Closure

Pursuant to an amendment in mining legislation (Decree No. 9,406/2018), the termination of a mining title is subject to: i) prior approval of the waiver request by the ANM, and; ii) execution of the Mine Closure Plan ("PFM"), which must be previously approved by the ANM.

In 2021, the ANM issued Resolution No. 68/2021, which established the requirements of the PFM. Subsequently, such Resolution established the minimum content that must be provided under each PFM, as well as the possibility for the ANM to exempt small-scale enterprises from some of these requirements, with mining and beneficiation operations of low complexity and low impact.

4 The Resolution set the deadlines for PFMs to be updated pursuant to the new requirements. Statutory Royalty ("CFEM")

Applicable law in Brazil requires that mining companies pay a statutory royalty known as "CFEM" (*Compensação Financeira pela Exploração de Recursos Minerais*) on:

- the revenues from the sale of minerals resources extracted from areas located in Brazil;
- the revenue from the consumption;
- the price of exportation, considering the Tax Authorities parameter price;
- the amount of the foreclosure, in the scenario of a mineral good acquired at a public auction; and
- the amount of the first acquisition of the mineral good, in the case of extraction under the Small-Scale Mining Consent ("*Permissão de Lavra Garimpeira*"). Such royalty is essentially a consideration for the economic use of mineral resources in Brazilian territory.

Payment of the statutory royalty is due whenever the exploitation works of the mineral rights commence. It is worth mentioning that it will not only be due as of the commencement of trading of the mineral resource extracted (whether for the domestic or foreign market), but also as of its consumption by the mining company itself.

The CFEM rates vary according to the substance extracted. According to the amendments made by Law 13,540/2017, the rates on the sold mineral vary from 1% to 3.5%.

5 Penalties

In accordance with ANM Resolution No. 122/2022 (which introduced significant changes in Brazilian mining legislation), failure to comply with mining obligations can subject the titleholder to the following sanctions, which can be imposed individually or in combination: (1) warning; (2) fine; (3) forfeiture; (4) *ex officio* nullity of the exploration authorization; (5) cancelation of title; (6) daily fine; (7) temporary suspension, total or partial, of mining activities; (8) seizure of ores, goods and equipment; (9) embargo on works or activities; (10) demolition of works; (11) interdiction; (12) restriction of rights.

The fines, which may range from BRL 2,000.00 to BRL 1 billion, must be determined based on the following factors: (1) the severity of the conduct, including (2) the resulting damages, (3) the offender's economic capacity, (4) prior records, (5) any mitigating circumstances and (6) any aggravating circumstances.

In an attempt to enable a smoother regulatory transition, the ANM established a 60% reduction in the calculation bases for violations until May 31, 2024 provided that the severity of such violations classifies as level four or lower. Additionally, the ANM's Executive Board can reevaluate the procedures for the calculation of fines, and adjust such procedures if deemed necessary, by May 1, 2024.

6 Relevant legislative changes

6.1 Mining Tailing Dams

The mining industry plays a major role in the national economy of Brazil, for which waste disposal management is currently one of the biggest challenges. The most common way to store such waste is to allocate it within tailing dams. Despite the long history of the mining industry in Brazil, regulations related to tailing dams are relatively recent. The first law referring to dam safety only came into effect in 2010, by means of the enactment of Federal Law No. 12,334/2010, which established the National Dam Safety Policy (also known as "*Política Nacional de Segurança de Barragens*" or simply "PNSB"), applicable to all kinds of dams, not only those intended for the mining sector.

The Brazilian Dam Safety Policy sets out general requirements for dam owners regarding dam safety, including classifying dams based on risk, development of dam safety plans, and dam safety inspections and reviews. After the creation of the Brazilian Dam Safety Policy, several rules were and are still being published on the subject. Since 2015, such rules have undergone a significant reform, in line with international guidelines aimed at increasing safety.

The most recent rule published was Resolution No. 95/2022, which was issued by ANM and published on February 16, 2022 (later amended) in order to consolidate all mining rules applicable to the mining dams and amend certain provisions. The new changes introduced by the aforementioned Resolution are significant and will likely still be the topic of debates within the mining sector and its stakeholders.

Resolution No. 95/2022 is currently under review by ANM in order to simplify existing rules and make compliance with obligations clearer and more accessible.

6.2 Mining Rights as collateral for financing purposes

The procedure to grant mining rights as collateral for financing purposes was recently regulated by the ANM by means of Resolution No. 90, dated December 22, 2021[50]. Previously, only Mining Permits and the Mine Manifesto ("*Manifesto de Mina*", a type of mining right in force until 1934) could be offered by their respective titleholders as collateral for financing purposes.

Subsequently, in order to address a longstanding request from the mining sector, Federal Law No. 14,514, dated December 30, 2022, was enacted, and also permitted other types of mining rights, such as exploration authorization, licensing, and small-scale mining consent, to be pledged as collateral in financing operations.

Pursuant to article 55 of the Mining Code, any acts of conveyance or encumbrance will only be valid after being approved and registered before the ANM.

Once the guarantee is registered before the ANM, the legislation provides certain protection mechanisms for creditors. No acts of waiver or Mineral Leases will be registered by the ANM without prior authorization of the creditor.

[50] Resolution 90/2021 came into force on March 02, 2022.

During the entire guarantee period, the titleholder remains responsible for complying with all its legal obligations, subject to sanctions provided by Law. However, on an exceptional case, the creditor will be allowed to perform acts in order to prevent forfeiture of the mining right.

6.3 Availability Procedure ("*Disponibilidade de Áreas*")

In 2020, the ANM changed the availability procedure of areas for exploration or mining ("*áreas em disponibilidade*") through Resolution No. 24/2020. Following the amendment, areas previously linked to mining titles can be auctioned by ANM to third parties.

Until 2018, the criteria for selecting the most advantageous proposal in the availability procedure of areas was based on technical requirements. However, after the enactment of Federal Decree No. 9,406/2018, a new model was established, according to which areas may be subject to a prior public offer. If two or more parties are interested, these areas will be auctioned and the criteria for the winner will be the highest value offered.

Considering that the release of new areas had been suspended since 2016, it was estimated that there were over 57,000 areas in ANM's portfolio, covering approximately 500,000 km², resulting in a large holdup in investments in the sector.

In 2020, ANM carried out the first public auction, comprising 502 areas intended for mineral exploration. As a result, 185 areas were granted to interested parties. Following the first bid, other auctions have already been launched and completed.

To date, 7 rounds of area availability have been carried out, and, by the time of this Doing Business, the 8th round is being planned.

6.4 New Rules to Prevent Money Laundering and the financing of terrorism

On February 27, 2023, the ANM published Resolution No. 129/2023 ("Resolution 129"), which provides for compliance with the duties of preventing money laundering, the financing of terrorism and the proliferation of weapons of mass destruction.

Resolution 129 is applicable to producers of precious stones (diamonds and colored gemstones) and precious metals (gold, silver and platinoids). Such producers are required to implement a policy to prevent money laundering and terrorist financing.

The new regulation also includes other important measures, such as a requirement for legally operating miners to maintain a structured client registry and to maintain such records for at least ten years, calculated from the date of operation or termination of the contractual relationship with the customer. The miners are also required to report any suspicious transactions, as defined by a list of scenarios that may indicate the occurrence of money laundering.

In addition, medium and large-sized companies (whose revenues exceeded BRL 16.8 million in the previous year) must implement and maintain a policy designed to ensure compliance with their respective obligations as members of the *"System for Prevention and Combating Money Laundering and Financing of Terrorism and the Proliferation of Weapons of Mass Destruction"* (acronym in Portuguese "PLD/FTP"). Such policy must be compatible with the company's size and volume of operations, and proportional to the corresponding risks.

7 Recent Legislation Proposals

Over the last 5 years, several changes to the current model adopted for the mining sector in Brazil have been proposed and discussed in the House of Representatives.

The well-known proposal for a new mining framework, Bill 5,807/2013, whose purpose was to establish a major change in the current mining system until 2017, was criticized for giving rise to legal uncertainty and preventing new investments in the sector.

After years of discussions and given the difficulties of reaching the quorum to vote, the Federal Government presented, in July, 2017, the Revitalization Program of the Brazilian Mineral Industry, which introduces essential changes for the sector. Initially, three Provisional Measures were signed that included the creation of the ANM and amendments to the Mining Code, in addition to improving legislation that deals with Financial Compensation for the Exploration of Mineral Resources (CFEM), in other words, statutory royalties.

The purpose of the Program is to increase the participation of the mining sector in the Brazilian Gross Domestic Product (GDP), generation of new jobs and investments. After the vote, two of the Provisional Measures were converted into law (Law No. 13,575/2017, which created the ANM and Law No. 13,540/2017, which established changes regarding statutory royalties). On the other hand, the provisional measure that proposed changes in the Mining Code was not voted within the constitutional term and, subsequently, lost effectiveness.

Other bills that seek to repeal restrictions on foreign capital in border areas, regulations for mining activities in indigenous lands and other relevant issues are still subject to vote, but there is no forecast for their publication.

Currently, the Brazilian National Congress is processing Bill No, 37/2011, Bill No. 1,890/2021 and Bil No. 957/2024 each of them proposes to amend the Mining Code.

Bill No. 957/2024 is the most recent proposal aiming to implement important changes, such as:

(i) ANM will be empowered to grant all Exploitation Permits, except for the mining titles related to the strategic minerals, which will remain granted by the MME

(ii) Creation of the Surface Mining Permission ('*Permissão de Lavra de Superfície*') regime (a new type of mining title), an authorization title which will allow the exploitation in a certain overlapping with other existing mining title , provided that the execution of both activities are technically and economically feasible;

(iii) Institution of the social auction ('*leilão social*'), which will consist of areas placed on public offer exclusively for use under the Small Scale Mining Permit (*Permissão de Lavra Garimpeira*);

(iv) Environmental license may not be required for exploration work if the technology used does not cause significant environmental impacts;

(v) Financial guarantees shall be required for the mine closure, especially to support environmental rehabilitation; and

(vi) Titleholders of Small Scale mining permits may add to the relevant mining titles other non-minable minerals encountered during mining operations.

OIL AND GAS

1 Brazilian Oil & Gas sector

In accordance with the Brazilian Constitution, petroleum, natural gas, and other mineral resources are property of the Union. The exploration and production of petroleum, natural gas, and other fluid hydrocarbons ("E&P") are a federal government monopoly, as well as the refining, the import and export of oil, gas and derivatives, maritime shipping of crude oil and derivatives produced in Brazil and any type of pipeline transportation. From its creation, in 1953, until the enactment of the Constitutional Amendment No. 9, in 1995, the state-owned company *Petróleo Brasileiro S.A. – Petrobras* had exclusive control over the petroleum and natural gas activities in Brazil, excluding, therefore, the participation of any private company in E&P activities.

In 1995, Constitutional Amendment No. 9 was enacted, easing the state monopoly by removing *Petrobras'* exclusivity in E&P activities and allowing the federal government to contract private and state-owned companies to perform these activities.

Amendment No. 9 opened the upstream segment to private domestic and foreign companies. In 1997, Federal Law No. 9,478 (known as the Petroleum Law) was passed, establishing a new regulatory framework (a "Concession Regime") for oil and gas activities, and creating the Brazilian Agency for Petroleum, Natural Gas and Biofuels ("ANP") to promote regulation, contracting and monitoring of economic activities related to the oil and gas industry.

The end of the monopoly and successive annual bidding rounds organized by ANP attracted domestic and foreign investment to Brazil, including leading international E&P players.

The announcement of large discoveries in 2007 motivated new changes to the law. A new regulatory framework was enacted in 2010 with the main goal to create a new regime ("Production Sharing Regime") to regulate E&P activities of an area with recent discoveries with large potential or areas which were considered strategic for Brazilian development, the so-called "Pre-Salt" areas. The new regulatory framework implemented several legal changes as further detailed, including also a third regime of direct contracting of Petrobras ("Transfer of Rights Regime").

Although there was a suspension of bidding rounds for a couple of years related to the creation of the new regime, the Government in the last years implemented certain changes to the legislation to encourage investment in the sector and promoted a series of relevant bidding rounds, including relevant areas under the Concession Regime, Production Sharing Regime and for the exceeding production of the areas of the Transfer of Rights Regime.

Additionally, ANP launched Open Acreage bidding rounds (*Oferta Permanente*), in which there are areas constantly listed for interested parties to bid at any time. The first bidding round of the Open Acreage for the concession regime was held in 2019. The second Concession Open Acreage bidding round began on September 11, 2020, with a public bidding session held on December 04, 2020. On April 13, 2022, the ANP held the public session of the third Open Acreage bidding round, in which 59 exploratory blocks were acquired in 6 different basins. The results of the subsequent fourth Open Acreage bidding round were confirmed by ANP on March 22, 2024. At the bidding, 189 exploratory blocks were acquired, together with the marginal area of Japiim.

ANP also held the first and second cycles for the Open Acreage bidding round for fields under the Production Sharing regime. In the first cycle, from the eleven blocks made available, four had its exploration and production rights acquired by E&P companies. The first cycle of the Production Sharing Open Acreage collected the amount of BRL 916,252,000.00 in signing bonus for the Federal Government. One exploratory block was acquired in the second cycle of the Production Sharing Open Acreage bidding round, with a total signature bonus of BRL 7,047,000.00 and a minimum BRL 360 million investment projection.

Due to recent changes in local content rules implemented by the Brazilian National Council for Energy Policy ("CNPE"), a governmental body directly related to the Ministry of Mines and Energy, the tender protocols of the Open Acreage bidding rounds were revoked. In April 2024, the ANP worked on the adjustments to the tender protocols, in accordance with the new rules established by CNPE.

According to the latest ANP Annual Report of Resources and Reserves, an increase of 6.98% in proved oil reserves (1P), 3.81% in proved and probable oil reserves (2P), and 2.26% in proved, probable and possible oil reserves (3P) was recorded for 2023 compared to 2022. In 2023, a total of 1,242 million was produced, which amounts to a 139 million barrels increase in comparison with the oil production in 2022 (1,103 million oil barrels).

ANP also informed that an increase of 27.12% in proved natural gas reserves (1P), 23.79% in proved and probable natural gas reserves (2P), and 25.35% in proved, probable, and possible natural gas reserves (3P) was recorded for 2023 compared to 2022. The natural gas production in 2023 amounted to 54.68 billion m^3, which represents a 4.38 billion m^3 increase in comparison with the natural gas production in 2022 (50.3 billion m^3).

Despite the sector's opening to private companies in the late 1990s and the recent implementation of the divestment program, *Petrobras* is still the dominant player in the country's oil and gas sector, holding considerable market share. However, in the last few years relevant assets from Petrobras were sold to investors, including gas pipelines, refineries, and several offshore and onshore fields.

2 Concession regime

Under this regime, E&P business is governed by concession contracts preceded by bid rounds organized by the ANP. Through these concession contracts, the Government grants companies, or consortia, incorporated under Brazilian law, the exclusive right to explore, develop, and produce hydrocarbons in a specified block and normally for a 30-year period, at their own expense and risk. The production (of oil and/or gas) is entirely owned by the concessionaires.

In return, the Petroleum Law establishes the following types of government take to be paid out by the concessionaire, as specified in the tender protocol:

(i) SIGNATURE BONUS: sum offered by the bidding company in the auction. The minimum value is established in the tender protocol of the bidding round.

(ii) ROYALTIES: financial compensation owed by the concession holders of E&P activities, corresponding, as a general rule, from 5% to 10% of the output value from each field.

(iii) SPECIAL PROFIT-SHARING: special compensation owed by the concession holders, collected only in the event of large production volumes or high profitability from the field.

(iv) PAYMENT FOR OCCUPATION OR RETENTION OF THE LAND: an amount to be paid annually by the concession holders, beginning on the signing date of the concession contract, as set forth in the tender protocol and the concession contract.

In addition to these stakes owed to the Brazilian government, the Petroleum Law calls for payment of a percentage of production (usually 1%) to the owners of the land.

The tender protocol for a specific bid round sets out, among other provisions:

(i) the areas to be offered;

(ii) the minimum exploration program to be performed in each area;

(iii) the minimum local content requirements for acquisition of equipment and services; and

(iv) the technical, financial, and legal qualification criteria for candidates to be eligible to participate in the bid.

Moreover, competing bids for oil and gas concessions are evaluated on a grading system, with scores awarded according to the bidders' proposed signature bonus and minimum exploration program. The proposed local content used to be bid criteria, but it was excluded in recent rounds.

As a matter of national policy, the ANP includes in its bidding rounds minimum requirements of local content which may vary from round to round, depending on the location and respective material, equipment, or services to be supplied.

The policy of local content has been eased over the past years. The agency has established new local content requirements for the last offshore bid rounds, simplifying the overly detailed percentages of previous bidding rounds, as well as improving the rules for local content inspection during the performance of E&P activities. In December 2023, the CNPE issued a new resolution authorizing contracts that exceeded the minimal local content requirements to transfer the outstanding local content amounts to other contracts in force.

In order to attract investments from different types of players and create a diversified market environment, ANP also published resolutions that allow the reduction of the royalty rate for small and medium-sized companies (to 5% and 7.5%, respectively) and for the incremental production in mature fields (for up to 5%).

3 Production Sharing Regime

In 2007, *Petrobras* announced what is believed to be the largest discovery of oil and natural gas accumulations found in the Western Hemisphere in the last thirty years. The huge potential of these new oil and natural gas resources, so-called "Pre-Salt" reservoirs, in addition to the sheer volume, the quality of the oil - considered a light crude oil with high commercial value - and the fact that the reserves found so far indicate that exploration risks are relatively low, have motivated the government to rethink the country's petroleum regime.

As a result, the Brazilian government opted for the introduction of the Production Sharing Regime for the exploration and exploitation of hydrocarbons within the Pre-Salt areas and others "strategic" areas, maintaining, therefore, the concession regime for the exploration and production operations out of such areas.

Its legal framework consists of three pieces of legislation. The main pillar of the new regime is the Law No. 12,351/2010, which governs the E&P activities under a "production sharing" regime. Under this framework, in the event of commercial findings, the contractor will have the right to recover the costs and investments from the results of the oil and gas produced (known as Cost Oil). The portion of the production resulting from the difference between the total production volume and the portions related to the cost in oil and royalties due, will be split between the federal government and the contractor (known as Profit Oil), in accordance with the criteria defined by the contract. The contractor will bear the risks of exploration and development.

The new regulatory framework also provides for some additional mandatory elements for the Production Sharing Regime, such as minimum local content and the value of the subscription bonus to be paid by the winning parties. Moreover, the criteria for awarding an agreement to a bidder, under the proposed system, is the offer with the highest percentage of Profit Oil to the federal government. Foreign companies participating in public bids will also be required to organize a local company under Brazilian law if they are awarded an agreement.

In addition, *Petrobras*' role in the operations in the Pre-Salt areas was minimized by subsequent changes in the regulatory framework. The Law No. 12,351/2010 was amended in October 2016, no longer requiring Petrobras to be the exclusive operator of all areas granted by the federal government under Production Sharing Regime. After such amendment, the Decree No. 9,041 of May 02, 2017, introduced *Petrobras*' pre-emptive right to hold a minimum participating interest and be the operator of the pre-salt area, in which case it must comply with the minimum stake of thirty percent interest in the consortia to be formed with third-party contractors. In the event the state-controlled company waives its pre-emptive right, it may participate on the bidding round, along with the other bidders, under equal conditions of participation.

The second piece of legislation, Law No. 12,276/2010, authorized the federal government to assign *Petrobras* certain areas located in the Pre-Salt that have up to five billion barrels of equivalent oil, waiving the requirement of public bidding, subject to a payment which shall be made by *Petrobras* with government bonds. The concession of these areas involves *Petrobras'* assumption of all risk, with ultimate ownership of the output. This is referred to as the Transfer of Rights Regime.

The third piece of legislation, Law No. 12,304/2010, authorizes the creation of a public company, *Pré-Sal Petróleo S.A.* (PPSA), with the purpose of governing production sharing agreements and agreements for trading hydrocarbon fluids, owned by the federal government. The PPSA will have a voting majority on operating committees.

The last pillar of the framework is the creation of a Social Fund. This Social Fund has been created to serve as a regular source of financing for social projects in Brazil.

In 2019, ANP held an unprecedented bidding round, over the surplus volume arising from the areas assigned to Petrobras under the Transfer of Rights Regime ("*cessão onerosa*"). Despite having offered high potential blocks in the Pre-Salt area, with an estimate ranging from 6 to 15 billion of existing oil barrels, the bidding round did not manage to receive offers for all offered areas.

As a result, the Federal Government discussed changes in the proposed model for the bid round and included a prior agreement with Petrobras for the compensation of its investment in the areas. Such changes were approved by the Board of ANP on December 17, 2020. In the 2019 bid round, this agreement was to be entered into with Petrobras after the areas were granted.

After such improvement, ANP concluded the Second Transfer of Rights Surplus Production Sharing Bidding Round on December 17, 2021, that resulted in 2 auctioned blocks (Sépia and Atapu).

4 Refining

As with E&P activities, the refining of domestic or foreign petroleum is a federal government monopoly. When authorized by the state through a specific process at the ANP, petroleum refining and natural gas processing can be carried out by private companies incorporated under Brazilian law.

In accordance with the latest Annual Statistic Statement published by ANP, in 2022, the processing of national oil increased 3.8% in comparison with 2021, reaching 1,700,000 barrels per day, which represents around 86.5% of the total refined volume. Meanwhile, the processing of imported oil registered an increase of 28.6% in comparison with 2021, reaching 211.3 thousand barrels per day, which is a 6.1% increase in relation to the refined oil volume of 2021.

In 2022, Brazil had an installed refining capacity of approximately 2,400,000 barrels per day, divided among 18 refineries, 11 of which were owned by *Petrobras* and corresponded to 80.4% of the total refining capacity, while the other 7 were privately held. The new Annual Statistic Statement to be disclosed by ANP with all 2023 refining data has yet to be published.

As part of *Petrobras*' divestment plan, and as provided for under a settlement agreement between the state-owned company and the Brazilian antitrust authority (*CADE*), Petrobras agreed to sell 8 of its 13 refinery assets (RLAM, REMAN, LUBNOR, REFAP, SIX, REGAP, RNEST and REPAR). The initiative was praised by the market and is seen as a unique opportunity for introducing new players to the Brazilian refining complex.

Petrobras announced on February 2021, the sale of *Refinaria Landulpho Alves (RLAM)*, which was concluded in November of the same year. One year after, the sales of *Unidade de Industrialização do Xisto* (SIX) and *Refinaria Isaac Sabbá* (REMAN) were concluded, in November 2022.

As for *Refinaria Gabriel Passos* (REGAP), Petrobras initiated the sale process, but, in November 2022, decided not to move forward, given that the offers made to the company did not meet its expectations. In November 2023, Petrobras also announced the termination of the purchase and sale agreement related to *Refinaria Lubrificantes e Derivados de Petróleo do Nordeste* (LUBNOR), due to the non-compliance of buyer's conditions precedent for the closing of the transaction.

The sale processes for the other 3 refineries (RNEST, REPAR and REFAP) were ongoing until February 28, 2023, when Petrobras received a letter from the Ministry of Mines and Energy requesting the suspension of the sale of its assets for 90 days. On April 17, 2023, Petrobras informed that it would seek, together with CADE, a solution to reconcile the commitments previously assumed with the new proposals to be considered in the strategic planning of the company. On November 28, 2023, Petrobras requested the renegotiation of the settlement agreements before CADE, considering the new strategic plan approved by the company.

5 Transportation and gas distribution

The federal government also has a monopoly over maritime shipping of crude petroleum of domestic origin or petroleum by-products produced in the country, as well as general pipeline transportation. As with the E&P activities, Constitutional Amendment No. 9 relaxed *Petrobras'* monopoly allowing private companies to engage in any type of transportation of petroleum, its derivatives and natural gas.

According to the Petroleum Law, any company or consortium of companies created under Brazilian law may be granted an authorization from the ANP to build facilities and to engage in any type of transportation of petroleum, its derivatives and natural gas, whether for domestic supply, import or export.

In 2009, the government enacted the Federal Law No. 11,909 (known as the Gas Law), which regulated activities of transportation through pipelines, storage, liquefaction, regasification, treatment, processing, and marketing of natural gas, and introduces a number of key elements to encourage the development of natural gas industry in the country. The Gas Law was received with certain enthusiasm by participants of the segment, particularly with regards to the provisions that introduce competition in the construction and operation of pipelines, the assurance of access by third parties to the new and existing pipelines, and the creation of certain degree of wholesale competition by enabling industrial consumers and gas-fired power generators to by-pass local distribution companies and buy gas directly from producers, importers or retailers.

The Gas Law introduced the concession regime for the construction, expansion, and operation of pipelines for the transport of natural gas. The Ministry of Energy would propose, on its own initiative or as requested by third parties, new pipelines, or the expansion of existing ones. New pipeline construction and expansion projects will be preceded by an open season aimed to identify potential shippers and the level of interest in the project. The main criterion to be applied in awarding concessions for transportation will be the lowest annual revenue. Initial user of the gas transport service was granted with an exclusivity period, that shall not be superior to 10 years, to use the hired capacity of the new transport gas pipelines. Such exclusivity period was determined by the Ministry of Energy and studied on a case-by-case basis, considering an estimated time for the amortization of investments before opening access.

Although many changes were implemented, the Gas Law did not create a competitive market in Brazil. A program with players from the industry and the Government was created to suggest changes that could foster investments in the sector. This program was called *Gás para Crescer* (Gas to Grow).

The entry of new shippers in the market has also been promoted by Petrobras with the sale of pipelines assets as part of its divestment program. In 2017, a part of Petrobras' participation on subsidiary *Nova Transportadora do Sudeste* (*NTS*), owner of a relevant gas pipeline network, was sold. Two years later, Petrobras also sold 90% of its equity interest in *Transportadora Associada de Gás* (*TAG*), another relevant gas pipeline network. The state-owned company sold the remaining 10% stake in TAG in 2020, followed by the sale of the other 10% stake in NTS. In 2022, CADE approved the sale by Petrobras of its 51% interest in Petrobras Gás S.A. (*Gaspetro*), an entity with participation in many of the gas distribution companies with concessions of different states. Gaspetro was renamed as Commit Gás and is currently owned by Compass Gás & Energia and Mitsui Gás e Energia do Brasil (Mitsui Gás).

Along with the Gas to Grow initiative, in 2019 yet another program was launched by the Federal Government, namely the New Gas Market (*Novo Mercado de Gás*), aiming at the increase of competition among players in the natural gas market. It consists of a series of principles and guidelines set out under the CNPE Ordinance No. 16/2019, such as the unbundling of the natural gas chain, supporting the privatization of state-owned gas distributors, as well as establishing clear rules for non-discriminatory access to essential facilities, gas processing plants and LNG terminals, among others.

In 2021, the government enacted Law No. 14,134 (known as "New Gas Law"), which revoked Law No. 11,909, creating a proper environment for diversification and creation of a more competitive market. Among the main innovations of the New Gas Law, we may highlight:

(i) Unbundling of the transportation market;

(ii) Modification of the concession regime (*outorga*) for the authorization (simpler to obtain);

(iii) Access of third parties to "essential facilities" (production flow pipelines, natural gas treatment or processing facilities and liquefied and regasification terminals);

(iv) Adoption of the entry-exit hiring model;

(v) Regulation of the transportations systems and introduction of the managers of the market area (responsible for the coordination of the transportation operation in the respective area);

(vi) Provision of the market management entities (qualified to manage the organized natural gas market, as per agreement executed with ANP); and

(vii) Adoption of mechanisms the encourage the competition, such as gas and capacity release and restrictions to the sale of natural gas between producers.

In addition, the Decree No. 10,712 was also enacted in 2021 in order to regulate the New Gas Law. The normative was responsible for, among other things, (i) clarify the possibility of corporate relation between natural gas distributors and other companies which develop competitive activities; (ii) allow equivalent regulatory treatment between natural gas and biomethane, as well as other gases interchangeable with natural gas, provided the compliance with ANP' specifications; (iii) establish criteria for ANP to set the characteristics of transportation pipelines; and (iv) clarify aspects related to the transitioning to the entry-exit model.

6 Special Customs Regime for the Oil and Gas Industry (Repetro-Sped)

Brazilian companies that research and produce oil and gas (as well as those companies hired by them) may benefit from the Repetro-Sped. This special customs regime is regulated by the Brazilian Customs Code (approved by Decree No. 6,759/2009) and by the RFB Normative Instruction No. 1,781/2017. Repetro-Sped basically provides the following benefits:

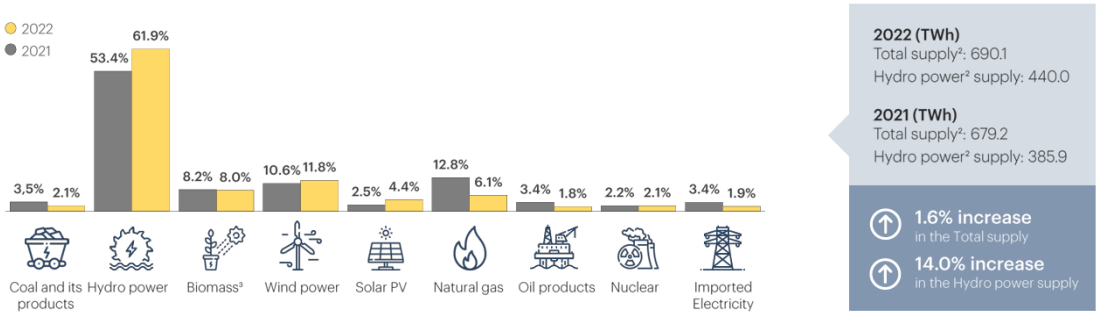
1. Definitive imports of the goods specified in Annexes I and II of the referred Normative Instruction with suspension of federal taxes;
2. Temporary imports of the goods specified in Annex II of the Normative Instruction with the suspension of federal taxes;
3. Fictitious exports of goods manufactured in Brazil and subsequent importation with the benefits described in items I and II above; and
4. Purchases, with suspension of federal taxes, of raw materials and intermediary products intended for the manufacture of goods that will be sold in the Brazilian market to companies that research and produce oil and gas.

Repetro-Sped is a federal regime, thus in principle it applies only to federal taxes. However, the Brazilian states have reached the Agreement No. 03/2018, which allows them to reduce or exempt the state VAT ("ICMS") on transactions benefited by the federal special customs regime.

POWER AND RENEWABLES

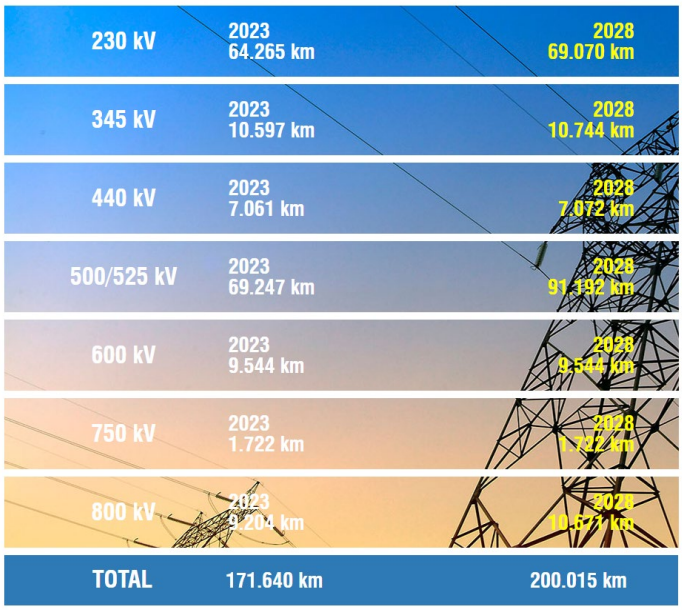
1 Brazilian Power Sector overview

Brazil is one of the leading countries when it comes to renewable power, having 87.9% of its electricity generated by renewable sources, according to the Brazilian Power Balance 2023 Edition, published by the Energy Research Office ("EPE"). The main electricity source in Brazil is hydropower, representing 61.9% of the total supply. Wind (11.8%), solar (4.4%) and biomass (8.0%) are other abundant sources increasingly explored.



In April 2024, the installed capacity of Brazil's Electric System was amounted to 221.621 MW, according to the Monthly Operational Programme, issued by the Brazilian Electric System Operator ("ONS"). By 2028, this capacity is expected to increase by more than 30,000 MW, resulting in a total capacity of 254.341 MW.

Regarding the power transmission sector, Brazil had 171,640 km of transmission lines at the end of 2023, and it is estimated that 28,375 km of new transmission lines will be implemented by 2028.



To support the continuous growth of power supply via renewable power sources, the Brazilian Electricity Regulatory Agency ("ANEEL") organized two power transmission auctions in 2023 and two more in 2024, one of which has already taken place. The following chart summarizes the distance of transmission lines that are to be built and an estimate of the investments required for construction.

Auction	Transmission Lines	Estimated Investment	Date
Transmission Auction No. 001/2023	6,184 km	BRL 15,7 billion	30/06/2023
Transmission Auction No. 002/2023	4,471 km	BRL 21,7 billion	15/12/2023
Transmission Auction No. 001/2024	6,464 km	BRL 18,2 billion	28/03/2024
Transmission Auction No. 002/2024	848 km	BRL 4,06 billion	27/09/2024

According to the EPE, in line with the "2031 Ten-Year Power Expansion Plan"[51], the share of renewable power sources, including solar and wind power, is expected to continue to grow in the coming years. What is more, according to the Expansion Plan, the estimated technical potential for hydrogen production in Brazil by 2050 is 1.8 Gt/year, which is more than 14 times the world's demand for hydrogen in 2018.

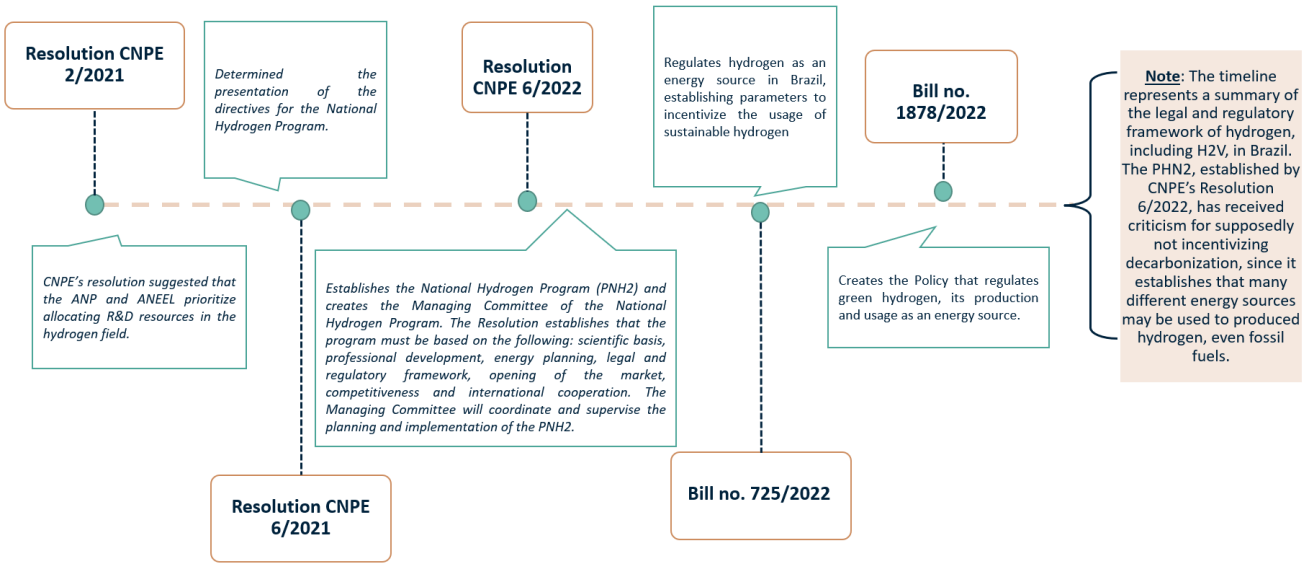
Estimation of the technical potential of hydrogen production from the energy resources until 2050

Energy Resource	Hydrogen Potential in Mt/year
Renewable – Offshore*	1,715.3
Renewable – Onshore*	18.1**
Biomass	50.5
Nuclear	6.9
Fossil fuels	60.2
Total	**1,851**

The Expansion Plan also recognizes that "Brazil could become a major exporter of hydrogen in the future, as it is a very competitive country in renewable power sources, with significant water resources (including extensive access to the sea and desalination technology, as well as great potential for water reuse), robust infrastructure, including logistics and ports, with a large and modern power sector, as well as national human capital to develop a significant hydrogen market and export to the global market, taking advantage of its distance from the main developed markets".

The Brazilian Government has expressed its intent to (a) by 2025, incentivize entrepreneurs to develop green hydrogen pilot-projects; (b) by 2030, consolidate Brazil as the most competitive player in the production of green hydrogen; (c) by 2035, establish "green hydrogen hubs" throughout Brazil. Although Brazil has yet to establish a legal landmark thoroughly establishing legal standards for green hydrogen and incentives for its production, the current regulatory framework related to the matter can be summarized as follows:

[51] Official Expansion Plan elaborated by Energy Research Company and the Ministry of Mines and Energy



CNPE: Brazilian National Council for Power Policy

ANP: National Petroleum Agency

Green hydrogen production in Brazil is also associated with the country's offshore wind potential, which is estimated at around 700 GW in marine areas with a depth of up to 50 meters. This is because exporting green hydrogen to other countries represents a new business model that circumvents the lack of transmission structure and power market demand in Brazil. The Ten-Year Power Expansion Plan 2031, published by the MME and the EPE, highlights that the estimated annual production of hydrogen from the balance of power resources available offshore would be around 1,850t/year by 2050.

Even though Brazil has yet to enact laws and regulations in order to truly enable offshore power plants to be constructed, IBAMA has already received requests to issue preliminary environmental licenses for more than 170 GW of offshore wind projects. Meeting the demands of entrepreneurs and society, ANEEL has included regulating offshore projects in its 2023-2024 Regulatory Agenda: (a) 1st semester of 2024: opening of a Public Consultation to conduct an Analysis of Regulatory Impact; (b) 2nd semester of 2024: another Public Consultation will be opened, regarding the draft of a Normative Resolution to regulate offshore power plants, which is expected to be voted on in the same semester, during an Ordinary Public Meeting of the ANEEL's Board of Directors.

Distributed generation, mainly made up of solar projects, has also been experiencing an exponential growth in Brazil. According to the Micro and Mini Generation Panel, maintained by the EPE, Brazil had in 2018 an installed capacity of 674 MW of distributed generation projects. In 2022, the number jumped to 17,325 MW. Moreover, data from the Monthly Operational Programme published by the ONS in April 2024 shows that 13,0% of Brazil's installed capacity is composed of distributed generation projects (28,845 MW).

2 Power Sector Authorities

The Brazilian power sector is ruled by public institutions engaged in a governance structure.

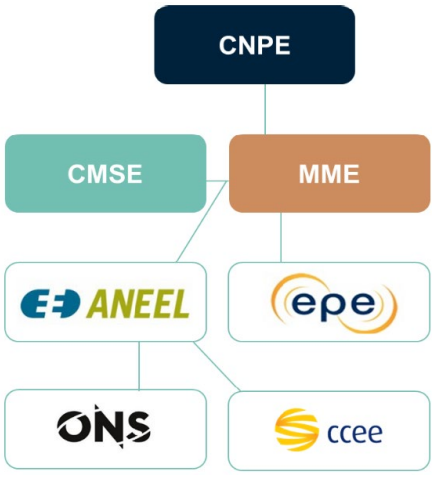
The Brazilian National Council for Power Policy ("CNPE") aims to oversee and formulate policies and guidelines for the entire electricity sector. Acting under the CNPE, the Power Sector Monitoring Committee ("CMSE") is responsible for monitoring and permanently assessing the continuity and the security of power supply in the country.

Directly connected to the CNPE and CMSE is the Ministry of Mines and Energy ("MME"), arm of the federal government responsible for minerals, power, and electricity matters. The MME works together with the Energy Research Office ("EPE"), which carries out studies and surveys concerning the power sector planning.

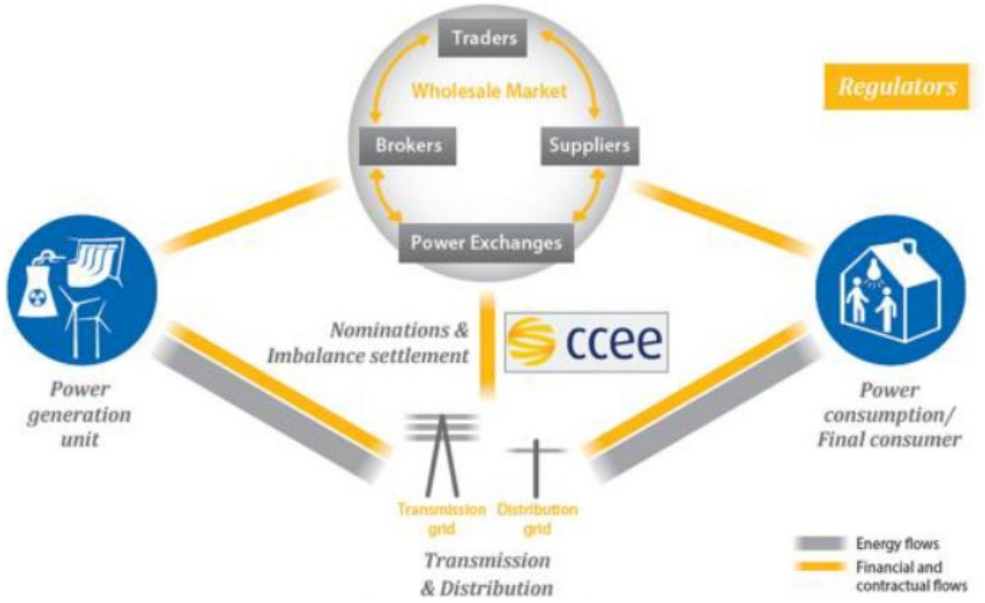
Following the MME directives, the Brazilian Electricity Regulatory Agency ("ANEEL"), is part of the public administration and is responsible for the regulation and supervision of the electricity energy sector.

Finally, Brazil has two Institutions that are regulated and audited by ANEEL: the ONS, which coordinates and manages the operation of generation and transmission facilities in the Brazilian Interconnected Energy System ("SIN") and the Electricity Commercialization Chamber ("CCEE"), which carries out the financial operation of the electricity market.

Graphically, the institutions can be represented as follows:



And the energy sector can be graphically represented as follows:



3 The Trading Environments

In Brazil, electricity services are classified as being of public interest. After being restructured in 2004, the sector was segmented into two "environments", the (i) regulated contracting environment and the (ii) free contracting environment.

The Regulated Contracting Environment ("ACR") encompasses the Energy Distribution Concessionaires and what are known as the Captive Consumers, attended exclusively by energy distribution companies. The main rule of the ACR is that the Energy Distribution Concessionaires must acquire electricity through public auctions held to attend the Captive Consumers' needs. Such Consumers pay to the Energy Distribution Concessionaires a public tariff established by ANEEL for energy supply and ancillary services.

In addition, the Distributed Generation System allows Captive Consumers to generate energy through renewable sources, which are nowadays represented mostly by solar power sources. Within this structure, the energy generated by the consumers is injected into the Energy Distribution Concessionaires' grid, generating credits that can be used as a discount in their electricity bill – known as the Compensation System.

In the Free Contracting Environment ("ACL"), the consumers are known as "Free Consumers" and are eligible to purchase electricity from any supplier and sell it to any buyer (other than the Energy Distribution Concessionaires and Captive Consumers) through bilateral agreements that are freely negotiated. From January 2023, consumers that have a minimum consumption of 500 kW were granted the right to join the ACL. In January 2024 onwards, any consumer that is connected to voltages equal to or higher than 2,3 kV (classified as "Group A" consumers) are eligible to become "Free Consumers". It is expected that over 100 thousand Group A consumers are now able to enter the ACL, being able to choose their power supplier and freely negotiate prices. For consumers connected to the grid in voltages lower than 2,3 kV (classified as "Group B" consumers) and that have a power consumption lower than 500 kW, the eligibility to enter the ACL is expected to be awarded in 2026.

4 Legal regime

The power sector is formed by Generation Agents, Transmission Agents, Energy Distribution Agents, Trading Agents, and Consumer Agents, all of which must be authorized by ANEEL, through concession; permission; authorization or registration, according to the system established in Law No. 9.427/1996.

Generation Agents are regulated entities that own a concession, authorization, or registration to generate electricity through the operation and maintenance of power plants.

In general, there are three legal systems through which the government grants the rights required to implement power generation projects: (i) a concession, which is mandatorily granted to the winner of public auctions; (ii) an authorization, which does not require an auction, but requires prior application to ANEEL; and (iii) simple registration, which entails a simple communication informing the Agency of the project, once it has been drafted.

Transmission Agents are regulated entities that own a concession title to provide the public service of electricity transmission through the operation and maintenance of transmission lines, power substations and other related equipment – usually in voltages equal or above 230kV.

Distribution Agents are regulated entities that own a concession or permission title to provide the public service of electricity distribution through the operation and maintenance of distribution lines and related equipment – usually in voltages lower than 230kV. They are responsible for supplying power to Captive Consumers.

Trading Agents are regulated entities that own an authorization title to trade electricity in the ACL.

Retailer Trading Agents are entities that own an authorization title to represent free consumers before the CCEE.

Free Consumer: any consumer is eligible to become a Free Consumer, by filling one of the two following requisites: (a) is considered as a "Group A" consumer and is connected to the grid in voltages equal or higher than 2,3 kV; or (b) has a minimum consumption of 500 kW (connected to the grid in any voltage).

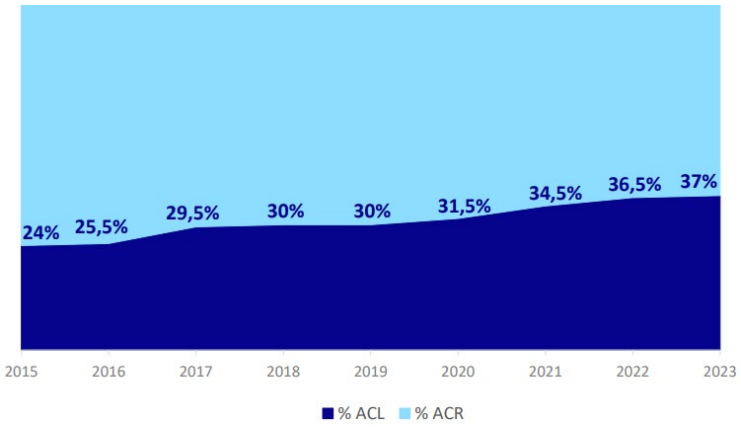
Free Consumers are not subject to the public tariffs established by ANEEL and must be associated to the CCEE. Because of their participation in the ACL, they can enter into Energy Purchase Agreements, freely negotiating its conditions, obligations, and prices.

Captive Consumers are those attended by the local Energy Distribution Concessionaire and subject to public tariffs calculated by ANEEL.

5 Foreign investment

Currently, although the Brazilian power market is intensively regulated, there are few obstacles for receiving foreign investments. It is increasingly common for international companies to invest in the energy sector, especially on power generation via renewables.

There is a growing demand in Brazil for energy generation under the ACL, which already accounts for over 37% of the total national energy consumption. Such number is bound to grow even further, given that the requirements for being classified as a Free Consumer were lowered and the landscape of freedom for all consumers to enter the ACL is expected to be a reality in 2026.



Percentage of annual consumption

Even in public auctions, there are usually no impediments for the participation of international companies, as long as the company has a legal representative in Brazil with powers to answer administratively and legally in the country, as well as represent the foreign company in all steps of the auction. The international company may also need to incorporate a Special Purpose Vehicle ("SPV") in order to be awarded the concession or authorization. Each public auction has specific rules that must be observed.

Normative Resolution No. 948/2021, issued by ANEEL, regulates the transfer of corporate control of companies which have been awarded an authorization, concession, or permission in the power sector. There are certain requirements in place, but none especially designed for the acquisition of shares by foreign companies.

6 Environmental benefits and products

In Brazil, there are certain ways of selling other products associated with renewable power, especially Renewable Energy Certificates and Carbon Credits from regulated or voluntary markets.

The International Renewable Energy Certificate System, ("I-REC"), is an international market-based instrument that represents the property rights to the environmental, social, and other non-power attributes of renewable electricity generation. I-RECs are issued when one megawatt-hour (MWh) of electricity is generated from a renewable energy resource and injected into the electricity grid.

The I-REC Standard (the international entity that controls the I-REC System worldwide) maintains a central registry from which sellers and buyers can trade I-RECs. For such purpose, the I-REC Standard gives authority to external companies to register energy generating enterprises and, subsequently, to issue I-RECs. Such companies are called local issuers, which can be a government agency or an independent entity, preferably acting with the recognition and support of government authorities.

The Totum Institute is the local issuing body and representative of the I-REC Standard in Brazil. They have the authority to register, supervise and audit renewable electricity producing enterprises, and issue I-RECs to registrants on behalf of I-REC Standard.

In order to join the I-REC System in Brazil, a company that wishes to become an issuer of I-RECs must adhere to the I-REC Code and undergo a documental audit carried out by the Totum Institute. Once all documents are deemed compliant and the audit is complete, the company is required to pay the Program fees and is subsequently registered to the I-REC Platform. After registration is complete, the company has permission to issue and transfer I-RECs (each I-REC is equivalent to 1MWh of generated energy).

The Carbon Credit is a type of certificate that represents the reduction of one metric ton (2,205 lbs.) of greenhouse gases (GHG), such as carbon dioxide. Carbon credits are viewed as an important financing mechanism to engage emission reduction projects. Among the main initiatives that can generate carbon credits are reforestation and conservation of native forests, renewable energy, and projects aimed at a more efficient use of energy.

Carbon credits are traded in what is known as the "carbon market", which is triggered by emission reduction targets, different from the voluntary and regulated markets. The voluntary carbon market involves companies that have no legal target obligation to reduce their emissions but wish to lower their carbon footprint on a voluntary basis. The voluntary market is regulated by emission trading systems. Recently, carbon emission neutralization has been increasingly valued by companies, in regard to reputation, ethics and/or corporate social responsibility, encouraged by ESG criteria.

The Paris Agreement, of which Brazil is one of the signatories, obeys the model established in the Kyoto Protocol and has regulated the market for carbon trading under its Article 6. The normative basis for the Agreement was recently approved during the UN Climate Change Conference 2021 ("COP26").

Green Bonds are fixed income securities aimed at financing projects that positively impact the environment. In light of increasing pressure from consumers and shareholders for companies to go green, securities labeled as Green Bonds are trading at a premium, when compared to ordinary bonds. Given that Brazil has a great deal of opportunities for investment in renewable energy, financing such projects via Green Bonds has become increasingly viable, as evidenced by the country's issuance value of more than USD 3.9 billion in 2023.

Brazil also has the potential to become a Green Hydrogen powerhouse, due to its abundant offer of sun and wind energy production. In the Pecém Industrial and Port Complex, the government of the state of Ceará is developing the Ceará Green Hydrogen Hub. The project has involved the signing of more than 12 memoranda concerning agreements with companies from all over the globe that have interest in building electrolysis plants to produce the fuel for export. Other Brazilian states such as Maranhão, Paraíba, Pernambuco, Bahia and Santa Catarina have already enacted state-laws providing policies and incentives for the implementation of green hydrogen production facilities.

7 Tax benefits and regimes

There are specific tax benefits and tax systems that apply to the energy sector.

The Special System of Incentives for Infrastructure Development (REIDI) benefit fosters infrastructure projects through the suspension of PIS and COFINS contributions due on certain goods and services intended for the achievement of a project, especially for the transport, ports, energy, basic sanitation, and irrigation sectors.

There is also a special system for the taxation of PIS and COFINS that can be applied to legal entities that are part of the CCEE concerning short-term operations in the energy market.

In addition, there is a national permit (*Convênio* ICMS 101/97) that allows the states to grant ICMS tax exemption for operations involving equipment and components aimed at the generation and consumption of solar and wind energy. However, it is necessary to verify whether the measure has been implemented by each specific state.

The application of such benefit pertains to the existence of an IPI benefit for the same products. Additionally, states can create ICMS incentives for specific cases.

Additionally, there are also Import Duty exemptions for equipment that is not manufactured in Brazil.

The company interested in importing such equipment can apply for the benefit by providing detailed information about the equipment. The authorities will then open a public consultation to verify whether any Brazilian company manufactures the equipment locally.

If there is no local production, an exception can be created in the tariff schedule of the equipment and any company can import it while benefiting from the duty exemption. Several exceptions of the kind have already been made for photovoltaic products.

8 Specific litigation aspects

Within the ACL, as described above, trading agents freely negotiate energy, establishing clauses, guarantees and conditions without any intervention from government authorities.

Despite that, according to the current Electricity Trading Convention of CCEE, approved by ANEEL's Resolution No. 957 of 2021, and in line with the latest international tendencies, all disputes between the agents and the CCEE must be settled in an Arbitration Court.

Because the state court does not have experience in the regulatory sector, an ill-informed decision – concerning regulatory and technical aspects can result in a deficient solution for the involved parties and the sector.

The Arbitration Convention was first enacted in 2007 and later reviewed and approved by ANEEL in 2023. The Arbitration Convention is designed to protect the electricity sector and its agents, providing competent solutions for its disputes, given that they involve invariably high technical aspects and valued interests.

Despite not being a compulsory practice for disputes involving ANEEL, the Agency has recently approved a dispute resolution through an arbitration court on a specific case involving a Transmission Concession Company, based on Federal Decree No. 10,025 of 2019, which authorizes the exercise of Arbitration to resolve disputes involving the Federal Government in transport areas.

The solution of the case in question is deemed a highly positive example in regard to disputes involving ANEEL and can potentially encourage the same path to be followed for other cases.

PRIVACY, TECHNOLOGY AND CYBERSECURITY

1 General Overview

General principles and provisions on privacy and data protection are provided for in the Brazilian Federal Constitution, the Brazilian Civil Code (Law No. 10,406/2002), as well as in other laws and regulations that address specific types of relationships or activities, such as the Consumer Protection Code (Law No. 8,078/1990), labor laws and rules that govern financial institutions and other entities authorized to operate by the Central Bank of Brazil. Furthermore, the Brazilian Civil Framework of the Internet (Law No. 12,965/14) and Decree No. 8,771/2016, establish principles and guarantees for internet users, including protection of their personal data in the digital environment, in addition to rights and duties of internet connection and application providers, including their liability.

The Brazilian General Data Protection Law (Law No. 13,709/2018, "LGPD") aims to protect the fundamental rights of freedom and privacy of data subjects (individuals), as well as the free development of their personalities.

The LGPD came into force on September 18, 2020, while the enforceability of its administrative sanctions became effective in August 2021. Since the Law's entry into force, companies must adopt effective measures capable of proving compliance with the rules of privacy and data protection, including the efficacy of such measures.

The Brazilian National Data Protection Authority ("ANPD") was created in 2018 and has been carrying out its functions since August 2020. The ANPD has defined two regulatory agendas: one that refers to the 2021-2022 biennium, and another that refers to the 2023-2024 biennium. These regulatory agendas are aimed at regulating and introducing guidelines regarding different key matters within the scope of the LGPD.

So far, the ANPD has published a regulation concerning the process of inspection and sanctions of the ANPD, the dosimetry regulation for the application of administrative sanctions, a regulation addressing security incident reporting, as well as a resolution on the application of the LGPD for small-scale data processing agents, such as startups, small businesses, private law legal entities, including non-profit organizations.

Lastly, the ANPD has published several guidelines that provide for matters such as the processing of personal data for academic and research purposes, the use of cookies and data protection, processing of personal data by the government, and the use of legitimate interest as a legal basis, among others.

2 The LGPD

2.1 Applicability and definitions

The LGPD is highly inspired by the GDPR – *General Data Protection Regulation* (the European Data Protection Regulation). However, the Brazilian legislation takes on certain particularities.

According to the LGPD, "personal data" is defined as any information regarding an identified or identifiable natural person, while "processing" stands for any operation carried out with personal data, such as collection, production, receipt, classification, use, access, reproduction, transmission, distribution, processing, filing, storage, deletion, evaluation or control of the information, modification, communication, transfer, dissemination, or extraction.

In contrast, "sensitive personal data" is defined as personal data concerning racial or ethnic origin, religious belief, political opinion, trade union or religious, philosophical, or political organization membership, data concerning health or sex life, genetic or biometric data, when related to a natural person.

The LGPD applies to any processing operation carried out by a natural person or a legal entity of either public or private law, irrespective of the means, the country where its headquarters are located or the country where the data are located, provided that:

a. processing is carried out in Brazil;
b. processing has the purpose of offering goods or services, or the processing to data subjects is located in Brazil; or
c. the personal data of data subjects were collected in Brazil (including of foreign individuals).

2.2 Legal basis

Under the LGPD, personal data must only be processed under one of the following legal bases:

- With the consent of the data subject;
- For compliance with a legal or regulatory obligation by the controller;
- By the government, for the processing and shared use of data necessary for the execution of public policies provided in laws or regulations, or based on contracts, agreements or similar instruments;
- Within the scope of studies carried out by research entities, ensuring, whenever possible, the anonymization of personal data;
- When necessary for the execution of a contract or preliminary procedures related to a contract of which the data subject is a party, at the request of the data subject;
- When necessary for the regular exercise of rights in judicial, administrative or arbitration procedures;
- When necessary to protect the life or physical safety of the data subject or a third party;

- When necessary to protect health, exclusively, in a procedure carried out by health professionals, health services or sanitary authorities;
- When necessary to fulfill the legitimate interests of the controller or a third party, except when the data subject's fundamental rights and liberties which require personal data protection prevail; or
- When necessary to protect credit, including as provided for in specific legislation.

The processing of sensitive personal data must only occur under a different set of legal bases, as follows:

(i) When there is specific and distinct consent granted by the data subject or their legal representative for specific purposes; or

(ii) Without consent from the data subject, but exclusively in cases when the processing is indispensable for:

- The controller's compliance with a legal or regulatory obligation;
- Shared processing of data when necessary to the public administration for the enforcement of public policies provided in laws or regulations;
- Studies carried out by a research entity, ensuring, whenever possible, the anonymization of sensitive personal data;
- The regular exercise of rights, including in a contract and in a judicial, administrative and arbitration procedure;
- Protecting the life or physical safety of the data subject or a third party;
- Protecting health, exclusively, in a procedure carried out by health professionals, health services or sanitary authorities;
- Ensuring the prevention of fraud and the safety of the data subject, in processes of identification and authentication of registration in electronic systems.

2.3 Data subjects' rights

Any individual to whom the personal data that are object of processing ("Data Subject") has the right to request from the data controllers:

- **Right to confirmation (Art. 18, I, LGPD)** - Right to request confirmation of the existence or otherwise of personal data processing activities.
- **Right to access (Art. 18, II, LGPD)** - Right to request access to the personal data being processed. The data subject is entitled to request a complete statement regarding ongoing personal data processing activities and additional information about these activities. Personal data must be stored in a format that favors the exercise of the right to access.
- **Right to rectification (Art. 18, III, LGPD)** - Right to request the correction, amendment, or update of personal data if they are incorrect or incomplete.
- **Right to opposition (Art. 18, §2, LGPD)** - Right to object to the processing of personal data in case of non-compliance with the LGPD.
- **Right to portability (Art. 18, V, LGPD)** - Right to request the portability of personal data to another service or product provider, upon express request. This means that a data subject can request a digital copy of their personal data and transfer it to a third-party service. However, portability is only allowed in regard to a data subjects' own personal data and not to third parties' data.

- **Right to anonymization, blocking or deletion (Art. 18, IV, LGPD)** - Right to request the removal, blocking or anonymization of stored personal Data that is no longer necessary or is excessive for the purposes for which it was initially collected.
- **Right to petition (Art. 18, §1, LGPD)** - The data subject has the right to petition in relation to their personal data against the controller before the ANPD.
- **Right to request the review of solely automated decisions (Art. 20, LGPD)** - Right not to be subject to decisions made solely by automated means that affect the interests of the data subjects, including decisions aimed at defining personal, professional, consumer and credit profiles or aspects of personality. In such cases, the data subject has the right to request that these decisions be reviewed.
- **Right to withdraw consent (Art. 18, IX, LGPD)** - The data subject has the right to request withdrawal of previous consent at any time through a free and facilitated procedure.
- **Right to information on the possibility of denying consent (Art. 18, VIII, LGPD)** - Consent must be requested and granted in a clear, transparent, and completely free manner. Therefore, the data subject has the right to be informed that they have the right to deny consent and of what the potential consequences are.
- **Right to information on shared use of data (Art. 18, VII, LGPD)** - The data subject has the right to request information about public and private entities with which the controller has made shared use of personal data, i.e., all communication, dissemination, international transfer, or shared processing of personal data.

2.4 Data Protection Officer ("DPO")

The DPO plays a crucial role in ensuring compliance with the LGPD. However, to date, the ANPD has not established supplementary regulations to provide for this role and its requirements. Furthermore, the LGPD indicates the activities of the DPO in art 41, paragraph 2:

(i) Receiving complaints and inquiries from data subjects, providing explanations and adopting necessary measures;

(ii) Receiving inquiries from the ANPD and adopting necessary measures;

(iii) Advising the entity's employees and contractors regarding necessary practices in regard to personal data protection; and

(iv) Carrying out duties determined by the controller or set forth in supplementary regulations.

Failure to comply with the LGPD and fulfill the responsibilities of the DPO can result in significant fines and penalties for the organization.

2.5 International transfer of personal data

In order for a company to legally carry out the processing of personal data internationally, such process must occur under one the following legal basis:

(i) Directed to countries or international organizations that provide a level of personal data protection that is adequate to the provisions established by the LGPD;

(ii) When the controller offers and proves guarantees of compliance with the principles and the rights of the data subject and the system of data protection provided in the LGPD, in the form of:

(iii) Specific contractual clauses for a given transfer;

(iv) Standard contractual clauses;

(v) Binding corporate rules;

(vi) Regularly issued stamps, certificates and codes of conduct;

(vii) When the transfer is necessary for international legal cooperation between public intelligence, investigative and prosecutorial agencies, in accordance with the instruments of international law;

(viii) When the transfer is necessary to protect the life or physical safety of the data subject or of a third party;

(ix) When the ANPD authorizes the transfer;

(x) When the transfer results in a commitment undertaken through international cooperation;

(xi) When the transfer is necessary for the enforcement of a public policy or legal attribution of public service, which shall be publicized pursuant to item I of the lead sentence of Art. 23 of the LGPD;

(xii) When the data subject has given her/his specific and highlighted consent for the transfer, having been given prior information regarding the international nature of the operation, with this being clearly distinct from other purposes;

(xiii) For compliance with a legal or regulatory obligation of the controller;

(xiv) When necessary for the execution of a contract or preliminary procedures concerning a contract of which the data subject is a party, at the request of the data subject;

(xv) For the regular exercise of rights in judicial, administrative or arbitration procedures.

2.6 Administrative sanctions

The LGPD establishes the following administrative sanctions that can be applied by the ANPD:

(i) Warning, establishing a deadline for adoption of corrective measures;

(ii) Simple fine of up to two percent of a private legal entity's, group's or conglomerate's revenues in brazil, for the previous fiscal year, excluding taxes, up to a maximum total of brl 50 million per infraction;

(iii) Daily fine, subject to the maximum total of brl 50 million;

(iv) Disclosure and publicization of the infraction once it has been duly ascertained and its occurrence has been verified;

(v) Blocking of the personal data to which the infraction refers to until its regularization;

(vi) Deletion of the personal data to which the infraction refers to;

(vii) Partial suspension of the operation of the database concerning the infraction, for a maximum period of six months, extendable for the same period, until the normalization of the processing activity by the controller;

(viii) Suspension of the personal data processing activity concerning the infraction, for a maximum period of six months, extendable for the same period;

(ix) Partial or total prohibition of activities related to data processing.

When calculating the amount of the fine addressed in item (ii) above, the ANPD can consider the total revenues of the company or group of companies:

(i) In the event that the ANPD does not have precise data regarding the specific amounts in revenues from the business activity within which the infraction occurred, defined by ANPD; or

(ii) If the amount in question is submitted in an incomplete form or is not demonstrated unequivocally and reputably.

Moreover, sanctions provided for in items (x), (xi) and (xii) must be applied:

(i) Only after at least one of the sanctions mentioned in items (ii), (iii), (iv), (v) and (vi) have already been applied, due to the same facts; and

(ii) In the event that controllers are subject to other agencies and entities that hold sanctioning powers, after such entities and agencies are heard.

It is important to highlight that these sanctions must only be applied after the carrying out of an administrative procedure that provides the opportunity for a full defense, in a gradual, single, or cumulative manner, in accordance with the particularities of each case and taking into consideration the following parameters and criteria:

(i) Severity and nature of the infractions and of the personal rights affected;

(ii) Good faith of the offender;

(iii) Advantage obtained or intended by the offender;

(iv) Economic condition of the offender;

(v) Recidivism;

(vi) Degree of damage;

(vii) Cooperation of the offender;

(viii) Repeated and verified adoption of internal mechanisms and procedures capable of minimizing the damage, to ensure secure and proper data processing;

(ix) Adoption of good practices and a governance policy;

(x) Timely adoption of corrective measures; and

(xi) Proportionality between the severity of the breach and the intensity of the sanction.

2.7 Measures of compliance

Companies must adopt measures aimed at ensuring compliance with the LGPD, in order to avoid administrative sanctions before the ANPD, other administrative entities, as well as prevent liability before the Judiciary through a comprehensive privacy and data protection program, which should include the mapping of personal data, implementing privacy policies, revision process, drafting of contracts, appointing of a DPO, procedures to attend claims and requirements made by data subjects, adopting administrative and technical information security measures, among other measures. In the event of security incidents that may generate risk, or are relevant to the data subjects, data controllers must communicate the ANPD in three working days. This notice may be updated with additional information, if there is justification, within 20 working days from the date of the preliminary communication.

PUBLIC LAW AND FINANCING

Over the last decades, the Brazilian Government has shifted its public services and infrastructure model to a private investments logic regulated through long-term contracts, positioning the private sector as a key player in national development. Different measures adopted by the government aim to boost total infrastructure investment and attract foreign equity via public concessions, partnerships, and privatizations.

In 2023, the Brazilian Federal Government launched a program to coordinate investments in infrastructure in Brazil, the *Programa de Aceleração do Crescimento* –Novo PAC, regulated by Federal Decree No. 11.632/2023, seeking to increase private investment and make public spending in the infrastructure sector more efficient. According to the Federal Government, the goal is to attract BRL 1.7 trillion by 2026 through projects that will include public and private investments through partnership models in sectors such as highways, ports, and airports.

The model for attracting private investments also includes supporting states and municipalities through technical support for modeling PPP projects. The Federal Government, through the *Banco Nacional de Desenvolvimento Econômico e Social* ("BNDES") and *Caixa Econômica Federal*, is procuring qualified consultants to carry out technical, legal, and economic studies for projects in various sectors. The model paves the way for improving infrastructure projects in regions with little or no track record of PPPs, betting on improving local regulatory structures to guarantee long-term private investments and improvements in the provision of public services to the Brazilian population.

The Federal Government has recently announced other measures aimed at fostering concessions and public-private partnerships. Two of these measures stand out:

(i) Structural measures, which aim to facilitate credits and ensure the clearance of those partnerships by states and municipalities. These measures seek to reduce existing obstacles and inefficiency in the credit market, protect investors in the capital market, improve the operation of institutions that support banking and capital markets, and streamline the process of using guarantees.

(ii) Definition of parameters for calculating continuous expenses derived from the set of partnerships contracted by the Federal Government, states and municipalities, to verify compliance with the net current revenue limit of 5%, as established by art. 28 of Federal Law No. 11,079/04, which must be observed for granting, or not, a guarantee or carrying out a voluntary transfer.

What is more, opportunities within the Brazilian Infrastructure sector encompass not only long-term PPP contracts or public procurement construction or services, but also complex and wide-ranging supplies of goods and services required to execute such contracts, which results in great opportunities for all types of business. Therefore, it is essential to know and understand the potential types of interaction between the government and the private sector, which can be deepened by Demarest's infrastructure and project finance teams.

1 Public Procurement in Brazil

The public procurement process aims at selecting private party agreements with the Government in Brazil. Given that Brazil is a Federation, public procurement can be conducted by the Federal Government, State Governments or Municipal Governments. The main objective is to guarantee the most advantageous proposal to public authorities, generating equal competition for bidders able to provide services and transparency to avoid public or private corruption.

The Federal Constitution defines that all rules and procedures for public bidding must comply with the following guidelines:

(i) Legality
(ii) Impersonality
(iii) Morality
(iv) Publicity
(v) Efficiency

Most of the rules subsequently included in relevant statutes stem directly from such constitutional provisions.

The legal framework for public procurement in Brazil was recently reformed through Law No. 14,133/2021, of April 2021. The main premises of this reform were the incorporation into the statute of judicial decisions and guidelines from the Federal Court of Accounts ("TCU"), encouraging legal certainty and good practices for public and private partners.

International companies that intend to participate in international public procurement in Brazil must meet the requirements of the New Public Procurement Law, depending on the rules provided by the Notice, upon submission of equivalent translated and authenticated documents.

International companies are also entitled to engage in such opportunities in a joint-venture model with Brazilian or other foreign companies. In this case, the consortium member companies are jointly responsible for the project's liabilities, including their risks and obligations.

1.1 Procurement Modalities

There are five modalities of bidding procedures, regulated by Law No. 14,133/2021:

(i) Reverse Auction (*pregão*)
(ii) Competition (*concorrência*)
(iii) Contest (*concurso*)
(iv) Auction (*leilão*)
(v) Competitive dialogue (*diálogo competitivo*)

1.1.1 Reverse Auction

Reverse Auction expedites the mandatory bidding modality for the acquisition of common goods and services. The judgment criteria can be the lowest price or the highest fee discount. It is mandatory for low-value acquisitions, and evaluation standards are usually objective.

1.1.2 Competition

Competition is the procurement modality for contracting special goods and services, and common and special engineering construction and services. The judgment criteria can be the lowest price, best technique or artistic content, technique and price, higher economic return, or greater discount.

1.1.3 Contest

Contest is the bidding modality for choosing a technical, scientific, or artistic work. The judgment criteria will be the best technique or artistic content, and the winner will be awarded or remunerated.

1.1.4 Auction

Auction is the modality of bidding for the disposal of immovable property or movable property that is useless or legally seized to the highest bidder.

1.1.5 Competitive dialogue

Competitive dialogue is the modality for contracting construction, services, and goods in which the Public Administration carries out dialogues with bidders previously selected according to objective criteria in order to develop one or more alternatives capable of meeting their needs. In this modality, bidders must submit a final proposal after the closing dialogue. This modality is restricted to the following conditions: (i) technological or technical innovations; (ii) solutions that are not available on the market; and (iii) the public administration alone cannot determine technical specifications with sufficient precision.

1.1.6 Waiver of procurement proceedings

The Public Procurement Law defines that a public procurement proceeding might be waived in the following cases:[52]

(i) Acquisition of materials, equipment, products, or contracting of services that only an exclusive manufacturer, company, or sales representative can provide.

(ii) Contracting of a professional artist, directly or through an exclusive business manager, if they are recognized by specialized critics or by public opinion.

(iii) Contracting the following specialized technical services of a predominantly intellectual nature with professionals or companies of well-known specialization:

a. technical studies, plans, basic engineering designs, or detailed engineering designs;
b. opinions, expert examinations, and general assessments;
c. technical advice or consulting services and financial or tax audits;
d. inspection, supervision, works or services management;
e. sponsorship or appeals in lawsuits or administrative proceedings;
f. training and development of personnel;
g. works of art restoration and properties of historical value;
h. quality and technological controls, analyses, field and laboratory tests and trials, instrumentation, and monitoring of specific work and environmental parameters, and other engineering services that fall under the provisions of this item;
i. objects that may be or are required to be contracted through registration; and
j. acquisition or lease of real estate that is necessary in the case of facilities and locations.

For cases in which a public procurement process is waived, the public authority must justify its decision and comply with the following requirements for entering into an agreement:

(i) documents that formalize the demand and, as the case may be, a preliminary technical study, risk analysis, and terms of reference;

(ii) estimated expenses;

(iii) legal opinion and expert opinions that certify compliance with the requirements;

(iv) proof of compatibility between the expected budgetary resources and the commitment to be assumed, and proof that the contracted party meets the minimum qualification and eligibility requirements;

(v) legal opinion and expert opinions evidencing compliance with the requirements;

(vi) reasoning for the choice of the contracted party and definition of the price; and

(vii) authorization issued by the competent authority.

In addition, article 75 of the New Procurement Law establishes more than 20 cases of exclusions and exemptions from a public procurement process.

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[52] Law No. 14,133 of April 01, 2021; see also DLA Piper, Global Government Contracting: Americas – Brazil, available at https://www.dlapiper.com/en/insights/topics/global-government-contracting/global-government-contracting---americas.

1.2 Winning Bid Evaluation Criteria:

Public procurement may use the following criteria for deciding the winning bid:

(i) lowest price;
(ii) biggest fee discount;
(iii) best technique or artistic content;
(iv) technique and price;
(v) highest bid the auction; and
(vi) higher economic return.

1.2.1 Lowest price

The “lowest price” criterion is the most common type of procurement bidding, in which the lowest-priced proposal wins the bid.

1.2.2 Biggest fee discount

Considers the least expensive contract for the Administration, meeting the minimum quality parameters defined in the bidding notice. This criterion will have the global price fixed in the bidding notice as a reference, and the discount will be extended to any amendment terms.

1.2.3 Best technique or artistic content

Considers solely the technical or artistic proposals submitted by the bidders, and the bid notice must define the prize or remuneration that will be awarded to the winners. This evaluation criterion may be used for contracting projects of a technical, scientific, or artistic nature.

1.2.4 Technique and price

Considers the highest score obtained from waiving technical and price features of the proposal.

The evaluation by technique and price must be carried out through an analysis of the bidder’s: a) qualification and experience; b) proposal; c) performance in previous contracts.

1.2.5 Highest bid

The highest bid evaluation criterion is used in auctions.

1.2.6 Higher economic return

Used exclusively for contracts that can bring economic advantages to Public Administration, and the remuneration must be fixed at a percentage that will be proportional to the savings obtained through the contract.

1.2.7 Participation of international companies in federal procurement

On February 12, 2020, the Federal Government of Brazil enacted Rule No. 10/2020 ("**IN 10/2020**"), which allows international companies that do not operate in the country to participate in public procurement opportunities. Their participation will now require registering with the Unified Registration System for Suppliers (*Sistema de Cadastramento Unificado de Fornecedores*), "**SICAF**".

IN 10/2020 aims to reduce red tape so that international companies can easily participate in Federal Government procurement, which can result in attracting more foreign investment. Since Brazil is now a World Trade Organization (WTO) member and must comply with its requirements, IN 10/2020 is a necessary step to comply with WTO's Government Procurement Agreement (GPA) requirements. GPA requires all members to establish public procurement rules that provide transparency commitments and access to national public procurement markets among its members.

1.2.8 Penalties:

Under Law No. 14,133/21, art. 156, if a contracted party fails to comply with the provisions under the law or if a contracted party fails to perform the respective agreement, public authorities can apply the following penalties:

(i) warnings;

(ii) fines (amount established in the respective agreement);

(iii) temporary suspension from engaging in procurement opportunities and ban from contracting with the Government; and

(iv) affidavit of unsuitability to bid or sign contracts with the Government (blacklisting).

2 Concessions & public-private partnerships ("PPPs")

Law 8,987/1995 ("Concessions Law") establishes general rules regarding long-term agreements for public services, which may or may not include constructions to improve public facilities. The risks associated with the concession must be borne by the concessionaire, which must recoup its investments from revenues collected from users.

PPPs are means of concession of public services, which can be partially or totally subsidized by the Government. PPPs are regulated by Law 11,079/2004 ("PPPs Law") and involve a prior auction to select the private party.

There are two modalities of concession under the subsidized PPP logic are:

(i) sponsored PPP, in which the private party is partially remunerated by the Administration, together with the fares charged for executing the public service; and

(ii) administrative PPP, in which the object will be direct or indirectly used by the Administration, and therefore totally subsidized by it.

PPPs Law establishes that contracts can additionally provide for requirements and conditions for the authorization, by the public partner, of the transfer of control or the temporary administration of the PPP to the financiers to the project. The goal to ensure financial restructuring while keeping the continuity of the public service.

3 Investments Partnership Program- PPI

The Investments Partnership Program (PPI) was created to foster public-private interactions, for the performance of public infrastructure and other privatization projects.

The PPI considers public projects that (i) are already in the execution stage, or that will be executed through partnership agreements signed by the Federal Public Administration; (ii) will be executed through the execution of public agreements by the State or Municipal Public Administrations; (iii) any other agreements that are a part of the National Privatization Program (Law No. 9,491/1997).

The main purposes of the PPI are the expansion of investment opportunities, job creation, technological and industrial development incentives, according to the Brazilian social and economic goals. Also, the PPI intends to ensure the expansion of public infrastructure, the wide and fair competition among the partnerships and provision of service agreements, stability, and legal certainty, in addition to facilitating the Federal Government's role in regulation, along with the self-sufficiency of public regulatory entities.

The main guidelines of the Program are stability of public policies, legality, quality, efficiency and transparency in the Federal Government's performance, and the guarantee of legal certainty, not only to public agents, but also to the public and private entities involved.

Among the latest projects implemented or under implementation through the PPI are the following:

3.1 Privatization of the Organized Port of Santos

The Brazilian Agency of Waterway Transport (ANTAQ) has conducted the public consultation procedure for privatizing the "Organized Port of Santos—SP."

Such a project intends to improve the quality and operational efficiency of the services provided through investments and private sector participation.

The project is currently pending approval by the control bodies.

In 2023, the Brazilian Federal Government opposed the privatization of the Port of Santos. However, the state of São Paulo is rendering efforts to continue with the privatization by holding regular meetings with the Brazilian Federal Government.

3.2 Leasing of Port areas

ANTAQ is holding public tender bids for the leasing of an area and infrastructure in the following ports: (i) Vila do Conde (both solid and liquid bulk cargo); (ii) Itaqui (combustible liquid bulk); (iii) Mucuripe (both solid and liquid bulk cargo and passenger transit); (iv) Maceió (fuel handling and storage and solid bulk/sugar); (v) Salvador (general cargo storage); (vi) Ilhéus (vegetable solid bulk, mineral solid bulk, general cargo, and the Passenger Terminal); (vii) Rio de Janeiro (liquid bulk cargo); (viii) Santos (solid bulk, liquid and cargo handling and storage); and (ix) Paranaguá (liquid and vegetable bulk); (x) Itaguaí (mineral solid bulk); (xi) Porto Alegre (vegetable solid bulk); (xii) Rio Grande (vegetable solid bulk); (xiii) São Francisco do Sul (general cargo storage); and (xiv) Fortaleza (passenger transit).

3.3 Road and Highways

PROJECT	TYPE OF PROJECT	INVESTMENTS (CAPEX)	STATUS
Rodovias Integradas do Paraná – Lote 3	PPP	BRL 11,114,000,000,00	Project currently awaiting analysis by the TCU
Rodovias Integradas do Paraná – Lote 4	PPP	BRL 8,353,000.000,00	Project currently awaiting analysis by the TCU
Rodovias Integradas do Paraná – Lot 5	PPP	BRL 4,592,000,000,00	Project currently awaiting analysis by the TCU
Rodovias Integradas do Paraná – Lot 6	PPP	BRL 12,925,000,000,00	Project currently awaiting analysis by the TCU
Studies for the concession of 1,600 km of highways	PPP	Not informed	Project currently under study
Rodovias de Santa Catarina	PPP	BRL 30,000,000,000,00	Project currently under study

3.4 Public Lighting network

PROJECT	TYPE OF PROJECT	INVESTMENTS (CAPEX)	STATUS
Joinville (Santa Catarina)	PPP	BRL 192,000,000	Project in the Public Hearing phase
Nova Friburgo (Rio de Janeiro)	PPP	BRL 32,710,600	Project currently under study
Valparaíso de Goiás (GO)	PPP	BRL 18,977,400	Project currently under study
Timon (Maranhão)	PPP	BRL 47,739,900	Project awaiting publication of the Bidding Notice
São Félix do Xingu (PA)	PPP	BRL 13,414,700	Project currently under study
Santo Antônio de Jesus (Bahia)	PPP	BRL 14,582,100	Project currently under study
Ribeirão Preto (São Paulo)	PPP	BRL 111,919,000	Auction expected to take place in the second semester of 2023
Paragominas (Pará)	PPP	BRL 32,364,800	Project currently under study
Olinda (Pernambuco)	PPP	BRL 31,056,000	Auction expected to take place in the second semester of 2023
Nova Iguaçu (Rio de Janeiro)	PPP	BRL 83,284,500	Project currently under study
Maranguape (Ceará)	PPP	BRL 11,432,200	Project awaiting publication of the Bidding Notice
Corumbá (Mato Grosso do Sul)	PPP	BRL 16,234,400	Contract awaiting signature
Pajeú Consortium (Pernambuco)	PPP	BRL 218,753,600	Project in the Public Hearing phase
Conder Consortium (Paraná)	PPP	BRL 25,834,900	Project currently under study
Alto Sertão Consortium (Bahia)	PPP	BRL 21,252,400	Contract expected to be signed in the second half of 2024
Colatina (Espírito Santo)	PPP	BRL 24,309,830	Project awaiting publication of the Bidding Notice
Camaçari (Bahia)	PPP	BRL 63,746,851	Project awaiting publication of the Bidding Notice
Ariquemes (Rondônia)	PPP	BRL 13,756,600	Contract expected to be signed in the second half of 2024
Araçatuba (SP)	PPP	BRL 31,665,400	Project currently under study
Araguari (Minas Gerais)	PPP	BRL 23,666,500	Contract expected to be signed in the second half of 2024

PROJECT	TYPE OF PROJECT	INVESTMENTS (CAPEX)	STATUS
Alagoinhas (Bahia)	PPP	BRL 31,800,000	Auction expected to take place in the second semester of 2023
Foz do Iguaçu (Paraná)	PPP	BRL 48,331,400	Project currently under study
Fazenda Rio Grande (Paraná)	PPP	BRL 13,018,200	Project currently under study
Teixeira de Freitas (Bahia)	PPP	BRL 19,812,000,00	Contract expected to be signed in the second half of 2024

3.5 Railway concessions

PROJECT	INVESTMENTS (CAPEX)	STATUS
Ferroeste EF-277 - *Estrada de Ferro Paraná Oeste*	BRL 14,500,000,000	Project awaiting publication of the Bidding Notice
EF-354 – Integration Railway Centro-Oeste (Center-West) "FICO"	BRL 2,730,000,000	Project in the Public Hearing phase
Ferrovia Centro Atlântica S.A. – FCA	BRL 13,816,400,000,00	Project currently awaiting analysis by the TCU
Ferrogrão Railway EF-170 – MT/PA	BRL 25,200,000,000 8,26	Project currently awaiting analysis by the TCU
FIOL 2 (Caetité/BA – Barreiras/BA)	BRL 3,800,000,000	Project currently under study
FIOL 3 (Barreiras/BA – Figuerópolis/TO)	BRL 6.000.000.0000	Project currently under study
Re-bidding of the Malha Oeste Concession Contract	BRL 18,925,000,000	Project currently awaiting analysis by the TCU
Rumo Malha Sul	BRL 10,300,000,000	Project currently under study
East-West Railway Corridor (BA, GO, MT, TO)	BRL 25,000,000,000,00	Project currently under study

3.6 Ports

PROJECT	TYPE OF PROJECT	INVESTMENTS (CAPEX)	STATUS
Waterway Access Channel to the Ports of Paranaguá and Antonina (Paraná)	PPP	BRL 1,050,000,000,00	Project currently awaiting analysis by the TCU
Organized Port of Itajaí/SC	PPP	BRL 2,800,000,000,00	Project currently under study
Organized Port of Santos	PPP	BRL 896,000,000,00	Project currently under study
Codeba and Organized Ports of Salvador, Aratu-Candeias and Ilhéus	PPP	BRL 800,000,000,00	Project currently under study
SSB01 - General Cargo Handling Terminal at the Port of São Sebastião/SP	PPP	BRL 656,085,000,00	Project currently under study
STS08 - Liquid and Gas Bulk Terminal in the Port of Santos	PPP	BRL 491,000,000,00	Project currently under study
MUC04 - Container Handling and Storage in the Port of Fortaleza/CE	PPP	BRL 360,738,000,00	Project currently under study
PAR03 - Solid Mineral Bulk Port of Paranaguá/PR	PPP	BRL 172,500,000,00	Project currently under study
IQI14 - Fuel Liquid Bulk Terminal at the Port of Itaqui/MA	PPP	BRL 119,920,000,00	Project currently under study
RDJ07 - Offshore Logistics Support Terminal in the Port of Rio de Janeiro/RJ	PPP	BRL 101,741,000,00	Project currently under study

3.7 Airports

PROJECT	TYPE OF PROJECT	INVESTMENTS (CAPEX)	STATUS
Viracopos International Airport in Campinas - Rebidding (São Paulo)	PPP	BRL 4,250,000.000,00	Project currently awaiting analysis by the TCU
Amazonas Regional Airport - Barcelos	PPP	Under studies	Project currently under study
Amazonas Regional Airport - Caruari	PPP	Under studies	Project currently under study
Regional airport in Amazonas - Coari	PPP	Under studies	Project currently under study
Regional airport in Amazonas - Eirunepé	PPP	Under studies	Project currently under study
Regional airport in Amazonas - Labrea	PPP	Under studies	Project currently under study
Regional airport in Amazonas - Maués	PPP	Under studies	Project currently under study
Regional airport in Amazonas - Parintins	PPP	Under studies	Project currently under study
Regional airport in Amazonas - São Gabriel da Cachoeira	PPP	Under studies	Project currently under study

4 Contractual Extension, Early Extension, and Procurement Renewal

Law No. 13,448 was enacted in June 2017, creating new rules and guidelines for the extension or termination of partnership contracts in highway, railroad, and airport sectors. The rules are applicable to projects qualified for this purpose according to the Investments Partnership Program (PPI).

The law provides three contract instruments: (i) contractual extension; (ii) early extension; and (iii) procurement renewal.

The contractual extension and early extension must consider the following rules:

(i) Contractual, in cases of end of contractual term, provided that it is formally expressed within 24 months before the end of the original contractual term;

(ii) Early/In advance, in which the final term of the contract will be altered and can include new investments not previously set out in the original contract; such can only be used in cases whose contractual execution is between 50-90% of the original term;

a. for highway concessions, at least 80% of the due mandatory construction works must have been executed between the initial concession term and the date of the extension request;

b. for railroad concessions, it is necessary to prove compliance with security and production goals defined in the contract for three years within a five-year interval or compliance with security goals defined in the contract within the last five years, both cases counting from the date of the extension's request.

In all cases, the original contract or invitation to bid must have a provision for extension. The extension must be for a shorter or equal period to what is set out in such documents. Any party can request the term extension. However, the contract must not have been extended before.

The extensions must be submitted to a public call for comments and opened to contributions for at least 45 days. The parties must sign a contractual amendment with new terms and a new investment schedule. The amendment must be submitted to the TCU, along with the studies and reports regarding the case.

The contract renewal provides for an amicable extinction of the concession agreements in place in cases where the concessionaire is unable to comply with contractual or financial obligations originally undertaken. The parties must sign a contractual amendment formalizing the details of the agreement.

In order to allow the contract renewal process, the original concessionaire must submit: (i) the justification and technical elements that demonstrate the necessity and grounds for the process, with proposals for the solution of the difficulties faced; (ii) waiver of the term for correction of failures and infractions, in case of forfeiture effects; (iii) formal statement on the intention to embrace the re-bid process irrevocably and irreversibly, in accordance with the law; (iv) necessary information for the re-bid process, especially the statements related to investments in reversible goods linked to the business and financing instruments used in the contract.

The original concessionaire will be entitled to indemnification, to be defined through arbitration or other private dispute resolution instruments, and eventually paid by the new concessionaire. On the other hand, the Government will be responsible for the indemnification to the lessors of the original concessionaire.

On May 19, 2023, the first contract renewal auction of Brazil was held at the B3 headquarters in São Paulo – also the first auction of infrastructure assets of the current Federal Government – involving the concession of the São Gonçalo do Amarante Airport (ASGA), located in Rio Grande do Norte. The auction took place after the previous operator voluntarily gave back the asset to the Government, in 2020.

5 State-owned Companies

Law No. 13,303, published in June 2016, introduced rules regarding the legal status of state-owned companies, mixed corporations, and their subsidiaries within the Federal, State, and Municipal scopes.

Upon regulation of the administration of such companies, the Law intends to promote the efficiency, establish governing and transparency mechanisms, and foster legal certainty and the actions of the regulatory public entities. Accordingly, the Law establishes that state-owned companies must make public, annually, its goals regarding public policies, as well as financial data that expresses the costs of such activities.

Furthermore, the Law establishes specific rules for all kinds of agreements of such institutions, for their bidding procedures and for their contracts. In addition, it provides for the companies' obligation to act in accordance with their social function, related to the fulfillment of collective interests aimed at the economic well-being and the allocation of resources generated by the company to society in a socially efficient way.

Another goal of this Law is to make the criteria for the appointment of its manager stricter, aiming for a separation from politics. Thus, it is established that appointments for management positions can only include citizens whose reputations are unblemished, who hold significant knowledge of the company's area of operation, such as academic education consistent with the position they are appointed to, and who must not be ineligible. In addition, they must meet one of the following criteria:

(i) ten years of professional experience in the public or private sector, in the company's area of operation;

(ii) four years of experience as director of a company with a corporate purpose similar to the state-owned company, a position of trust in the public sector, or as a professor/researcher in the areas in which the company operates;

(iii) four years as an independent professional in activity related to the area of operation of the state-owned company.

The Board of Directors will be composed of up to ten members, of which 25% must be independent, and must not hold any previous relation to the state-owned company, or with holders of public offices in the Executive and Legislative Branches.

6 Project Financing

BNDES has played a key role in project financing transactions in Brazil throughout the last decades and has been supported by two federal state-owned banks (Banco do Brasil and Caixa Econômica Federal) and other local state-owned banks (such as Banco do Nordeste and Banco da Amazônia). Other state-owned lenders that are usually sought by project owners in Brazil include the investment fund of the *Fundo de Garantia por Tempo de Serviço* - FI-FGTS (in English - Guarantee Fund for Length of Service).

In recent years, mainly due to the aftermath of the *Lava-Jato* Operation investigation, there has been a retraction of BNDES funds, and companies started to seek other forms of private financing that became available, such as syndicated financings granted by commercial banks and the issuance of incentivized debentures (under the terms of Law No. 12,431/2011).On April 25, 2023, the Executive Branch published Decree No. 11,498 ("New Decree"), amending Decree No. 8,874, of October 11, 2016, which regulates fundraising activity, with tax incentives, through securities issued as per Law No. 12,431, of June 24, 2011.

The New Decree includes the following sectors in the priority category:

(i) Education
(ii) Healthcare
(iii) Public security and prison system
(iv) Urban parks and conservation facilities
(v) Cultural and sports facilities
(vi) Social housing and urban renewal ("New Sectors").

These new sectors refer to the ESG agenda (especially to the environmental and social aspects) and join the areas of logistics and transport, urban mobility, energy, telecommunications, broadcasting, basic sanitation, and irrigation, which were already listed as priority sectors.

REAL ESTATE

1 Introduction

Real estate regulation in Brazil is heavily rooted in the registry system introduced by Federal Law 6,015/1973. The most common matters are primarily governed by the Brazilian Civil Code and by Federal Laws No. 6,015/1973 ("Public Records Law"); 14,382/2022 ("Electronic System of Public Records Law"); 9,514/1997 ("Fiduciary Lien Law"); 14,711/2023 ("Legal Framework for Guarantees Law"); 13,465/2017 ("Land Regularization Law"); 8,245/1991 ("Urban Lease Law"); 4,591/64 and 6,766/79 (both the "Real Estate Development"); 5,709/1971 and Decree No. 74,965/1974 (both the "Rural Real Estate Legislation"); as well as Federal Decree No. 59,566/1966 ("Rural Leases and Partnership Law") and Federal Law No. 4,504/1964 ("Rural Land Act"), as amended. A great deal of different and innovative laws and administrative rules relating to real estate transactions, rural and urban properties, that were enacted over the last years, brought a new trend in real estate transactions, with new forms of financing and the tools for a virtual environment at all steps of the transactions, including processes before the governmental agencies involved, Notary Officers and Real Estate Registry Officers and all others public records. Brazil has state regulations on notarial and conveyancing matters and municipal ordinances on land use and occupancy regulations, as well as urban property taxation.

Rights over real estate have two primary stems, namely:

(i) possession: a fact consisting of the occupation of a real estate by an individual or legal entity out of which certain rights and obligations derive; (*e.g.,* from a mere detention to a *in rem* possession right or a possession that represents ownership itself); and

(ii) ownership: a right of proprietorship over real estate, mandatorily constituted by title duly registered before the competent Real Estate Registry Office.

Real Estate Registry Offices are, in summary, responsible for keeping records of all title transfers, liens, encumbrances, physical changes and possession aspects of real estates. In some cases, the Real Estate Registry Office is responsible for keeping records of pledges and estate regimes in marriage and marital stable union.

In summary, a notary public is responsible for drafting agreements that are required by law to be entered into by a public instrument, notarizing signatures, attesting as to the authenticity of copies of documents, certifying facts and information, including from the web, among others. Recently enacted federal and state laws permit lawyers to attest to the authenticity of certain documents in specific cases, for specific purposes.

The types of *in rem* rights over real estate in Brazil are: (i) ownership; (ii) surface; (iii)easement/ right-of-way; (iv) usufruct; (v) use; (vi) habitation; (vii) committed buyers' right to acquisition; (viii) assignment of *in rem* right of use; (ix) assignment of special use for housing purposes; and (x) right of floor slab ("Direito de Laje", which roughly translates to the right of the floor slab, and allows for the obtaining of a distinct title for construction on top of or under another building, despite sitting on the same land); and (xi) the rights arising from the provisional imposition of possession, when granted to the Federal Government, the states, the Federal District, the municipalities or their delegated entities and the respective assignment and promise of assignment. Certain rights to guarantee are also *in rem* rights: such as pledge, mortgage, fiduciary lien and antichresis.

The classification of a property depends on its use. Therefore, the location of the property is not a decisive factor (i.e., property located in an urban area with municipal zoning regulations will be considered rural property if used for rural purposes). There are two main types of property: (i) rural property; and (ii) urban property.

Urban properties are primarily classified as residential, commercial, and industrial. The ownership of urban property may be classified as fractional ownership, joint ownership in a condominium building or a co-ownership in an ordinary condominium.

All regulations applicable to property records, rules relating to the property boundary description, its registry before the relevant authorities and governmental agencies, restrictions, property tax collection, and other requirements depend on the classification of the property, whether the real property is urban or rural.

Different bills are under discussion in the Brazilian National Congress and amendments in different aspects of different laws related to real estate transactions are expected, not only to urban land, real estate developments and financing, but also to rural land, investment funds and publicly owned real properties. In this sense, the Federal Government and several different State Governments have enacted interesting Laws that reveal equally interesting initiatives concerning the sale of public real estate properties to private entities.

2 Recording of Acts and Information before the Competent Real Estate Registry Office

Federal Law 6,015/1973 was enacted to create the "public records", which serve the purpose of ensuring that all acts and information concerning real property are available to public access and rights opposable to third parties, and in accordance with the sequential order of the events. This legislation assigned special emphasis on the recording of acts and information related to real estate and their titleholders.

With respect to real properties, the primary document created by Federal Law 6,015/1973 is the enrollment certificate, or the property record file, which contains a description of the real estate's area, its boundaries, main characteristics and registered owner, valid and former liens, easements, environmental data, among others. Recordation of all acts relevant to that real estate is made on the enrollment certificate[53]. With regard to rural land, there are specific rules related to the description of a property's boundaries and the confirmation by the federal authorities that such description does not overlap another.

Certain acts have their recordation carried out before the enrollment certificate as a requisite of validity, such as acquisition, liens, and encumbrances (*e.g.,* usufruct). This is to say that the parties to a given transaction can enter into and execute relevant documents, deeds or carry out necessary acts, but unless and until recordation is completed before the Competent Real Estate Registry Office, certain effects will not be achieved. Below are examples:

(i) in an acquisition, the acquirer is not fully vested in the title of ownership to the real estate, and the seller remains as owner for all intents and purposes;

(ii) in a collateral, the creditor will not be able to foreclose on the real estate, in the event of payment default; and

(iii) in a usufruct, the use right will not be upheld before a good-faith third party who acquires the real estate.

Other acts do not have recordation as a validity requirement, but a party holding interest in real estate can procure recordation to make such interest known to the public in general, as a way of protecting it. This is the case, for instance, of:

(i) recordation of urban lease agreements, which assure tenant's right of first refusal and the lease validity clause in the event of a sale. This means that if the lease is registered, an acquirer: (a) will be precluded from purchasing the real estate unless the tenant does not exercise its right of first refusal; and/or (b) will have to maintain the lease in force until the expiration of its term.

(ii) purchase rights (commitment of purchase and sale and purchase option), which will bar the sale of the real estate to a third party without the purchaser's consent. Also, the purchase rights will be acknowledgeable as an *in rem* right upon the recordation of the agreement, including for tax purposes.

The registration of any title acts is public. One may obtain information from this procedure personally in the registration division or via special online service called the "Center of Electronic Services in the area of Real Estate Registration". Information about the registration is available after payment of a duty.

The unified electronic real estate registry was established in Brazil. However, not all information about real properties in Brazil are available online. For more detailed information, refer directly to the competent registration division.

[53] The Law governing Public Records dictates that recordation of relevant acts be made through registration (those which constitute the *in rem* right) or annotation (for all other acts or facts related to the property or its owner).

The electronic registry contains, where available, information about real estate properties registered since 1976, and the corresponding statement history can be obtained either online or in physical document form along with an apostille.

3 Acquisition of Title over Real Estate

According to the Brazilian Civil Code, real estate can be acquired by:

(i) bilateral instrument;
(ii) adverse possession (title acquisition by limitation - "*usucapião*");
(iii) accession; and
(iv) inheritance rights.

As explained in item 2 above, the documents and facts listed need to undergo registration on the real estate's enrollment certificate before the competent Real Estate Registry Office, so that the title to vest in their beneficiaries.

3.1 Bilateral Instrument

Real Estate acquisition through a bilateral instrument is operated either by a public deed or a corporate act. In some cases, a bilateral instrument operated by a private agreement is applicable.

In Brazil, a public deed is an agreement drawn by and executed before a public notary whereby a party transfers to another a certain right over a real property (*e.g.,* ownership, usufruct, or any collateral), whether by purchase and sale, donation, property exchange, payment in-kind, mortgage or any other type of agreement.

The act of drawing public deeds is subject to collection, normally by the acquirer, of the applicable transfer tax, "ITBI" (in case of onerous ownership transfer), and "ITCMD" (in case of ownership transfer by a donation or inheritance transfer[54]), in addition to the Notary Public's costs. Other costs related to the deed registration on the property record files will be due.

If the parties agree on an installed payment, such parties can execute a private or public instrument (commitment) governing acquisition contingent upon payment in full of installments. The structure whereby the commitment is typically entered into comprises a down payment from the buyer, followed by due diligence over the real estate, the seller, and prior owners. Positive due diligence findings work as a condition precedent to the deal closing (ownership transfer), which, if achieved, oblige the buyer to pay the remainder of the purchase price upon drawing and execution of the deed.

[54] Please refer to items 7.3 and 7.4 below.

The commitment of purchase and sale may be subject to other conditions precedent, which, like the due diligence, subject the effectiveness of the purchase to their achievement. Most common conditions precedent require the seller to make certain rectifications to the real estate records, *e.g.,* cancelation of liens, annotation of constructions, but can also comprise other measures, such as confirmation of the viability of the intended use of the property, environmental investigations or building entitlements and permits, among others.

Acquisition operated through a corporate act occurs in cases when a partner contributes to an entity's corporate capital real estate in exchange for stock underwritten. In this case, the relevant corporate act, normally a bylaw, serves as title of acquisition. Unless the social purpose of the acquirer entity is real estate activities, ITBI taxes are not due by the entity.

Irrespective of whether the acquisition is object to a public deed or a corporate act, the parties will be required to present certain mandatory documents, either to the Notary Public or to the Real Estate Registry Officer. Such documents reveal the seller's financial liabilities and can impair or ultimately bar the transfer. The most common cases where this situation occurs are:

(i) judicial attachments: a Judicial authorization is required for disposal of the real estate;
(ii) federal tax outstanding liabilities: the seller may be required to present information to allow the Notary Public / Real Estate Registry Officer to assess whether the disposal's ultimate intention is to evade taxes; and
(iii) labor debts: require the acquirer to publicly acknowledge that the liabilities can cause the transaction to be undone.

3.2 Adverse Possession ("*Usucapião*")

Adverse possession is a form of acquisition of real estate through the exercise of possession rights by an individual over an extended period, provided that certain legal requirements are met. This institution awards a good-faith possessor of the real estate with the ownership title, thus granting stability and legal safety to acts perpetrated over said real estate.

The interested party possessor of the real estate is required to produce evidence, either judicially or extrajudicially, of the possession, as well as compliance with other conditions. After a judicial or extrajudicial proceeding in which the evidence is accepted, a registrable property title will be issued in the name of such interested party.

Typically, good-faith possessors are found in the countryside of Brazil, occupying either parts of bigger lands, where the owners may have difficulty controlling informal occupation, or in land previously held under public domain. It is somewhat common for good-faith possessors to enter into agreements with investors of energy projects, for instance.

3.3 Accession

Pursuant to the Brazilian legislation, real estate acquisition by accession is the incorporation onto a land of an asset (either man-made or deriving of natural occurrence), which attaches to the land and entitles its owner to acquire such asset by accession. Under certain conditions, accessions also trigger indemnification obligation by the landowner.

The most common occurrence of this institute is the construction of a building on a third party's land by an investor.

Upon completion of the building, the individual/entity in charge of it will procure the issuance of the occupancy certificate ("*Habite-se*") and the clearance certificate of social-security taxes ("INSS") specific to the construction. These documents will allow registration of the building on the land's enrollment certificate, which will operate acquisition thereof by the landowner.

A party that constructs a building in good faith is entitled to obtain indemnification from the landowner, as consideration for said owner having acquired the building by accession. On the other hand, if the building's value is found to be substantially higher than the land´s value, the party who carried out its construction can procure the purchase of the land upon payment of indemnification to the landowner as consideration for the acquisition.

3.4 Inheritance Rights and Corporate Succession

Transfer of real estate through inheritance rights occurs upon the passing of its owner, followed by a judicial or extrajudicial proceeding in which the heirs claim their rights over the deceased's estate, including any real estate owned. This proceeding will cause a title to be issued, which, once registered, will operate the real estate transfer to the heir's estate. As a condition for registration, the heir will be subject to the payment of the corresponding ITCMD[55].

While title issuance and registration are pending, it is possible to enter into agreements over the real estate, contingent upon the effective transfer.

Likewise, in a corporate transaction that results in the winding-up of an entity holding real estate, the surviving entity will be vested in the respective title of ownership. This title will be materialized in the corporate documents whereby the transaction was operated, and which will need to undergo registration before the competent Real Estate Registry Office.

Unlike with the transfer of inheritance, corporate succession is not subject to ITCMD, but instead to ITBI, to be assessed and collected upon title registration.

[55] Please see item 7.4 below.

4 Collaterals over Real Estate

A collateral over a real estate grants the creditor the right to foreclose on the real estate if the debtor defaults any of its financial obligations, provided that the creditor has the asset sold to keep its proceeds.

Mortgages and fiduciary sales are the most commonly used real estate-backed collaterals in secured transactions. These collaterals serve as basis to securitization operations.

4.1 Mortgage

A mortgage is a collateral that encumbers the real estate owned by debtor borrower or a third party. The lender is not vested in neither possession nor ownership rights over the real estate.

Normally, a mortgage secures the loan's main amount and ancillary costs, such as interest, taxes, late payment charges and expenses, and, in some cases, preset losses and damages, in which the borrower may incur in the event of failure to comply with the terms of the underlying credit agreement.

A mortgage is created through a public deed registered before the competent Real Estate Registry Office, or by a private instrument, most commonly used in financial operations.

Registration of instrument to the mortgage before the Real Estate Registry Office is mandatory and essential for the creation of the collateral. Only after registration, the mortgage will be enforceable in avoiding any other creditors that the borrower may have from tapping the real estate in their recoveries.

Considering that the borrower remains in ownership and possession of the mortgaged real estate, it can freely sell it to third parties, in which case the collateral survives the sale. This ultimately means that a third-party acquirer will be exposed to the risk of foreclosure if the borrower defaults its obligations and triggers accelerated maturity of the debt, which is usually a consequence of payment default in mortgage agreements.

It is worth noting that one real estate may be encumbered by more than one mortgage, to more than one creditor. In this case, in a scenario of default, the mortgages are enforced in the order in which they were created (i.e., as registered in the respective real estate enrollment).

Before the enaction of the Legal Framework for Guarantees Law, the execution of mortgage was only possible by judicial means. However, through the new provisions introduced by the Legal Framework for Guarantees Law, it is now possible to execute mortgage through extrajudicial means. This innovation does not depend on a contractual provision and is applicable to all mortgage cases, except for agricultural financing.

In any case, in order to use the mortgaged real estate to resolve its credit, a lender must follow certain steps, namely:

(i) file a judicial enforcement lawsuit before the competent Court or an administrative proceeding before the competent Real Estate Registry Office, seeking acknowledgment of the debt and its amount;

(ii) if the lender prevails, it is awarded foreclosure on the real estate, which means that, in a judicial lawsuit, the real property will be seized and, in an administrative proceeding, the Real Estate Registry Office will provide the annotation of the default before the enrollment certificate of the real property – both cases allow the initiation of the execution through a public auction;

(iii) once the execution is initiated, the real estate must be sold in a public auction (the lender is precluded from keeping the real estate as payment in-kind, subject to the exception below), in this sense, to register the real property in its name, the winner of the auction must bear (a) the letter of auction (*carta de arrematação*) to be issued in the case file, in the lawsuit; and (b) the notary act to be drafted in the Notary Office, in the administrative proceeding;

(iv) the proceeds from the sale will be used to pay judicial or administrative costs and the debt; and

(v) if the proceeds from the sale are insufficient, the lender will still have an appeal against the borrower.

(vi) in the event that the bid offered in the first public auction is not equal to or greater than the value of the property established in the contract for excussion purposes, or the valuation carried out by the public body competent to calculate the tax on *inter vivos* transfer, whichever is larger, the second auction will be held in the following 15 days.

(vii) in the second auction, the highest bid offered will be accepted, as long as it is equal to or greater than the full value of the debt guaranteed by the mortgage, expenses, including notary fees, insurance premiums, legal charges, taxes, and condominiums contributions, and, if there is no bid that reaches this value, the mortgage creditor may, at its sole discretion, accept a bid that corresponds to at least half of the appraised value of the property.

(viii) before the asset is sold at auction, the debtor or, if applicable, the provider of the mortgage guarantee is assured the right to redeem the execution, upon payment of the entire debt, the value of which will be increased by the expenses relating to the collection and auction procedures, authorizing the Real Estate Registry Office to receive and transfer the corresponding amounts to the creditor within three days.

(ix) if the bid for auction of the property exceeds the value of the total debt, plus the expenses provided for above, the excess amount will be delivered to the debtor within 15 days, counting from the date of payment of the auction price.

(x) in the event that the bid offered in the second auction is not equal to or greater than the minimum reference established above for auction, the creditor will have the option of: (i) take ownership of the property in payment of the debt, at any time, for the value corresponding to the duly updated minimum reference, upon request to the competent Real Estate Registry Office, who will register the records of the negative auctions with the notation of the ownership transfer; (ii) carry out, within a period of up to 180 days, counting from the last auction, the direct sale of the property to a third party, for a value not lower than the minimum reference, excluding a new auction, in which case the mortgage creditor will remain invested with an irrevocable mandate to represent the mortgage guarantor, with powers to transfer domain, right, possession and action, manifest the seller's responsibility for the eviction and give the acquirer possession of the real property.

Another significant change introduced by the Legal Framework for Guarantees Law is the possibility of renegotiating the mortgage, which allows a new debt to be guaranteed, with the return of the amount already written off from the previous debt by the creditor to the debtor. Thus, the creditor returns part of the amount already paid to the debtor, up to the limit of the original claim. This hypothesis can only be used in a transaction to open an existing credit limit, favoring the use of the residual credit granted over the use of surplus collateral in contracts in general.

The advantage of this innovation is that the transaction can be carried out by means of a simple contractual amendment, regardless of the prior cancellation of the original guarantee and the creation of a new one. The new credit is subordinate in priority to the main credit and the new debt must be paid within the same period as the original debt, although it may have different interest rates.

In a judicial reorganization scenario, real estate encumbered by a mortgage can be used in the recovery plan to pay creditors other than the collateral's beneficiaries. In the event that the borrower undergoes bankruptcy, a lender beneficiary to the mortgage will prefer certain creditors (such as unsecured ones) but will fall behind other ones (such as labor and tax).

4.2 Fiduciary Lien over Real Estate

A fiduciary lien over real estate (*"Alienação Fiduciária em Garantia")* is a transaction in which a borrower holds possession and the right to reacquire the property ownership by paying the debt, transferring the ownership of the property on a fiduciary basis to the lender. The constitution of a fiduciary lien causes the real estate property title to be shared between borrower and lender, in an inseparable manner, creating certain limitations to the exercise of property and possession rights, such as leasing, sale, encumbering and others.

Fiduciary lien creates a condition where default in payment of the debt will revert the title of the real estate to the lender ("property consolidation"), who will have the obligation to auction the real estate in order to collect funds for the payment of the debt, subject to the exception below. This means that, unlike the mortgage, the foreclosure of the collateral triggers the applicable transfer taxes[56], taking into consideration that in the beginning of the foreclosure the ownership entitled to creditor on a fiduciary basis will turn into full ownership.

Normally, a fiduciary lien secures the debt's main amount and ancillary costs, such as interests, taxes, late payment charges and expenses, and, in some cases, preset losses and damages. In case of the latter, the borrower can incur in the event of failure to comply with the terms of the underlying credit agreement.

A fiduciary lien is created through a private or public instrument (some state laws provide for the obligation of providing a public instrument and this particular aspect is the subject of a great discussion), and its effectiveness depends on its registration before the relevant Real Estate Registry Office. Therefore, only after being registered, will the fiduciary lien be enforceable, including to prevent the property from being affected by other creditors.

The Borrower will not be able to sell the property. Also, leases require the borrower's express consent to be enforceable against them if longer than one year.

The foreclosure must follow certain steps, as follows:

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[56] Please see item 7.3.

(i) upon default, the lender will notify the borrower of the default for payment within 15 days following receipt of the notice;

(ii) should the borrower's default be confirmed, the lender will have to collect the property ownership transfer tax and carry out the registration of the property consolidation on his behalf;

(iii) procure an extrajudicial auction sale of the property (the lender is precluded, at this point, from keeping the real estate as payment in-kind);

(iv) the property must be auctioned for the minimum amount, whichever is higher, between: (a) the amount stated by the parties in the corresponding instrument; or (b) the amount assessed by the municipality for purposes of calculating the transfer taxes;

(v) if the proceeds of the auction are not sufficient to fully pay the amount of the debt, expenses and charges, the debtor will still be obliged to pay the remaining balance, which may be charged through an execution action and, if applicable, foreclosures of other debt guarantees, except in the event of extinguishment of the remaining debt balance provided for below;

(vi) if, on the other hand, the minimum amount mentioned above is not achieved, a second auction will take place for an amount equivalent, at least, to the sum of the debt, auction expenses, insurance premiums, legal charges, including taxes and common area expenses;

(vii) if there is no bid that meets the minimum amount mentioned above in the second auction, the fiduciary creditor may, at its sole discretion, accept a bid that corresponds to at least half of the appraised value of the asset or consider the debit extinguished, with reciprocal discharge, in which case the creditor will be vested with free availability;

(viii) the proceeds from the sale will be used to pay the auction costs and the debt, provided that any amount remaining is returned to the borrower[57]; and

(ix) it is guaranteed to the fiduciary, assignees or successors, including the purchaser of the property through the public auction, the repossession of the property, which will be granted outright and, once the property has been auctioned or has been definitively consolidated in the event of a frustrated auction, legal actions aimed at disputes over contractual stipulations or procedural requirements for collection and auction, except for the requirement to notify the debtor and, if applicable, of the third party trustor, will not prevent the repossession of the real property and will be resolved in damages.

In a judicial reorganization or bankruptcy proceeding, the encumbered real estate will not be reachable by other creditors that the borrower may have.

It is interesting to highlight that with respect to the restrictions of farmland acquisition by foreign individuals, in some cases, recently enacted Federal Law No. 13,986 of April 07, 2020, authorizes foreign individuals to receive farmland as collateral by a fiduciary lien. This law recognizes that the foreign individual becomes the owner for the purpose of debt liquidation.

Regarding the new features introduced by the Legal Framework for Guarantees Law, we highlight the possibility of registering the so-called "supervening fiduciary lien", which are subsequent liens of the same property, without cancelling the previous ones. Despite the possibility of its registration right after its execution, the subsequent lien will only be effective when the previous one has been canceled. If the previous fiduciary sale is foreclosed, the creditor of the subsequent fiduciary sale will be subrogated to the surplus (if any) of the price obtained from the sale of the property by the previous creditor.

[57] The fiduciary sale was initially created as a means to secure real estate acquisition. Over time, its application was expanded to comprise more complex transactions.

Similarly to the mortgage, the Legal Framework for Guarantees Law also allows the possibility of renegotiating the fiduciary lien, which allows a new debt to be guaranteed, with the return of the amount already written off from the previous debt by the creditor to the debtor. Thus, the creditor returns part of the amount already paid to the debtor, up to the limit of the original claim. This hypothesis can only be used in an operation to open an existing credit limit, favoring the use of the residual credit granted over the use of surplus collateral in contracts in general.

However, it is important to note some differences between the renegotiation of a fiduciary lien and the mortgage: (i) the renegotiation of the fiduciary lien can only be carried out with financial institutions or simple credit companies, while that of the mortgage is free to be carried out with any creditor; (ii) the credits secured by the same fiduciary sale can only be assigned together, to the same creditor, while there is no such limitation on the assignment of the mortgage; and (iii) the existence of a supervening fiduciary sale prevents the renegotiation of another preceding fiduciary sale, while the existence of supervening encumbrances does not prevent the renegotiation of a previous mortgage, but the new debt will be subject, in priority, to the encumbrances then existing on the property.

Another advantage of this innovation is that the transaction can be carried out by means of a simple contractual amendment, regardless of the prior cancellation of the original guarantee and the creation of a new guarantee. The new credit is subordinate in priority to the main credit and the new debt must be paid within the same period as the original debt, although it may have different interest rates.

Furthermore, in the case of fiduciary sale of multiple properties and/or properties in multiple counties, the Legal Framework for Guarantees Law facilitates the judicial enforcement of the secured debt, so that, since each property is not linked to a portion of the debt, the creditor can simultaneously seize all the properties, auctioning them at the same time, or successively, until the debt is paid, even if the properties are located in different counties.

Finally, the Legal Framework for Guarantees Law introduces the concept of the collateral agent, which must basically manage the assets and foreclose on the collateral, if necessary, and must, after receiving the value of the sale of the asset pledged as collateral, make the payment to the creditors within 10business days. Thus, the collateral agent is useful in cases where (i) there is more than one creditor or there are multiple debts, because the agent can execute the collateral directly; or (ii) there is a foreign creditor, because in this case the agent can be a local representative, able to manage and execute the collateral without the need for the creditor to intervene or formalize a power of attorney.

5 Acquisition and Lease of Rural Real Properties by Foreigners

5.1 Applicable Restrictions

Acquisition and lease of rural real estate by foreign individuals or foreign legal entities are governed by the Rural Real Estate Legislation, which is centered on two main legal issues:

(i) A general limitation on the acquisition and lease of rural real estates by any foreign individual or legal entity; and

(ii) The applicability of such restrictions for a Brazilian legal entity that has the majority of its capital held, at any title, by a foreign individual or legal entity ("Brazilian Entities of Foreign Capital"), once it is considered as a foreign entity.

Such restrictions are not applicable to urban properties. The ongoing discussions regarding the restrictions before Brazilian Courts reached the Brazilian Superior Court, where a ruling is expected, but has already been delayed a few times. It is possible that the discussion will end and, consequently, Brazilian Entities of Foreign Capital will not be considered as foreign entities. Therefore, such restrictions can be lifted, or not, depending on the decision rendered.

5.2 Need for Government's Approval

Due to the applicable restrictions, authorization of the National Institute of Colonization and Agrarian Reform ("INCRA") is required for the acquisition or lease of rural land by a foreign individual, foreign legal entity or Brazilian Entities of Foreign Capital ("Foreigners") and it is contingent on a prior request/submission of an exploitation project (describing the intended use of such property) to INCRA. Therefore, the issuance of INCRA's prior authorization is a legal requirement to proceed with such transaction. For rural lands located on border areas, or on any area considered indispensable to National Security, besides the INCRA's approval, authorization from the National Security Council ("NSC") is also required to proceed with the transaction and, in this case, the NSC must also approve the exploitation project, whose approval proceeding must be initially submitted to INCRA.

This requirement to INCRA (and to NSC, when regarding areas secured by National Security) is extensive to corporate transactions resulting in the direct real estate title transfer of rural land, or in corporate transactions/reorganizations that result in transfer of shares or quotas in an entity holding rural land (consequently, the indirect real estate acquisition). However, when the authorization concerns the direct or indirect transfer of rural land located on border areas, the respective authorization process is initiated directly before the NSC.

5.3 Consequences of Not Having the Approval

The acquisition and lease of farmland by Foreigners without prior authorization can be considered null and void, and its registration on the real property ownership record file, before the competent Real Estate Registry Office, can be canceled or refused, as applicable. The analysis of the validity of such acquisition or lease depends on the time when the property was acquired, its use, its location, and the size of its area, among other aspects. Considering that not only the law on farmland acquisition or lease by Foreigners, but also the Federal Constitution, and the official understanding from the Federal authorities that are binding to the governmental agencies, changed a few times in the past 30 years, such analysis must be made on each case, upon the presentation of the proper documentation.

This legal landscape establishes that Foreigners can only acquire rural real estate upon governmental authorization to be granted in view of a project to develop and implement agricultural, industrial and/or colonization projects.

The Notaries Public, Real Estate Registry Officers and INCRA oversee application of the restrictions, not to mention that any individual or entity that holds rights over rural property Real Estate Registry Officers is obliged, under the law, to annually update the property registry before INCRA. This means that the control on farmland acquisition by foreigners can be made: (i) by the Notaries Public, upon drafting of the relevant deed; (ii) by the Real Estate Registry Officers, upon registration of the ownership transfer deed and obligation to submit a notification to INCRA every three months informing the acquisitions by Foreigners; and (iii) by INCRA, upon registration of the transaction, in the event that Notaries Public and Real Estate Registry Officers fail to bar a prescribed transaction, or upon the annual update of the property's registry. The review made by any of these agents will initiate administrative procedures before INCRA, and judicial lawsuits, if necessary, that might lead to the annulment of a transaction that was subject to the restrictions, without regard for the restrictions currently in force. As stated previously, ongoing discussions related to restrictions before Brazilian Courts have reached the Brazilian Superior Court, where a ruling is expected. It is possible that the discussion will end and, consequently, Brazilian Entities of Foreign Capital will not be considered as a foreign entity and, therefore, such restrictions may, or may not, be lifted, depending on the decision rendered.

5.4 Transactions Not Subject to Restrictions

The Brazilian law expressly restricts the acquisition and the lease of rural land by Foreigners, which does not mean that Foreigners cannot occupy or have rights over rural lands is Brazil, since there are other rights that are not subject to these restrictions.

The law expressly mentions that the following rights are not subject to the restrictions: (i) the constitution of an *in-rem* collateral (ii) the transmission of fiduciary ownership of a rural property to Foreigners, (iii) cases of receipt of property in settlement of transactions, by means of execution of an *in-rem* collateral, payment in kind or any other form.

Moreover, Foreigners can be granted access to rural lands by entering into instruments that are not subject to restrictions, such as the surface right, the usufruct, the free lease, or the assignment of use. Although none of these titles transfer the ownership of the rural land, it can guarantee Foreigners access to the land for long periods of time.

Furthermore, a new category of investment funds, recently established in the agribusiness sector, is allowed to acquire, sell and lease rural lands. It is the "Investment Fund in Agro-Industrial Chains" or the "Agribusiness Investment Fund" (in Portuguese, *Fundo de Investimento nas Cadeias Produtivas Agroindustriais*), created by Law No. 14,130/2021, amended by Law No. 14,421/2022, and currently ruled by Law No. 8,668/1993 ("FIAGRO").

The types of assets that may be included in FIAGRO's portfolio are innovative, all regarding to agribusiness sectors, which can be associated with rural real properties or activities concerning production in the sector. Real Estate FIAGRO is a class of FIAGRO that invests in rural real properties and generates income from leasing the rural real property, seeking to increase the value of the land in the medium and long term. The goal is to increase the value of the property and subsequently sell it to generate a profit for investors.

FIAGRO's law is an interesting alternative to the current restrictions applicable to Foreigners acquiring rural property, since it allows foreign investors to participate in the rural land market through FIAGRO, but with no possession or ownership over the rural land. As a result, it is possible for foreign funds to enter the rural sector without falling foul of the limits on the acquisition of rural land imposed on Foreigners. Thus, Foreigners can invest and receive income without directly purchasing the land and, therefore, will not be subject to the restrictions of the current legislation.

6 Leasing Real Estate

6.1 Urban Leases

Urban real estate leases are governed by the Urban Lease Law. The legal framework introduced by the Urban Lease Law is a regulation that promotes the tenants' right to remain on the leased property real estate, even, at times and in commercial leases, to the detriment of the landlord's will. As such, the Urban Lease Law awards great protection to the individual's residence and the legal entity's goodwill.

Below are certain clauses that normally apply to the lease relation.

(i) **Right of First Refusal**: Tenant has right of first refusal over the leased real estate, if the landlord intends to sell it to a third party, in equal conditions to the ones offered by such third party. This right is applicable irrespective of contractual provisions. Nonetheless, if contractually stipulated, the tenant can request registration of the agreement on the leased real estate's enrollment certificate. This registration will have the effect of acknowledging the right of first refusal to the public in general, including for its enforceability.

(ii) **At-will termination**: The landlord is not entitled to lease at-will termination. Early termination by the landlord is restricted to causes strictly outlined in the Urban Lease Law. The tenant, on the other hand, can terminate the agreement early, irrespective of cause, upon payment of a contractually agreed penalty, reduced proportionally to the period of the agreement already elapsed.

(iii) **Renewal Right:** In commercial lease agreements the tenant can, upon filing a specific lawsuit, have the right to extend the lease term for another term, provided that all of the following conditions are met:

a. the lease agreement must be executed in writing and for a specific term;

b. the minimal term of the agreement, or sum of the terms of continuous and uninterrupted leases must be of at least five (5) years;

c. the tenant must have been using the real estate to develop the same business for, at least, the last three (3) years prior to the filing of the lawsuit; and

d. the landlord must request extension of the term in the period comprised between one (1) year and six (6) months prior to the lease's expiration date.

(iv) **Validity Clause**: Sale of the leased real estate does not trigger the termination of the lease agreement, but the purchaser of a leased real estate has the right to terminate the agreement upon prior notice of 90 days following the registration of the sale on the real estate record files before the relevant Real Estate Registry Office. A validity clause eliminates such right upon the registration of the lease agreement on the real estate record files for validity clause purposes. If not registered, the tenant will only be entitled to losses and damages.

(v) **Built-to-suit agreements:** The Urban Lease Law specifically governs built-to-suit lease agreements. The provisions of the Urban Lease Law stipulate: (i) that the parties can waive the right to have the mark-to-market rent judicially reviewed (landlords' and tenants' triannual statutory rights); and (ii) in the event of tenant at-will termination, the tenant is subject to an early termination fine up to an amount to all rents maturing until the expiration of the original lease's term.

6.2 Rural Leases and Partnerships

Rural leases are governed by the Rural Leases and Partnership Law. They are defined as the transfer of possession from landlord to the tenant for the latter to exploit a rural activity, as defined under the Rural Land Act. This means that the activity must be of agricultural, livestock or agribusiness nature.

The Rural Leases and Partnership Law stipulates the minimum duration of rural leases, in accordance with the activity developed, to which the parties are bound.

Federal Law 8,629/1993 stipulates that the restrictions imposed by the Rural Real Estate Legislation are also applicable to leases of rural real estate. Please refer to item 5 above.

Unlike purchase and sale transactions, lease agreements are normally entered into through a private instrument that does not require registration. Verification by the authorities of compliance with the restrictions is difficult to carry out. In order to address this issue, Instruction 43/2015, enacted by the National Justice Council, innovated the effective legislation by establishing that lease agreements executed by foreign individuals or legal entities over rural real estate must be entered into through public deed.

Rural partnerships are the agreements whereby a landowner partners with a third party for the development of an activity under the Rural Land Act. The parties share the proceeds (both financial and in-kind) of such partnership as compensation for their activities, subject to certain percentages, as stipulated in the Rural Leases and Partnership Law.

7 Taxes Related to Real Property in Brazil

Under Brazilian law, there are specific taxes related to real property.

7.1 Urban Real Estate Tax – IPTU (Municipal Tax)

A municipal tax accruing annually on the ownership of urban real estate and assessed over the value attributed by the municipal tax authorities to such real estate (usually close to market value). The rates vary according to the municipality where the real estate is located.

All urban real estate property in Brazil owned by individuals or legal entities as of January 01 of each year, is subject to Urban Real Estate Property Tax, to be paid to the municipality whose jurisdiction the property is located in. The IPTU is the main annual tax imposed on urban real estate properties, and the surface area of the real estate property, its location, the value of its constructions etc. are used to calculate such tax.

7.2 Rural Real Estate Tax- ITR (Federal Tax)

A federal tax accruing annually on the ownership of rural real estate and assessed over the value of the land itself (without crops, constructions etc.). The rates vary in accordance with the size and degree of use of the real estate.

All rural real estate property in Brazil, owned by individuals or legal entities as of January 01 of each year, is subject to Rural Real Estate Property Tax, to be paid to the Federal Government. Calculation of the ITR is based on information provided by the property owner to the Federal Tax Revenue (information includes the surface area, the purpose of its use, extent of preserved native forest, agricultural production, among several other considerations).

7.3 Real Estate Conveyance Tax (Onerous Transfers)- ITBI- (Municipal Tax)

A municipal tax accruing at a variable rate (depending on the municipality) on all onerous ownership transfers or usufruct of real estate. The real estate conveyance tax rate will be applied on the transaction's actual price; although the value of the real estate can be assessed by the municipality if the transaction's actual price is not in accordance with a fair market value.

Such tax does not apply in cases of contribution of the real estate to the capital in exchange for underwritten stock of companies whose main income does not come from real estate activity (requirements to be observed).

7.4 Inheritance and Donation Tax – ITCMD

A state tax accruing at a variable rate (depending on the state) on all transfers by donation or as a consequence of inheritance rights, and normally assessed over the higher between: (i) the transaction price; or (ii) the value of the real estate as assessed by the state.

The same issues indicated above relating to the value of the transaction and the value established by the municipality referring to the real property are also applicable to the ITCMD.

7.5 Foro

A fee due by individuals or legal entities holding a right to use a real estate owned by a third party, usually the Federation, under an *aforamento* regime. This fee is due annually in addition to the IPTU or ITR, and is assessed over the value attributed by relevant tax authorities.

7.6 Laudemium

A fee accruing at a 2% rate on all onerous transfers, of any kind, of real estate owned by a third party, usually the Federation, under an *aforamento* regime, and normally assessed over the higher between: (i) the transaction price; or (ii) the value of the real estate as assessed by the Federal Government.

8 General Considerations over Other Real Estate Aspects

8.1 Co-ownership

Real estate can be owned jointly by more than one individual or legal entities, in which case they share the costs, expenses and income relating to the use of the real estate. This means that ownership title is held jointly, without possession allocation over the common real estate. There are two main forms of joint or common ownership, namely tenancy in common (undivided portion of ownership or "*Condomínio Geral*") and co-ownership or "*Condomínio Edilício*", the latter applicable to real estate with constructions (residential or office buildings, industrial facilities, storage & logistics facilities).

8.2 Easements

Easements confer limited rights in favor of one's real estate (the "dominant" land) over another's real estate (the "servient" land). They can either be positive, permitting the owner of the dominant land to exercise certain rights over the servient land (*e.g.,* a right-of-way); or negative, prohibiting the owner of the servient land from exercising one of its ownership rights (*e.g.,* building above a certain height).

This institute was created in 2002 and, as such, certain aspects of the legislation are still pending regulation, such as, for instance, taxes accruing over its creation and extinction, by the relevant municipalities.

8.3 Surface Rights

Surface rights (*"Direito de Superfície")* entitle its holder to build or to plant on a real estate owned by a third party for a determined term. The concession of surface rights can be paid or free of charge and must be granted by a public deed.

8.4 Usufruct

Usufruct is the temporary right to use and to profit from a third party's real estate (except for the practice of any acts that may result in the disposal of the real estate). The usufruct's maximum duration is for the life of the usufructuary, if the beneficiary is an individual, or for 30 years, renewable for an additional 30 years, if the beneficiary is a legal entity.

8.5 Fees and expenses related to the acquisition of a real property

Notarial and Real Estate Registry Office fees vary from state to state and are regulated by state law. In each state, the same fees will be charged by every Real Estate Registry Office and Notary Public practicing in that state.

Lawyer's fees can be negotiated and are established by the Brazilian Bar Association in its main fee guidelines. To ensure the validity of negotiations and compliance with the relevant legal formalities, it is advisable to have a lawyer present. Furthermore, the presence of a lawyer also serves to ensure the accuracy of the deed's content in relation to the description of the property, the description of the succession of rights of the seller and his/her predecessors, in addition to other legal requirements.

Depending on the circumstances, other costs might be applicable, such as the *laudemium*, applied to marine land (properties located on islands or properties that fall under an occupancy regime or a permit issued by the Federal Government).

8.6 Specificities with respect to rural land- property boundaries description and its environmental data

Brazilian Law prescribes particular provisions in relation to rural land, and anyone with the intention of acquiring rural land must be aware of (i) specific rules/regulations concerning the description of the boundaries of rural land that detail satellite geo-referenced coordinates, in accordance with the proper topographical rules established by the National Institute of Colonization and Agrarian Reform ("INCRA"), and (ii) specific rules/regulations with respect to demarcated preservation areas on such properties and registration thereof with the State and the federal environmental agencies.

Additionally, the description of rural properties through satellite geo-referenced coordinates must be certified by INCRA and can lead to other legal measures/requirements regarding the property regularization, given that the description must be recorded in the property ownership record file. In addition to certification by INCRA as a requirement for the valid execution of a deed of sale of rural land, registration with the relevant Real Estate Registry Office is also required if the property in question comprises an area of more than 100 hectares in extent (note that this provision will soon apply in transactions involving properties smaller than 100 hectares in extent).

In addition, registration of rural property data with the State and the Federal environmental agencies is a further requirement for the execution of deed of sale for the acquisition of rural land, coupled with its registration with the relevant Real Estate Registry Office.

Finally, the rural property must be registered with the Federal Revenue, since the property must have an identification number ("NIRF").

8.7 Notes on real estate realtor activities

Under Brazilian law, a Real Estate Realtor must be registered with the relevant agency ("CRECI"). A broker's participation in a transaction is not mandatory unless a broker has been hired, even if the broker is not responsible for the effective conclusion of the transaction. Regardless of whether the transaction is duly concluded, the realtor's fees are still due. The parties can (and are advised to) reach an agreement regarding the incorporation of a provision in the deed of sale stipulating effective conclusion of the transaction as a prerequisite to the payment of the realtor's commission.

The realtor's commission can vary in accordance with the arrangement between the party and the broker, with an upper limit of 6% (six per cent) of the purchase price, established by law in general/standard/conventional cases.

8.8 Urban Land Regularization

The Land Regularization Law provides for instruments that allow for the regularization of urban land, by establishing legal, urban planning, environmental and social measures with the aim of regularizing informal urban centers into the urban organization and guaranteeing the land title to its occupants.

Informal urban centers are those that are clandestine, irregular or in which the occupants could not be given title, even if they comply with the municipal legislation in force at the time of their establishment or regularization.

In this sense, the procedure involves the regularization of areas and lots with the appropriate governmental bodies, by registering each of the areas and lots as individual properties, assigning them a number before the municipal government, for purposes of registration and tax collection, and an enrollment with the Real Estate Registry Office, where the ownership title will be registered.

The process also includes the implementation of public facilities and missing infrastructure, as well as environmental and social measures to guarantee the regular use and occupation of the real properties. F From this perspective, the aim is to occupy the land efficiently, combining its use in a functional way.

The Land Regularization Law mostly aims is to expand access to urbanized land for the low-income population, in order to prioritize the permanence of occupants in the regularized informal urban centers and foster social integration and generation of employment and income.

However, irregular urban lands that are not occupied or destined for the low-income population also benefits from the law, provided that there is a specific purpose for the regularization. In this case, the regularization may be necessary for a number of reasons, such as situations of possible overlapping areas.

The regularization aimed at benefiting the low-income population is financially supported by the government, while the specific purpose regularization (not destined for low-income population) must be financially supported by their potential beneficiaries or private claimants. In both cases, the regularization adds value to the benefited areas.

TELECOMMUNICATIONS, MEDIA, AND TECHNOLOGY (TMT)

1 General Overview

Telecommunications, Media, and Technology ("TMT") is one of the fastest-growing sectors in Brazil, whose development is considered vital for Brazil's economic and social growth and progress.

The TMT sector spans a broad range of activities, including the provision of telecom services (*e.g.,* fixed, and mobile telephony, satellite-based services, fixed broadband, Pay-TV), deployment of passive infrastructure (towers, poles, dark fiber, etc.), broadcast services and Value-Added Services ("VAS")/over-the-top provisions.

Companies carrying out activities within the TMT sector must be aware of rules and obligations involving certification of products, spectrum use, licensing, Internet regulation, privacy, and protection of personal data, among others, which can resonate in their activities.

TMT activities in Brazil are mainly regulated by six different governmental authorities and at least two non-governmental organizations in Brazil, namely:

- Ministry of Communications ("MCOM"): ministry within the structure of the Federal Government responsible for establishing public policies for the development of Information and Communications Technology ("ICT") and telecommunications in Brazil as well as regulating and managing free-to-air television and radio broadcasting.
- Ministry of Science, Technology, and Innovation ("MCTI"): ministry within the structure of the Federal Government that coordinates Brazil's science, technology, and innovation activities. Among others, the MCTI is responsible for **(1)** establishing scientific and technological research and innovation incentive policies on a national level; **(2)** planning, coordinating, supervising, and controlling science, technology, and innovation activities; and **(3)** establishing Information Technology ("IT") and automation development policies.
- Ministry of Justice ("MJ"): ministry within the structure of the Federal Government, responsible for the regulation and monitoring of consumers' rights, personal data processing, parental ratings for radio, TV, VoD, public entertainment contents (*e.g.,* role-playing games, electronic games, and applications), among other topics.
- Brazilian National Agency of Telecommunications ("ANATEL"): created by Law No. 9,472/1997, ANATEL is responsible for regulating and fostering the development of Brazil's telecommunications services. Its main attributions are: **(1)** implementing national telecommunications regulations, aimed at setting legal and technical standards for the provision of telecom services; **(2)** managing the radiofrequency spectrum and use of satellites; and **(3)** ensuring fair competition and preventing financial concentration within the telecom market. ANATEL has statutory powers to grant (and revoke) licenses for regulated services, to issue regulations and guidelines, to control the use of spectrum and orbital slots, to oversee the quality and security of services and products, to oversee compliance with net neutrality rules, to authorize transfers of control among telecoms and to impose fines for regulatory infringement, among others.

- Brazilian National Film Agency ("ANCINE"): created by Provisional Measure No. 2,228-1/2001, ANCINE mainly **(1)** regulates audiovisual services, which include the making and distribution of films and production, programming, and packaging of Pay-TV content, **(2)** manages the National Audiovisual Fund ("FSA"), providing resources aimed at fostering the development of Brazilian audiovisual productions, and **(3)** prevents piracy and imposes fines for regulatory infringement.
- Brazilian National Data Protection Authority ("ANPD"): created by Provisional Measure No. 869/2018, as amended by Law No. 13,709/2018, the Authority is responsible for the enforcement of data protection in Brazil. For instance, ANPD has the legal duty of encouraging awareness of rules and public policies on the security and protection of data, in addition to monitoring the sector and applying sanctions due to non-compliant data processing through any means (electronic or not).
- Self-Regulatory Advertising Council ("CONAR"): created to encourage freedom of expression and defend the constitutional requirements and limitations applicable to commercial advertising, CONAR (i.e., a non-governmental association) handles complaints from consumers, authorities, and advertisers with regards to advertisements in Brazil.
- Brazilian Internet Steering Committee ("CGI.br"): created by Inter-ministerial Order No. 147/1995, the Committee coordinates and integrates all Internet service initiatives in Brazil, fostering the quality, innovation, and dissemination of Internet services. Moreover, the operational body of CGI.br, NIC.br, is responsible for domain name registration and administration of ".br" domains, in addition to carrying out studies and offering recommendations for Internet security.

The following chapters describe the most relevant matters involving TMT in Brazil.

2 Telecommunications

2.1 Provision of telecom services

According to the Brazilian General Telecommunications Law (*Lei Geral de Telecomunicações* – "LGT") and additional regulations issued by ANATEL and MCOM, telecommunications services in Brazil can be provided:

- under a "public regime" (i.e., STFC), understood as a "public service" subject to the provider's commitment to universalization and continuance, and therefore, more strictly regulated; and
- under a "private regime", understood as a private service, allowed in adherence to economic freedom provided by the Brazilian Constitution, and therefore subject to less regulatory burden.

Additionally, services can be classified into (A) collective interest, provided to any party that is interested in its fruition, on a non-discriminatory basis, and (B) restricted interest, which are targeted at specific groups of users selected by the provider.

Until now, ANATEL has regulated five telecommunication services, whose regulation is still under review:

- Fixed telephony service (*Serviço Telefônico Fixo Comutado* – "STFC"): collective interest service allowing the transmission of voice and other signals, intended for communication between fixed stations through telephony processes. The STFC is currently the only telecom service that can be provided within the public regime (i.e., through concession), but since the enactment of Law No. 13,879/2019, it can also be provided under the private regime (i.e., through authorization). ANATEL recently approved the Regulation for the Adaptation of Fixed Telephony Service Concessions, which establishes that concessionaires may migrate the provision of their STFC services to the private authorization system.
- Mobile telephony service (*Serviço Móvel Pessoal* – "SMP"): collective interest service which enables communication between mobile stations as well as mobile and fixed stations, via telephony processes.
- Fixed broadband services (*Serviço de Comunicação Multimidia* – "SCM"): collective interest service that enables the transmission of multimedia information (i.e., audio, video, data, voice and other signals, images, texts, and other information of any kind) between fixed points.
- Pay-TV services (*Serviço de Acesso Condicionado* – "SEAC"): collective interest service that enables the distribution of audiovisual content via technology, process, electronic media, and communication protocols, with access based on paid subscription. Not to be mistaken with VAS/OTT (i.e., VoD), which do not classify as telecommunications services under Brazilian legislation. In this regard, within the scope of SEAC, the service provider is responsible for making the connection available to the client by its own means and technology.
- Private services (*Serviço Limitado Privado* – "SLP"): restricted-interest services, encompassing multiple applications, such as communication of data, video/audio signals, voice and text, and capture/transmission of data. Considering its nature as restricted-interest services, the SLP is not entitled with the same rights and prerogatives as collective interest services, especially interconnection with telecom networks.

The provision of telecommunications services under the private regime is contingent on ANATEL's prior authorization, although authorizations are not required (A) for telecommunications activities restricted to the limits of the same construction or movable/immovable property and (B) if support telecommunications networks use exclusively confined means and/or restricted radiation equipment, provided that no numbering resources are employed, and, (C) in case of collective interest services, there are less than 5,000 users.

ANATEL can only grant an authorization if the interested party is duly organized in accordance with the Brazilian Law and has its headquarters and administration located in Brazil. Also, such provider cannot be prohibited from contracting with public entities but must still have the technical qualifications required to provide the service, in addition to good economic/financial standing, and tax regularity. Additionally, specific restrictions for the provision of the same service in each area/region can be applicable.

One important aspect is that the issuance of authorizations by ANATEL for the provision of telecommunication services using the radiofrequency spectrum is contingent on the execution of a bidding procedure, in the event that there are not enough resources to serve all interested parties. The spectrum resources are understood to be limited public assets, whose usage is therefore subject to payment obligations, which means that the Government must seek the best proposal for their use. The issuance of authorizations based on public actions can be attached to coverage commitments to be undertaken by service providers, with oversight being held by ANATEL.

It is finally noteworthy to mention that ANATEL has recently approved two regulatory sandboxes to test potential initiatives and business models, one to improve mobile phone coverage in underserved areas and the other to support trials for direct-to-device satellite connectivity.

2.1.1 Satellite Services

According to Brazilian Law and regulation, Brazilian and international satellites can be used to provide space capacity to other telecommunication services. Satellite operation in Brazil is subject to ANATEL's jurisdiction, although the provision of space capacity is not considered itself to be a telecommunications service.

2.1.2 VAS

According to the rules set by the LGT, services and other solutions that add utilities to a telecom service, but do not provide connection between users, (i.e., OTT platforms) are not to be confused with the telecommunications services supporting them, and are deemed to be VAS, which are currently outside ANATEL's jurisdiction, and thus not subject to telecommunications rules and regulations. Also, the Internet environment is subject to the Brazilian Internet Law (*Marco Civil da Internet* - "MCI"), established through Law No. 12,965/2014. Nevertheless, there are ongoing discussions regarding a more comprehensive regulation of OTT platforms, especially within the scope of ANATEL and the National Congress, which may introduce changes to this regulatory landscape.

2.1.3 Restrictions on market access and foreign investment

As briefly mentioned above, only companies headquartered and duly incorporated under Brazilian laws are eligible to obtain authorization/license to provide telecommunication services.

A more robust and specific restriction is established by Law No. 12,485/2011 ("SEAC Law"), which rules for the provision of Pay-TV services and establishes cross-ownership restrictions between content producers and telecom service providers (Articles 5 and 6):

- The control or ownership of more than fifty percent (50%) of the total voting capital of companies providing telecom services of collective interest cannot be held, directly, indirectly, or through a company under common control, by Free Trade Association ("FTA") broadcasters and/or by audiovisual producers and programmers headquartered in Brazil, which are prohibited from directly exploiting those services; and
- The control or ownership of more than thirty percent (30%) of the total capital with the right to vote of FTA broadcasters and audiovisual producers and programmers headquartered in Brazil cannot be held directly, indirectly or through a company under common control, by telecom service providers of collective interest, which are prohibited from directly exploiting those services.

Such cross-ownership restrictions are currently under review by the Brazilian Legislature but remain in force in the meantime.

2.2 Spectrum use

The LGT establishes that spectrum is a public asset managed by ANATEL, and therefore, the Agency is responsible for (1) preventing harmful interference and maximizing its economic use, (2) setting and altering the destination of frequency bands, characteristics, and technical requirements of its use to serve the public interest, and (3) granting or canceling authorizations or imposing new obligations on telecom service providers.

The allocation of spectrum by ANATEL can be carried out as follow:

- licensed use, when the use of radiofrequencies must be previously authorized by the Agency (i.e., allowing the operation of a certain technology in a band); and
- unlicensed use, when the use of radiofrequencies is not contingent on ANATEL's prior authorization, only being subjected to technical requirements provided by regulation.

ANATEL holds the competence to establish which bands are to be allocated for licensed or unlicensed use, in compliance with international rules regarding this topic provided by the International Telecommunication Union ("ITU"), a United Nations agency of which Brazil is a member.

Certain radiofrequency bands are designated for specific telecommunication services. As a result, spectrum licenses can only be granted to companies that exploit the same telecommunications services assigned on the bands, and the fee for spectrum use varies depending on the occurrence or not of a bidding process.

If there is a bid for the spectrum – namely when there is not enough spectrum for all interested parties, the highest offer will determine the price that the interested party will pay. If the bidding process is unnecessary, an appropriate fee, defined in accordance with ANATEL's regulations, will be applied, which will depend on a set of variables, such as geographical area, bandwidth, and duration.

Historically, the right to use spectrum has always been attached to the provision of a "related" telecommunication service and could not be transferred, sold, or loaned to third parties, which halted the development of a secondary spectrum market in Brazil. Notwithstanding, following the enactment of Law No. 13,879/2019, which detached the spectrum usage to the authorization to provide a specific service, ANATEL is now in the process of reviewing its regulations, including the Regulation on the Use of Radio Spectrum ("RUE"), in order to encourage the development of the secondary market in Brazil.

2.2.1 Temporary Use of Spectrum (UTE)

Under ANATEL's Resolution No. 635/2014, individuals or entities can require ANATEL to grant a license for temporary use of spectrum for different purposes. Such purposes include the demonstration of a radiofrequency emitting product and allowing foreign authorities or foreign military vessels and official aircraft visits to Brazil.

This authorization has a maximum term of 60 days, it is not extendable, and it is granted on a secondary basis. Thus, the interested party is not protected against harmful interference and cannot cause interference in systems operating on a primary basis. Devices connecting to telecom networks under such license are waived from certification/homologation requirements.

2.3 Competition

The LGT establishes that telecom services in Brazil must be provided in a competitive environment, which enables consumers to freely choose between service providers who operate under market conditions, and are not allowed to engage in anticompetitive behaviors. Given such fact, the LGT granted ANATEL statutory powers to prevent antitrust behavior by telecom providers, in addition to the powers to other public stakeholders, such as the Administrative Council for Economic Defense ("CADE").

Currently, competition in the telecom sector is subject to the General Competition Goals Plan (*Plano Geral de Metas de Competição* – "PGMC"), which, in summary, (1) defines the relevant markets existing in the sector, and (2) defines the holders of relevant market power within such relevant markets, in order to (3) establish asymmetrical measures on those players, with the aim of encouraging competition within downstream markets (i.e., retail) by regulating the upstream market (i.e., the supply of wholesale inputs). The latest version of the PGMC is currently under review due to the impacts of digital transformation in the telecommunications' market, as well as to reevaluate relevant markets and asymmetrical measures.

2.4 Telecommunications' passive infrastructure

For the provision of telecommunication services in Brazil, major investments in "passive" infrastructure (*e.g.,* towers, poles, dark fiber, etc.) are required. Although ANATEL claims to have jurisdiction over passive infrastructure companies, the fact is that such activities are not currently regulated by the Agency.

The deployment of telecommunication infrastructure is currently regulated by Law No. 13,116/2015 (the "General Antenna Law"), which sets principles and rules for the licensing of telecom infrastructure and networks in Brazilian urban areas. Given that Brazil is a federation, and that municipalities are constitutionally competent to regulate local licensing, the General Antenna Law aims to set general standards to be followed by Brazilian municipalities.

The General Antenna Law prohibits the Government, owners, or concessionaries from charging telecom providers for rights of passage on public roads, sideways and other public properties of common use, a measure recognized by the Brazilian Supreme Court as constitutional and aimed at promoting the development of the telecom sector.

ANATEL and ANEEL also regulate the use of energy distribution poles by the telecom sector (i.e., the Brazilian electricity services watchdog). Several joint regulations have been enacted by the agencies to govern and resolve the ongoing disputes between power distribution concessionaries and telecom providers. In 2022, ANATEL and ANEEL held public consultations to review the pole sharing rules, and a new regulation is expected to be implemented this year.

2.5 Assignments and transfers of control and authorization

Generally, the transfer of corporate control of telecommunication providers (*e.g.,* mergers and acquisitions) requires mandatory prior clearance from ANATEL, provided that the groups involved in the deal meet the thresholds established in the Antitrust Law: (i) at least one of the groups involved with annual gross revenue (turnover) or total volume of business in Brazil (including exports to Brazil), greater than BRL 750 million in the latest financial year; and (ii) another group involved with annual gross revenue (turnover) or total volume of business in Brazil greater than BRL 75 million). According to ANATEL Resolution No. 720/2020 (General Grant Regulation), if powers designed to manage the company's activities or operations (directly or indirectly, internally, or externally), are being transferred to another party, the transaction must be submitted to ANATEL prior to its closing, except in the case of SLP services.

The transfer of authorization to provide telecommunications services is also subject to ANATEL's prior consent.

2.6 National and foreign satellites' operation

ANATEL regulates satellite operations in Brazil through its specific regulations, and in compliance with international rules established by the ITU.

The General Satellite Regulation, recently enacted by ANATEL (Resolution No. 748/2021), establishes the main requirements for the operation of satellites and the provision of telecommunications services supported by the satellite infrastructure and space capacity.

The satellite landing right is the authorization for Brazilian and foreign satellites to use spectrum and orbit resources, carry out satellite communication, and provide satellite capacity. The granting of the related landing right is subject to the technical and regulatory analysis of the application, as well as the submitted documentation.

The satellite landing right is granted for a period of up to 15 years. It can be extended for additional periods of up to 15 years, provided that the company expresses its interest at least two 2 years before the expiration of the original term, in the same orbital position, in the same or part of the authorized frequency bands.

Finally, the provision of space capacity is not considered a telecom service in Brazil, and only serves as support for other services, as described in Topic 2.1.1 above.

2.7 Certification and homologation of telecommunication products

As a condition for importing, using, and trading products connected to telecommunication networks in Brazil, interested parties must comply with telecom-specific regulations, particularly those governing the approval/homologation of products by ANATEL.

As a rule, ANATEL's homologation is required for any product for telecommunications (i.e., equipment, device, gadget, or element that is a necessary or sufficient means to perform telecommunications, including its accessories and peripherals), including (1) telecommunications devices in general and (2) other devices that broadcast in the radiofrequency spectrum.

According to Brazilian laws and regulations, trading non-approved/non-certified products is a punishable offense. ANATEL currently understands that the "trading process" is not limited to the acts of purchase and sale, but also encompass other acts performed by third parties equally necessary to the trading of the products, such as acquiring and storing products, pricing, offering and displaying products to consumers, advertising products in the media and/or self-owned and third-party websites, providing an interim budget, offering payment solutions, among many others.

3 Media

3.1 General overview

The carrying out of FTA broadcasting services in Brazil is subject to a set of rules established in the Brazilian Constitution, Law No. 4,117/1962 and regulations enacted by different public stakeholders. As a public service, FTA broadcasting services are subject to strict rules and regulations, including limitations on foreign capital.

The Brazilian Constitution, along with Law No. 4,117/1962, allows individuals and corporations to provide broadcast services under concession, authorization, or permission, which can be granted for renewable and successive periods of 10 years (for radio broadcasting) or 15 years (for TV broadcasting).

Such authorizations are subject to the following requirements and obligations, among others:

- 70% or more of the total capital and voting capital of the broadcaster must belong, directly or indirectly, to native Brazilians or individuals naturalized in Brazil for more than 10 years, who will mandatorily carry out management activities and define the content of the programming.
- The same individual cannot participate in the administration or management of more than one broadcaster within the same location.
- The transfer to third parties of the concession, authorization or permission depends on prior approval by the Brazilian Congress.
- Programming and content aired by FTA broadcasters must fulfill quotas and observe the educational and cultural purposes of the services.

3.2 Foreign ownership restrictions

As stated above, broadcasting companies can only be owned by native or naturalized Brazilians who have been citizens for at least 10 years, or by legal entities incorporated under Brazilian laws and headquartered in Brazil. Additionally, for more than 10 years, at least 70% of such companies' total capital and voting capital must be owned, directly or indirectly, by native Brazilians or individuals naturalized in Brazil for more than ten years, who will manage the companies and control the programming.

The same restriction applies to journalistic companies rendering services in Brazil.

3.3 Local content quotas

In accordance with constitutional principles governing media communication, Brazilian Law and regulations have established several local contents and must-carry obligations over the years, which are applicable to different means of social communication, including FTA and Pay-TV providers. Several of these obligations are now under review by the Legislature, especially considering the arrival and upcoming of OTT platforms.

3.4 Advertising through traditional and digital media

Brazilian Law, regulation, and self-regulation rules discipline and limit advertising over the traditional (*e.g.,* FTA, Pay-TV, etc.) and digital (*e.g.,* Internet) media.

According to Brazilian legislation, the time allotted in broadcasting programming for commercial advertising cannot exceed twenty-five percent (25%) of the total programming. In addition, there are limitations on the advertising of certain products such as tobacco, alcoholic beverages, and medical treatments.

Furthermore, Internet advertising must comply with the Brazilian Civil Rights Framework for the Internet (Law No. 12,965/2014 – Marco Civil da Internet) and the Code of Consumer Protection (Law No. 8,078/1990), in addition to obligations and rules enforced by CONAR, which establishes that all advertising on the Internet must be carried out with special care.

Through the National Consumer Secretariat ("SENACON"), the Brazilian Ministry of Justice also regulates advertisements on these platforms. SENACON's activities are focused on planning, elaborating, coordinating, and enforcing the National Policy on Consumer Relations, with the primary goal of guaranteeing the protection and exercise of consumer rights and promoting harmony within consumer relations.

3.5 Video-on-Demand ("VoD")

As of the current moment, there are no specific regulations set for VoD in Brazil. Pay-TV rules do not apply to content delivered exclusively on the Internet. Nevertheless, there are ongoing discussions regarding a more comprehensive regulation of OTT platforms, especially within the scope of ANATEL and the National Congress, which may introduce changes to this regulatory landscape.

3.6 Content rating system

The Brazilian National Secretariat of Justice ("SENAJUS") of the Brazilian Ministry of Justice ("MJ") has the attribution of rating audiovisual works (*e.g.,* FTA, Pay-TV, cinema, video, streaming, VoD, electronic and role-playing games). The rating system is consolidated as a national public policy.

Under the MJ's content rating regulation – notably Ordinance No. 502 of November 23, 2021 – several categories of audiovisual works are subject to a content rating system, such as (i) electronic games sold in physical or digital media, (ii) works offered on Internet applications, provided that they are intended for the Brazilian market, (iii) works made available by VoD services, regardless of the modality adopted (SVOD, TVOD or AVOD), etc.

On the other hand, certain categories are expressly waived from this obligation, such as sports competitions, events and programs, electoral programs and advertisements, advertisements and publicity in general, journalistic programs, and audiovisual content produced by users of internet applications (user-generated content), whether paid or not.

Apart from announcing the rating prior to broadcasting content, exhibitors of classifiable works must provide parents and legal guardians with the possibility control and block access to works, electronic games and applications not recommended for a specific age group.

The Department for the Promotion of Justice Policies ("DPPJ") of the MJ is responsible for monitoring compliance with the rules of content rating, but does not have the power to apply sanctions. Entities subject to the relevant regulation must provide the DPPJ with free, unrestricted, and permanent access to classifiable content.

In the event of non-compliance with rating obligations, the DPPJ can initiate an administrative procedure, ensuring the right to an adversary system and full defense. Once non-compliance is confirmed, responsible parties will be notified in order to adequate their conduct immediately, without prejudice to the communication of the fact to the competent authorities. The application of sanctions will take the form of specific legislation through the action of bodies with the competence to do so (*e.g.,* Public Prosecutor's Office, Guardianship Councils and ANATEL).

4 Technology

4.1 Internet regulation

As mentioned, the MCI is the legal framework that governs the Internet in Brazil, and was set by Law No. 12,965/2014. It establishes principles, guarantees, rights and obligations for the use of the Internet, aiming to secure it as an open public space where rights such as the freedom of expression and economic liberty are secured and encouraged. The Framework also deals with privacy and data protection, record-keeping to assist law enforcement, liability for third-party content, inviolability and secrecy of communications, and net neutrality.

While providing Internet access is considered a telecom service regulated by ANATEL, applications built Over-the-Top ("OTT") of telecom networks, such as messaging applications and VoD, are considered VAS. No license is required to provide OTT services in Brazil.

As highlighted above, there are ongoing discussions regarding a more comprehensive regulation of OTT platforms, especially within the scope of ANATEL and the National Congress, which may introduce changes to this regulatory landscape.

4.1.1 Net neutrality

The MCI also provides for net neutrality, deeming it one of the principles of the Internet. Under the MCI, Internet providers responsible for the transmission, switching and routing of data must treat the data without distinction based on content, origin and destination, service, terminal, or application. Bandwidth throttling is forbidden.

Decree No. 8,771/2016, which provides for the exceptions to net neutrality, establishes that traffic discrimination or degradation can only occur due to technical requirements indispensable to the service provision (*e.g.,* network security and congestion) and the prioritization of emergency services.

In any event of exception, however, the service provider must adopt transparent measures to provide the user with accurate information regarding the data transmission discrimination or degradation. According to the MCI, the provider must also: (i) abstain from causing damage to the users; (ii) act with transparency, proportionality, and isonomy; (iii) inform the user in advance about the measures adopted, including those related to network security; and (iv) offer services in non-discriminatory conditions and abstain from anticompetitive conduct.

4.1.2 Liability for third-party content

The Brazilian intermediary liability system is provided by the Internet Law. In order to secure freedom of expression and prevent censorship, Internet application providers that make available content created by third parties can only be held liable:

- for damages from content generated by third parties if, after a specific court order, they do not take steps to, within the scope and the technical limits of its service, and within a reasonable timeframe, make unavailable the content indicated as infringing, except as otherwise provided by law.
- for the violation of privacy resulting from unauthorized disclosure of images, videos, and other materials containing nudity or sexual acts of a private nature: if, after receiving notice from the

participant or the participant's legal representative, the application provider fails to remove the content from its service promptly.

However, there are certain judicial precedents in the sense that such platforms can be held liable for the content posted, jointly with the users who posted the content, if it has editorial control or does not remove the content once aware of its existence. In the absence of such control, liability is only due if the application service provider remains inert after receiving notification for the removal of the material. Regardless, it is understood that Internet application providers are not obligated to monitor proactively and cannot be judicially compelled to monitor content published by its users.

4.2 Internet of Things

On June 25, 2016, Brazil's government established the Brazilian National Plan of Internet of Things ("IoT"), through Decree No. 9,854/2019, to implement and develop the IoT in Brazil, based on free competition and free circulation of data, in compliance with the rules of information security and data protection.

The main objectives of the Plan are:

- improving people's quality of life and promoting efficiency gains in services through the IoT;
- promoting professional training for the development of IoT solutions and job creation in the digital economy;
- increasing productivity and fostering the competitiveness of Brazilian IoT companies through innovations in the sector;
- seeking partnerships with the public and private sectors for the implementation of the IoT; and
- increasing Brazil's integration with the international IoT scenario, mainly through the development, innovation, and internationalization of IoT solutions developed in the country.

The Plan establishes actions and projects to facilitate IoT implementation in Brazil and provides that the oversight of such actions is a responsibility of the Chamber of Management and Monitoring of the Development of Machine-to-Machine Communication Systems and the Internet of Things, composed of representatives from different Ministries (*e.g.,* Ministry of Science, Technology and Innovation, Ministry of Economy).

Apart from that, in recent years, several measures have been taken to lower barriers to the IoT in Brazil. For example, ANATEL published Resolution No. 735 on December 1, 2020, specifying that the obligations provided in the Agency's General Regulation of Consumer do not apply to accesses intended exclusively for the connection of IoT devices.

4.3 Cybersecurity

Brazil's National Cybersecurity Policy ("PNCiber") was enacted on December 26,2023 to steer cybersecurity activities in the country. The policy is grounded in the principles of sovereignty and prioritizing the national interest, guaranteeing fundamental rights, preventing cybersecurity incidents, and national and international cooperation. It also established the National Cybersecurity Committee ("CNCiber"), which is responsible for monitoring how the PNCiber is implemented and how it develops. The committee is currently reviewing Brazil's National Cybersecurity Strategy ("E-Ciber"), approved by Decree No. 10,222/2022, which established strategic goals to guide the country's approach from 2020 to 2023. Such goals included making Brazil a reference nation in the cybersecurity area and strengthening the country's resilience toward cyber threats.

Within the telecom sector, ANATEL's Cybersecurity Regulation promotes cybersecurity in telecommunications networks and services and supports ongoing supervision of the market, infrastructures, and the adoption of proportional corrective measures. It also imposes an obligation on telecommunication providers to develop, maintain and implement a detailed cybersecurity policy. Currently, ANATEL's Cybersecurity Regulation is under review and the Agency may seek to broaden its scope.

Additionally, Brazilian criminal legislation states that it is a criminal offense to invade any computing device connected or not to the Internet by evading security mechanisms in order to obtain, alter or destroy data, or install any program, virus, or other functionality to obtain unlawful gain without the device owner's consent.

4.4 Data protection

Data protection is primarily guaranteed by the 1988 Constitution, which provides for the inviolability of personal data and respect for privacy as fundamental rights, even via digital means.

The Brazilian General Data Protection Law ("LGPD") is currently the most relevant regulation regarding data protection in Brazil. Inspired by the European Data Protection Regulation ("GDPR"), it sets several obligations for individuals, companies, and public agencies during personal data processing. In 2023, the ANPD published the Regulation on Dosimetry and Application of Administrative Penalties, which sets the criteria and parameters for pecuniary and non-pecuniary sanctions applied by the ANPD in the event of a violation of the LGPD, as well as the rules and dosimetry for calculating the base amount of the fines. In 2024, the ANPD approved the Data Breach Notification Regulation, which establishes procedures for data controllers to notify the ANPD and subjects of data breaches, as required by Article 48 of the LGPD.

Brazil's Internet framework also promotes data protection. According to the MCI, the entity responsible for collecting and processing data cannot communicate it to third parties without the data subject's voluntary, express, and informed consent. Moreover, the disclosure of connection and access to Internet applications logs and the content of private communications is only allowed under judicial order.

Under the telecoms legal framework, users of telecommunications services have the right to the secrecy of communications, privacy, and data protection. Telecom providers can only use information related to the user's individual use of the service to carry out their activity. The disclosure of individual information will depend on the express and specific consent of the user. The provider can disclose aggregated information about the use of its services to third parties, provided that they do not allow the identification, directly or indirectly, of the user or the violation of their privacy.

VENTURE CAPITAL AND STARTUPS

1 Overview

Venture capital has been growing at a rapid pace in Latin America for the past decade and Brazil stands out as the indisputable leader when it comes to the distribution of investments within the region: more than half of invested funds have been allocated to Brazilian startups from several different sectors, such as financial, healthcare and education technology companies that constitute the top sectors for the entire region. This does not come as a surprise for the country with the fifth most internet users in the world and considering its continental proportions. The Brazilian tech industry consistently attracts the interest of venture firms worldwide and has seen an increase in domestic venture firms.

Over the past three to four years, the Brazilian venture capital market has experienced substantial fluctuations, largely influenced by economic and political changes, not only in Brazil, but worldwide. From 2020 to 2022, Brazil saw a surge in startup investments, particularly in the fintech, healthtech and edtech sectors, driven by digital transformation trends which were accelerated by the COVID-19 pandemic. Investment peaked in 2021 and was moderated in 2022 due to macroeconomic pressures such as inflation and interest rate hikes. As of 2023, we have noticed a conservative approach from investors regarding new investments in startups, with a sharp decline in available capital and, consequently, in venture investments. This is in line with global trends, due to the lack of liquidity in the markets, rising cost of capital, and increasing difficulty for developing companies to access capital markets in Brazil.

The structuring of the vast majority of venture investments in Brazil tend to adhere to foreign legislations and are recurrently structured abroad, in which it is common to see a significant demand from venture firms (local and foreign) regarding Brazilian startups in their primary investment rounds, aiming to incorporate foreign parent companies in order to receive their investment and swap equity interest. In view of this growing industry and the acknowledgment that deals structured abroad prevent the Brazilian economy from fully benefiting from such investments – meaning the collection of taxes by foreign jurisdictions, residency of investors abroad, etc. –, Brazilian legislators made a series of efforts to change this scenario, with new bills being passed to reinforce legal security and facilitate investments through local deals, in particular with Supplementary Law No. 182 (further detailed below).

In 2024, the investment climate is marked by cautious optimism, still with no prospect of a considerable immediate improvement, although interest rates have already started to fall in Brazil and should start declining in developed countries as well. 2024 is expected to be another year in which smaller startups struggle to raise money, and greater improvement is only expected for 2025 and 2026. The main alternatives used by developing companies in the latest years, which should also be applied in 2024, include bridge loans, small investment rounds, crowdfunding and venture debt, for example, as well as mergers and acquisitions.

2 Specific Legislation

In an innovative move, the Brazilian federal government passed Complementary Law No. 182 in mid-2021, which instituted the Legal Framework for Startups and Innovative Entrepreneurship.

This new Law introduces and provides for a number of aspects that are fundamental to a legal framework for startups, among which are the following: recognition of innovative entrepreneurship as a vector for economic, social, and environmental development; encouraging the creation of legally safer environments; granting greater contractual freedom and favoring investments; modernizing the Brazilian business environment in light of emerging business models; encouraging innovative entrepreneurship as a means to generate qualified jobs; creating an entrepreneurial ecosystem through cooperation among public entities, between such entities and the private sector, and among private agents; and encouraging the contracting by the government of startups that offer innovative solutions to public problems, taking advantage of potential economic opportunities.

The Legal Framework for Startups inaugurates a legal concept for startups in Brazil, according to which startups will be considered newly constituted companies or companies recently in operation, whose business model is characterized by innovation. Under the Law, companies (as well as individual entrepreneurs) will be considered startups when they meet the following criteria: (i) annual gross revenues of up to BRL 16 million in the previous calendar year or BRL 1.3 million multiplied by the number of months of activity in the previous calendar year (when less than twelve months), regardless of the corporate form adopted; (ii) up to 10 years of enrollment in the National Register of Legal Entities (CNPJ/MF); and (iii) have expressly declared, in their corporate documents, the use of innovative business models or that are framed in the special regime *Inova Simples* provided for in the Micro and Small Companies Statute (Complementary Law No. 123/2006).

Additionally, the Law ratifies investment practices for raising financial resources without integration into its capital stock, among them: (a) option of subscription or sale of participation; (b) debentures and convertible mutuals; and (c) partnerships. It introduces the concept of the "angel investor" in the Brazilian legislation, determining that the investor who makes investments in the aforementioned modalities will not be liable for the company's debts, even in the event of a Court-Supervised Reorganization proceeding, and will not have any management power or even the right to vote in the corporate resolutions, but may participate in the resolutions in an advisory capacity. Such provisions establish that the piercing of the corporate veil will not extend to such investor, which is a major innovation for the Brazilian legal framework and represents a great incentive for investment in the country.

The Law also authorizes companies that have R&D investment obligations to fulfill their commitments by investing in startups through Equity Investment Funds (FIPs), in the categories of seed capital, emerging companies, and companies with R&D-intensive economic production.

Moreover, the Legal Framework creates experimental regulatory environment programs, under which the government may establish special simplified conditions for participating startups to receive temporary authorization to develop innovative business models and test experimental techniques and technologies, through a facilitated procedure.

According to the provisions of the Law, the State will be able to hold tenders and enter into contracts whose purpose is to meet public demands that require innovative solutions through the use of technology, and that promote innovation in the production sector.

The Law also establishes changes to the Corporation Law to simplify procedures applicable to corporations with annual revenues below BRL 78 million and incorporates into Complementary Law No. 123/2006 the provisions related to capital contributions made by angel investors in micro- and small-sized companies.

By providing a structured pathway for new types of investment and simplifying the bureaucratic procedures regarding the raising of capital by startup owners, the law enables startups to access a broader range of potential investors, which, in due time, will have a significant importance to businesses that, although innovative and which present great growth potential, do not have the magnitude to attract venture capital firms.

Although other important sectors, such as labor, tax and regulatory were not covered in sufficient depth by the Law, there is no question that the Legal Framework for Startups represents a transformative step toward the fostering of a supportive ecosystem for innovative businesses, encouraging both local and international investment with the improvement of the legal concepts and the simplification of the legal procedures surrounding the market.

VISAS AND INDIVIDUAL INCOME TAX

1 Overview

Law No. 13,445/2017 – in force since November 2017 – and Decree 9,199/17 changed the scenario regarding immigration in Brazil, with the aim of reducing the differences in rights between Brazilians and foreign individuals. However, it is still necessary to obtain certain authorizations for foreign individuals to work in Brazil.

Foreign individual must obtain a residence permit, which authorizes the individual to work in Brazil, and a valid visa, which authorizes them to enter the country.them.

The visa and residence permit requirements are provided for in Law No. 13.445/2017, Decree No. 9.199/2017 and the regulatory norms issued by the National Immigration Council (the "Normative Resolutions").

Regarding visas, there are currently three types that apply in Brazil:

(i) **Visitor visa**: for tourism, business, transit, and artistic/sports activities purposes; does not allow the individual to work in Brazil;

(ii) **Temporary visa:** applicable for work (with or without an employment contract), research, health treatment, study, vacation or summer job, family reunion and investment purposes, among others;

(iii) **Official, diplomatic, and courtesy visas:** applicable for foreign government representatives or private employees who travel to Brazil for an official visit, that is of a temporary or permanent nature.

The visitor visa, as well as the official, diplomatic and courtesy visas are not recommended for individuals that will actually be working in Brazil.

As mentioned above, in addition to the visa - which allows the employee to enter Brazilian territory-, the foreign individual will need a residence permit, which allows the individual to reside in Brazil and, depending on the case, to work in the country.

If the individual is abroad and intends to work in Brazil, they have to apply for a residence permit first and, once such "prior" residence permit is approved, the applicable visa will be issued accordingly.

It is also possible for a foreign individual who is already in Brazil, under any of the visa types above, to apply for a residence permit without having to leave the country, "transforming" a Visitor or Official visa into the appropriate residence permit.

Below is a summary of the main types of temporary residence permits under which foreign individuals may work in Brazil, and the main aspects of each kind of visa according to the current legislation.

2 Residence permit for investors

This residence permit is appropriate for the foreign individual who intends to come to Brazil to invest personal resources in a Brazilian legal entity in order to promote jobs and income generation in Brazil.

The main requirement in order to obtain such permanent visa is the investment of personal resources from the foreign individual into the capital stock of a Brazilian Company, under one of the following conditions:

XVII. At least BRL 500,000.00 if the investment is made in a pre-existing or recently incorporated company; or

XVIII. From BRL 150,000.00 to BRL 500,000.00 if the investment is intended for innovation activities or to research of a scientific or technological nature — in which case additional specific requirements apply, such as investment intended for innovation support of government institutions, having the company located in a technological complex, having participated and reached a final stage of a government program for startups, among others.

In both cases it is required to present a 3-year business or investment plan, observing the requirements of the normative resolution, including company purpose and generation of job positions and income. Under this visa, the Immigration Department does not require foreign individuals to execute an employment contract with the Brazilian company.

3 Residence permit for officers and managers

This residence permit is applicable to foreign individuals who will occupy management roles in Brazil, i.e., administrator positions, duly indicated in the Brazilian company's articles of association or bylaws as an manager, officer or director, and with powers to legally represent and sign documents on behalf of the Brazilian company, whether hired as an employee or a non-employed administrator.

In order to obtain such residence permit, the main specific requirement applicable to the Brazilian company receiving the foreign individual will be one of the following:

XIX. Proof of direct foreign investments in the company, in the amount of at least BRL 600,000.00 per foreign officer/administrator/executive, duly proven by an electronic report related to the registry of foreign currency with the Central Bank of Brazil; or

XX. Proof of direct foreign investments in the company, in the amount of at least BRL 150,000.00 per foreign officer/administrator/executive, duly proven by an electronic report related to the registry of foreign currency with the Central Bank of Brazil, and the obligation to create 10 new jobs in a 2-year term from the date that the company is incorporated or that the respective manager enters the country.

The amounts above may belong to the company’s headquarters abroad. Such amounts do not need to belong to the individual, as in the case of the investors’ permit.

Under this residence permit, the immigration department does not require the foreign individual to execute an employment agreement with the Brazilian company; thus, the foreign individual may be hired as an effective employee of the company, or as a non-employed officer.

4 Residence permit for work purposes with an employment agreement with a Brazilian company

This type of Temporary residence permit is appropriate for foreign individuals who will be hired as employees in Brazil, to hold positions that do not involve management.

Thus, foreign individuals bearing this residence permit are not allowed to represent the Brazilian company, sign documents, contracts, checks or other documents on behalf of the Brazilian Company, or have powers of attorney granted to them to represent the company, under the risk of having the permit canceled.

For this residence permit, the local employer must demonstrate the compatibility between the professional qualification/experience of the foreign individual and the activity that they will be performing in Brazil.

Brazilian companies that carry out industrial (except for the rural industry) and trading activities, and that have more than three employees, are also required to ensure that at least two-thirds (2/3) of the company's employees are Brazilian nationals. The same ratio is applied to the salaries, which means 2/3 of the payroll cost must be allocated to Brazilian employees.

Furthermore, it is also legally required to execute an employment agreement in accordance with the Brazilian Labor Law standards, and provide the minimum clauses provided in the templates set forth in the exhibits of Normative Resolution No. 02/2017.

This residence permit is valid for two years, with the possibility of being transformed into an undetermined term permit.

5 Residence permit for rendering technical assistance services without an employment agreement

Under this type of residence permit foreign individuals can render technical assistance services in Brazil, as a result of a contract, cooperation agreement or covenant executed between a foreign entity and a Brazilian entity.

The residence permit can be granted for up to one year; however, it is possible to request a renewal of the residence permit for an additional period of one year, based on Normative Resolution No. 30/2018. In order to have the new request granted, it is necessary to provide a detailed request, justifying the need for the continuity of the services being rendered without an employment relationship.

6 Residence permit for technology transfer purposes without an employment agreement

This type of residence permit is applicable to foreign individuals who enter the country to render services that arise from a technology transfer arrangement between a foreign entity and a Brazilian entity.

This residence permit is valid for one year, however, it is possible to request a renewal of the residence permit for an additional period of one year, based on Normative Resolution No. 30/2018, as long as the requesting party provides a detailed justification regarding the need for the continuity of the services being rendered without an employment relationship.

In urgent cases, this residence permit may be issued within five business days and for a period of up to 180 days in each calendar year. In case of emergencies, the one-year permit may be issued within two business days through a simplified procedure.

If the request is based only on the desire of the local company to retain the foreign individual's services, it will be necessary to engage the individual as a regular employee, as per Brazilian Labor Law.

7 Residence permit for receiving training in the Brazilian subsidiary, branch or headquarters of an international company

This type of residence permit is applicable to foreign individuals who are employees of an international company and will enter the country to receive training in the local offices of the Brazilian entity that is part of the same economic group of the international company, without an employment agreement with the local (Brazilian) entity.

No employment agreement is required between the individuals and the Brazilian entity. However, these companies must prove that they belong to the same economic group and that there is a contractual (employment) bond between the foreign individual and the international company.

This residence permit is valid for two years, and can be transformed into an undetermined term permit.

8 Citizens from Mercosur Countries (Brazil, Argentina, Uruguay, and Paraguay), Chile, Peru, Bolivia, Ecuador, and Colombia

As a result of an agreement among Mercosur countries (Brazil, Argentina, Uruguay, and Paraguay), Chile, Peru, Bolivia, Ecuador and Colombia, the citizens of these countries may obtain a permit to live in any of them, and consequently have the same rights as those of the nationals of the country where they live, including the right to work.

In this sense, the citizens of the countries above that intend to live and work in Brazil do not need a work visa, but rather a residence permit to work in Brazil.

This permit is valid for 2 years and may become permanent if its renewal is requested within 90 days prior to expiration.

9 Residence for citizens of border countries

Ordinance No. 09/2018 maintained certain rules of the previous Labor Ministry's Normative Resolution No. 126/2017, providing for the possibility to grant a permit to live in Brazil for up to two years to citizens of bordering countries that are not participants of the Mercosur residence agreement. Such request must be made directly at Federal Police offices.

In practice, this authorization is applicable to citizens of Venezuela, Suriname, Guyana, and French Guyana.

10 Individual income tax

Upon arrival in Brazil, Brazilian tax legislation provides that an individual will be subject to the same income tax laws applicable to residents of Brazil: (i) upon their entry in Brazil with a permanent visa; (ii) upon their entry in Brazil with a temporary visa with an employment contract with a Brazilian company; or (iii) on the 184th day (consecutive or not) of permanence in the country during a period of 12 months if they enter Brazil with a temporary visa. In this case, the individual will be taxed as a non-tax resident during the period before the completion of the term unless they obtain a permanent visa or an employment relation, in which case they will be taxed as a tax resident from this date on.

Given the uncertainty regarding the concept of "tax residency", an individual can potentially meet the requirements of two or more legal systems, thus being a tax resident in more than one jurisdiction at the same time. This would generally result in the individual being liable to income tax in both countries unless otherwise provided (e.g., in a Double Taxation Avoidance Treaty).

As a taxpayer in Brazil, their worldwide income will be subject to Brazilian income taxation (that ranges from zero do 27.5%). A tax credit may be granted to income taxes paid in other countries, provided that certain conditions are met.

WATER AND SANITATION LAW

1 General Terms

In Brazil, the legislation and regulation of sanitation comprises the following public services:

(i) water supply;
(ii) sewage collection and treatment;
(iii) rainwater drainage; and
(iv) waste collection and street cleaning.

The Federal Government establishes general regulations regarding sanitation services. However, the municipal government provides and manages these services, ensuring the population's access to clean water, efficient sewage disposal, functional drainage systems, and the overall cleanliness of the city's public spaces.

2 Navigating the Impact of Brazil's New Sanitation Regulatory Framework

The enactment of the new Sanitation Regulatory Framework (Federal Law No. 14.026 of 2020) brought about a comprehensive overhaul of regulatory and contractual norms within the sector. This reform was primarily aimed at fostering private sector participation, establishing uniform regulatory standards, and enhancing water and sanitation services' overall efficiency and financial sustainability. The law represents a significant step toward modernizing the framework to better meet the needs of the population and the environment, and to ensure universal access to water and sanitation services.

Throughout 2023 and into the first half of 2024, the sanitation sector witnessed a surge in bidding activities, underscoring the private sector's confidence in the evolving legal landscape. These biddings, which predominantly encompassed water supply, sewage treatment, and solid waste management projects, not only attracted participants but also culminated in the successful awarding of contracts. This trend is a testament to the private sector's unwavering commitment to investing in these essential services, providing reassurance to all stakeholders.

Water supply and sewage system management is often organized through concession contracts, where private entities are remunerated via public tariffs. These agreements align with legislative objectives, particularly the ambitious targets of providing 99% of the population with potable water, and 90% with sewage collection and treatment services by December 31, 2033.

In contrast, waste collection initiatives are typically executed through public-private partnerships (PPPs), which combine government funding with public fees. The primary aim of these PPPs is to phase out the reliance on open dumps and to minimize the volume of waste directed to sanitary landfills, consequently fostering environmental sustainability.

In 2024, the main milestone in the basic sanitation sector occurred with the privatization of Sabesp. This is the Basic Sanitation Company of the state of São Paulo, responsible for providing basic sanitation services (water and sewage) in 375 municipalities, which corresponds to 70% of the population of the state of São Paulo. It is the largest sanitation company in the Americas in terms of population served and the fifth largest in the world in terms of revenue.

The privatization was carried out with a follow-on of Sabesp shares for BRL 14.7 billion, reducing the São Paulo State Government's shareholding position from 50% to 18%. Of the reduced amount, 15% of the shares were acquired by a strategic investor. The privatization aimed to increase investments to BRL 66 billion, anticipating the universalization of basic sanitation services by 2029 and reducing the tariff.

Additionally, a significant development following the New Regulatory Framework is the formation of inter-municipal collaborations for the joint administration of sanitation services. The aim is to achieve economies of scale, enhance resource utilization, and reduce tariffs. Regionalization may encompass one or several sanitation services tailored to specific goals and organizational structures.

Municipalities can voluntarily form these collaborations, choosing their service administration model or be compelled by state legislation. In mandatory cases, the state must guarantee municipal representation in decision-making and service administration.

This approach is particularly pertinent for water supply, which requires consideration of hydrographic basin usage. For waste management, regions must utilize the same sanitary landfills to optimize space and prevent unnecessary soil contamination.

A pivotal transformation within the sector was the enactment of a suite of regulations by the National Water Agency (Agência Nacional de Águas – "ANA"), which aimed to standardize regulation by establishing general guidelines. This move significantly bolstered legal certainty for practices related to sanitation services throughout the nation.

Since 2023, the National Water Agency (ANA) has implemented essential regulatory standards concerning water supply, sewage treatment, and waste management. These regulations address critical areas such as:

- Compensation for reversible assets in public contracts;
- **Risk allocation** between public and private parties in public contracts;
- Tariff structures;
- Methods for measuring and achieving universalization goals for service coverage.

Although municipalities possess the autonomy to manage and regulate their services, they are not inherently bound by federal standards. Nevertheless, the federal government encourages adherence to these norms by stipulating that municipalities failing to meet the established benchmarks will be ineligible for federal funding. Moreover, the National Water Agency (ANA) has several other critical regulatory standards on its agenda to ensure consistent service quality.

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